

# SENATE BILL REPORT

## SB 5525

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As of January 25, 2022

**Title:** An act relating to allowing persons to take immediate action to remedy water quality conditions to protect public health and welfare without the threat of penalty.

**Brief Description:** Allowing persons to take immediate action to remedy water quality conditions to protect public health and welfare without the threat of penalty.

**Sponsors:** Senators Fortunato and Short.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/25/22.

**Brief Summary of Bill**

- Authorizes the Department of Ecology (Ecology) to allow a person responsible for water quality conditions that require immediate action to protect the public health or welfare to take immediate action to remedy the problem.
- Prohibits Ecology from imposing a fine or penalty for any day on which Ecology forbade or prevented a person from taking immediate action.
- Provides that a person must be allowed to continue their activities if the person begins to implement a plan to resolve the alleged problem, for a plan submitted to Ecology.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Gregory Vogel (786-7413)

**Background:** The Clean Water Act (CWA) establishes water quality goals for navigable surface waters of the United States and mechanisms for achieving the goals, including National Pollutant Discharge Elimination System permits. The Department of Ecology

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

(Ecology) is the delegated authority for administering the CWA in Washington.

The Water Quality program's goals are to prevent and reduce water pollution, to clean up polluted waters, and engage citizens in the work to protect and restore water quality in Washington. Ecology's program duties consist of water quality permitting, water quality improvement projects, and clean water financial assistance. Ecology, with the assistance of the Attorney General, is also charged with enforcement authority necessary to carry out any provision of the program, including written orders and civil penalties.

Ecology may issue a written order to the person responsible without prior notice or hearing, directing the person to immediately discontinue or modify the discharge into the waters of the state, or appear before Ecology for the purpose of providing information pertaining to the violations and conditions alleged in the written order, whenever it appears that:

- water quality conditions exist which require immediate action to protect the public health or welfare;
- a person required to obtain a waste discharge permit is discharging without a permit; or
- a person conducting an operation subject to a waste disposal permit is conducting the operation in violation of the terms of the permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare.

If following the meeting, Ecology determines that water quality conditions exist which require immediate action, Ecology may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state.

**Summary of Bill:** If Ecology determines that water quality conditions exist that require immediate action to protect the public health or welfare, Ecology may allow a person responsible for the conditions to take immediate action to remedy the problem. Ecology may not impose a fine or other penalty for any day on which the agency forbade or prevented a person from taking immediate action that would have improved water quality conditions.

If Ecology issues a written order directing a person to appear before them to provide information pertaining to the violations and conditions alleged in the written order, Ecology must allow the person to present a plan to resolve the alleged problem. The person must be allowed to continue or resume their activities if the person begins to implement the plan that they submitted to Ecology.

The provisions of the act apply to all written orders, retroactive to January 1, 2020.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: This bill isn't intended to stop Ecology from enforcing Clean Water Act (CWA) violations. The focus is on allowing work to continue if Ecology issues an order. The goal is to reduce project delay, which add costs to projects and is often passed onto the end consumer in the form of increased housing costs. This bill would allow an opportunity to correct the violation while work continues on other aspects of the project.

CON: The bill would restrict Ecology's authority to protect the public's health and environment and the ability to implement CWA. We want to ensure remedial measures are environmentally effective and legally sound. The reason a violator may be denied is because they lack expertise or fail to produce a plan adequate to remedy the violation, possibly making the situation worse. Penalties may be imposed to ensure violations don't occur in the future.

**Persons Testifying:** PRO: Senator Phil Fortunato, Prime Sponsor; Josie Cummings, Building Industry Association of Washington.

CON: Vince McGowan, WA State Dept of Ecology/WQ Program; Bruce Wishart, Puget Soundkeeper.

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