

SENATE BILL REPORT

SB 6279

As of January 24, 2018

Title: An act relating to limiting the application of certain civil penalties to protect landowners from incurring penalties based on the actions of the landowner's lessee.

Brief Description: Limiting the application of certain civil penalties to protect landowners from incurring penalties based on the actions of the landowner's lessee.

Sponsors: Senators Warnick, Schoesler and Wagoner.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/18/18.

Brief Summary of Bill

- Provides that the Department of Ecology (Ecology) may not levy a civil penalty against a landowner if the actions of the landowner's lessee are the basis for the violation.
- Establishes that, in such cases, Ecology may levy the civil penalty against the lessee.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: The water code specifies a sequence of enforcement measures Ecology must follow to achieve compliance with the state's water laws and rules. Ecology must first prepare and distribute technical and educational information to the general public to assist the public to comply with water rights and water law requirements. When it determines a violation has occurred or is about to occur, Ecology must first attempt to achieve voluntary compliance. If this is not successful, Ecology issues a notice of violation or a formal administrative order or assesses penalties unless noncompliance is corrected expeditiously or Ecology determines no impairment or harm has occurred. Ecology may take immediate action if in its opinion the nature of the violation is causing harm to other water rights or public resources.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Ecology may levy civil penalties of ranging from \$100 to \$5,000 per day for violation of the surface and ground water, minimum water flows and levels, and water supply facilities statutes. In determining the amount of the penalty, Ecology must consider the seriousness of the violation, whether the violation is repeated or continuous after notice is given of the violation, and whether any damage has occurred to the health or property of other persons. In situations involving the waste of water—a misdemeanor, Ecology may alternatively follow the sequence of enforcement actions specified in the water code.

Summary of Bill: Ecology may not levy a civil penalty against a landowner if the actions of the landowner's lessee are the basis for the violation. In such cases, Ecology may levy the civil penalty against the lessee.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: At times landowners are penalized for actions that their lessee may be doing without their knowledge. This bill comes out of a case in which significant penalties were assessed not only against the lessee but the landowner as well. This bill is designed to help protect the landowner that believes the right thing is being done by their lessee. In one case, the landowner was willing to transfer water rights from the trust water rights program to offset the water use, but was told that it was past the deadline to do that. Ecology did not contact the landowner until after that deadline, past the due date to rectify the issue. The landowner wanted to address the issue so that the crops that were currently planted could be harvested. Ecology instructed the landowner to stop the lessee from using the water, but the landowner could not stop the lessee from watering the property because the lessee had sublet the property to a third individual and the landowner was concerned about being sued. The landowner has filed an appeal with the Pollution Control Hearings Board. This bill will help other individuals that have lessees. There are other folks that could be in a situation like this and this bill will help them in the future.

Persons Testifying: PRO: Senator Judy Warnick, Prime Sponsor; Michele Kiesz, citizen.

Persons Signed In To Testify But Not Testifying: No one.