
SUBSTITUTE HOUSE BILL 1082

State of Washington 62nd Legislature 2011 Regular Session

By House Local Government (originally sponsored by Representatives Bailey, Chandler, Finn, and Angel)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to local governments and state agencies providing
2 assistance to citizens prior to issuing penalties for violating certain
3 laws; amending RCW 90.58.210, 90.58.220, and 90.48.144; reenacting and
4 amending RCW 43.21B.300; adding a new section to chapter 36.70A RCW;
5 adding a new section to chapter 90.48 RCW; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature recognizes that the
8 Washington Constitution establishes that the powers of government are
9 derived from the consent of the people and that government efforts are
10 to protect and maintain individual rights. The role of government is
11 to benefit the people and to do so in a way that is best suited to the
12 people, not the government. Over the years, this constitutional limit
13 has been diluted as agency powers have grown and more government
14 requirements have been placed on the people.

15 The legislature finds that the people have complained to its
16 representatives that state agencies exhibit an attitude not of service
17 to the people but are adversarial in situations where there are alleged
18 violations of environmental laws. The legislature further finds, in
19 enforcing environmental laws, the public benefit is greater if a

1 citizen corrects the action that leads to a violation rather than
2 merely receiving citations and being fined penalties. In many
3 instances where there are environmental concerns, individuals may be
4 unaware that their actions are harmful to the environment, and they may
5 not know how to rectify the problem when they receive a notice of
6 violation.

7 The legislature intends state agencies to provide warnings to
8 individuals that are in violation of laws and provide them with
9 information on how to voluntarily comply with laws and provide them
10 with the time to correct alleged violations before issuing fines or
11 penalties.

12 Agencies should establish a culture of working with people to
13 improve our environment instead of relying on the ability to issue
14 citations and penalize individuals.

15 **Sec. 2.** RCW 90.58.210 and 2010 c 210 s 39 are each amended to read
16 as follows:

17 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
18 43.05.150, the attorney general or the attorney for the local
19 government shall bring such injunctive, declaratory, or other actions
20 as are necessary to ensure that no uses are made of the shorelines of
21 the state in conflict with the provisions and programs of this chapter,
22 and to otherwise enforce the provisions of this chapter.

23 (2) Any person who shall fail to conform to the terms of a permit
24 issued under this chapter or who shall undertake development on the
25 shorelines of the state without first obtaining any permit required
26 under this chapter shall also be subject to a civil penalty not to
27 exceed one thousand dollars for each violation. Each permit violation
28 or each day of continued development without a required permit shall
29 constitute a separate violation.

30 (3)(a) Prior to a penalty being issued under this section, the
31 department or local government shall seek voluntary compliance actions
32 from the person identified under subsection (2) of this section and
33 work in good faith with any person who indicates an interest in
34 voluntary compliance. In seeking voluntary compliance actions under
35 this subsection, the department or local government shall provide the
36 person with educational information on methods of correcting the
37 alleged violation and technical assistance for expeditiously achieving

1 compliance with: (i) The terms of a permit issued under this chapter;
2 or (ii) requirements for undertaking development on the shorelines of
3 the state. If the provided information and assistance do not result in
4 a voluntary rectification of the violation, the department or local
5 government may impose a penalty upon the person in accordance with this
6 section.

7 (b) Nothing in this subsection (3) lessens or otherwise affects the
8 authority of a local government to take actions necessary to address an
9 immediate threat to human health or safety.

10 (4) The penalty provided for in this section shall be imposed by a
11 notice in writing, either by certified mail with return receipt
12 requested or by personal service, to the person incurring the same from
13 the department or local government, describing the violation with
14 reasonable particularity and ordering the act or acts constituting the
15 violation or violations to cease and desist or, in appropriate cases,
16 requiring necessary corrective action to be taken within a specific and
17 reasonable time.

18 ~~((+4))~~ (5) The person incurring the penalty may appeal within
19 thirty days from the date of receipt of the penalty. The term "date of
20 receipt" has the same meaning as provided in RCW 43.21B.001. Any
21 penalty imposed pursuant to this section by the department shall be
22 subject to review by the shorelines hearings board. Any penalty
23 imposed pursuant to this section by local government shall be subject
24 to review by the local government legislative authority. Any penalty
25 jointly imposed by the department and local government shall be
26 appealed to the shorelines hearings board.

27 **Sec. 3.** RCW 90.58.220 and 1983 c 138 s 3 are each amended to read
28 as follows:

29 In addition to incurring civil liability under RCW 90.58.210, any
30 person found to have willfully engaged in activities on the shorelines
31 of the state in violation of the provisions of this chapter or any of
32 the master programs, rules, or regulations adopted pursuant thereto
33 shall be guilty of a gross misdemeanor, and shall be punished by a fine
34 of not less than twenty-five nor more than one thousand dollars or by
35 imprisonment in the county jail for not more than ninety days, or by
36 both such fine and imprisonment: PROVIDED, That the enforcing agency
37 first attempted to achieve voluntary compliance: PROVIDED FURTHER,

1 That the fine for the third and all subsequent violations in any five-
2 year period shall be not less than five hundred nor more than ten
3 thousand dollars: PROVIDED FURTHER, That fines for violations of RCW
4 90.58.550, or any rule adopted thereunder, shall be determined under
5 RCW 90.58.560.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
7 to read as follows:

8 (1) Prior to issuing a penalty authorized in a local ordinance
9 adopted in accordance with the requirements of this chapter, counties
10 and cities must seek voluntary compliance actions from the alleged
11 violator and work in good faith with any person who indicates an
12 interest in voluntary compliance. In seeking voluntary compliance
13 actions, the county or city must provide the alleged violator with
14 educational information on methods of correcting the alleged violation
15 and technical assistance for expeditiously achieving compliance with
16 the local ordinance. If the provided information and assistance do not
17 result in a voluntary rectification of the violation, the county or
18 city, in accordance with the applicable local ordinance, may impose a
19 penalty upon the alleged violator.

20 (2) Nothing in this section lessens or otherwise affects the
21 authority of a county or city to take actions necessary to address an
22 immediate threat to human health or safety.

23 **Sec. 5.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to
24 read as follows:

25 Except as provided in RCW 43.05.060 through 43.05.080 and
26 43.05.150, every person who:

27 (1) Violates the terms or conditions of a waste discharge permit
28 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

29 (2) Conducts a commercial or industrial operation or other point
30 source discharge operation without a waste discharge permit as required
31 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

32 (3) Violates the provisions of RCW 90.48.080, or other sections of
33 this chapter or chapter 90.56 RCW or rules or orders adopted or issued
34 pursuant to either of those chapters, shall incur, in addition to any
35 other penalty as provided by law, a penalty in an amount of up to ten
36 thousand dollars a day for every such violation. Each and every such

1 violation shall be a separate and distinct offense, and in case of a
2 continuing violation, every day's continuance shall be and be deemed to
3 be a separate and distinct violation. Every act of commission or
4 omission which procures, aids or abets in the violation shall be
5 considered a violation under the provisions of this section and subject
6 to the penalty herein provided for. The penalty amount shall be set in
7 consideration of the previous history of the violator and the severity
8 of the violation's impact on public health and/or the environment in
9 addition to other relevant factors. The penalty herein provided for
10 shall be imposed pursuant to the procedures set forth in section 6 of
11 this act and RCW 43.21B.300.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.48 RCW
13 to read as follows:

14 (1) Prior to issuing a penalty authorized under RCW 90.48.144, the
15 department must seek voluntary compliance actions from the alleged
16 violator and work in good faith with any person who indicates an
17 interest in voluntary compliance. In seeking voluntary compliance
18 actions, the department must provide the alleged violator with
19 educational information on methods of correcting the alleged violation
20 and technical assistance for expeditiously achieving compliance with:
21 (a) The provisions of this chapter; or (b) rules and orders adopted or
22 issued to implement the requirements of this chapter. If the provided
23 information and assistance do not result in a voluntary rectification
24 of the violation, the department may impose a penalty upon the alleged
25 violator.

26 (2) Nothing in this section lessens or otherwise affects the
27 authority of the department to take actions necessary to address an
28 immediate threat to human health or safety.

29 (3) If provisions in this section are determined to be in conflict
30 with federal law or program requirements for the national pollutant
31 discharge elimination system permit program, or in conflict with
32 federal requirements that are a prescribed condition to the allocation
33 of federal funds to the state for this program, the conflicting part of
34 this section shall be inoperative solely to the extent of the conflict.

35 **Sec. 7.** RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are
36 each reenacted and amended to read as follows:

1 (1)(a) Except as provided in (b) of this subsection, any civil
2 penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080,
3 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
4 90.56.330, and 90.64.102 and chapter 90.76 RCW shall be imposed by a
5 notice in writing, either by certified mail with return receipt
6 requested or by personal service, to the person incurring the penalty
7 from the department or the local air authority, describing the
8 violation with reasonable particularity. For penalties issued by local
9 air authorities, within thirty days after the notice is received, the
10 person incurring the penalty may apply in writing to the authority for
11 the remission or mitigation of the penalty. Upon receipt of the
12 application, the authority may remit or mitigate the penalty upon
13 whatever terms the authority in its discretion deems proper. The
14 authority may ascertain the facts regarding all such applications in
15 such reasonable manner and under such rules as it may deem proper and
16 shall remit or mitigate the penalty only upon a demonstration of
17 extraordinary circumstances such as the presence of information or
18 factors not considered in setting the original penalty.

19 **(b) Prior to imposing a civil penalty under RCW 90.48.144, the**
20 **department of ecology must provide technical assistance as required**
21 **under section 6 of this act.**

22 (2) Any penalty imposed under this section may be appealed to the
23 pollution control hearings board in accordance with this chapter if the
24 appeal is filed with the hearings board and served on the department or
25 authority thirty days after the date of receipt by the person penalized
26 of the notice imposing the penalty or thirty days after the date of
27 receipt of the notice of disposition by a local air authority of the
28 application for relief from penalty.

29 (3) A penalty shall become due and payable on the later of:

30 (a) Thirty days after receipt of the notice imposing the penalty;

31 (b) Thirty days after receipt of the notice of disposition by a
32 local air authority on application for relief from penalty, if such an
33 application is made; or

34 (c) Thirty days after receipt of the notice of decision of the
35 hearings board if the penalty is appealed.

36 (4) If the amount of any penalty is not paid to the department
37 within thirty days after it becomes due and payable, the attorney
38 general, upon request of the department, shall bring an action in the

1 name of the state of Washington in the superior court of Thurston
2 county, or of any county in which the violator does business, to
3 recover the penalty. If the amount of the penalty is not paid to the
4 authority within thirty days after it becomes due and payable, the
5 authority may bring an action to recover the penalty in the superior
6 court of the county of the authority's main office or of any county in
7 which the violator does business. In these actions, the procedures and
8 rules of evidence shall be the same as in an ordinary civil action.

9 (5) All penalties recovered shall be paid into the state treasury
10 and credited to the general fund except those penalties imposed
11 pursuant to RCW 18.104.155, which shall be credited to the reclamation
12 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
13 disposition of which shall be governed by that provision, RCW
14 70.105.080, which shall be credited to the hazardous waste control and
15 elimination account created by RCW 70.105.180, RCW 90.56.330, which
16 shall be credited to the coastal protection fund created by RCW
17 90.48.390, and RCW 90.76.080, which shall be credited to the
18 underground storage tank account created by RCW 90.76.100.

19 NEW SECTION. **Sec. 8.** All provisions of this act must be
20 administered and funded within existing resources.

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