

---

HOUSE BILL 2755

---

State of Washington

55th Legislature

1998 Regular Session

By Representatives Keiser, McCune, Dickerson, Regala, Anderson, Constantine and Wood

Read first time 01/19/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to environmental settlements and penalties;  
2 amending RCW 43.21B.300, 43.08.250, 90.48.400, and 75.20.106; adding  
3 new sections to chapter 43.21A RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.21A RCW  
6 to read as follows:

7 FINDINGS AND PURPOSE. The legislature finds that environmental  
8 pollution incidents and other violations of state environmental laws  
9 result in fines and penalties which are presently used for a variety of  
10 purposes unrelated to restoring the damage caused by the pollution or  
11 otherwise benefiting the air, water, and other natural resources  
12 enjoyed by Washington citizens. The legislature further finds that  
13 settlements of enforcement actions relating to environmental violations  
14 are often reached without adequate involvement of the communities in  
15 which the violations occurred and without adequate consideration of  
16 community recommendations on expending settlement funds.

17 Therefore, the purpose of chapter . . ., Laws of 1998 (this act) is  
18 to dedicate environmental fines and penalties to the restoration and  
19 improvement of Washington's environmental quality, and to ensure that

1 communities in which environmental violations occur have a greater  
2 voice in determining the expenditure of ensuing settlement funds.

3 NEW SECTION. **Sec. 2.** ENVIRONMENTAL RESTORATION AND IMPROVEMENT  
4 ACCOUNT CREATED. (1) The environmental restoration and improvement  
5 account is created in the state treasury. All receipts, fines,  
6 penalties, and damages recovered under RCW 43.21B.300, 90.48.140,  
7 70.94.430, 90.56.300, 70.105.085, 70.95.240, 70.95.560, 75.20.106, and  
8 70.107.070 must be deposited in the account. The treasurer shall  
9 require the depositing entity to identify the water resource inventory  
10 area, as those areas are delineated by the department of ecology in  
11 chapter 173-500 WAC, where the violation occurred. In the case of  
12 moneys recovered for violation of air quality laws under chapter 70.94  
13 RCW, the depositing entity shall identify the county where the  
14 violation occurred. Where the violation caused environmental damage in  
15 more than one water resource inventory area, or in more than one county  
16 in the case of an air quality violation, the depositing entity may  
17 allocate a portion to each county or to each area in reasonable  
18 proportion to the damage occurring in each county or area. The  
19 treasurer shall maintain records of total moneys in the account  
20 identified by county and by water resource inventory area.

21 (2) Moneys in the account may be spent only after appropriation.

22 (3) Moneys in the account may be expended by the department of  
23 ecology consistent with the limitations and procedures of this section  
24 for the restoration and enhancement of the state's environmental and  
25 natural resources, for improving the capacity of local governments to  
26 protect and restore the environmental resources within their  
27 jurisdiction, and for public education and involvement in activities  
28 directly related to environmental protection, restoration, and  
29 enhancement.

30 (4) The object of each expenditure from the account must be  
31 identified by water resource inventory area, and by county in the case  
32 of expenditure of moneys recovered for air quality violations. Total  
33 expenditures in the fiscal biennium, identified for each water resource  
34 inventory area, and for each county damaged by air quality violations,  
35 must not exceed the total projected deposits to the account in the same  
36 biennium, identified for each area and county.

37 (5) In developing a proposed expenditure from the account, the  
38 department shall seek recommendations from the governing bodies of the

1 cities and counties in the general vicinity where the funds will be  
2 expended and of counties and cities that will be benefited by the  
3 expenditure. The department shall also seek recommendations from  
4 community and civic organizations with members residing in those cities  
5 and counties.

6 (6) The treasurer, the depositing entity, and the department may  
7 act at their sole discretion under this section, and the actions of any  
8 one of them under this section are not reviewable in a judicial  
9 proceeding.

10 **Sec. 3.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to  
11 read as follows:

12 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
13 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
14 90.56.330 shall be imposed by a notice in writing, either by certified  
15 mail with return receipt requested or by personal service, to the  
16 person incurring the penalty from the department, the administrator of  
17 the \*office of marine safety, or the local air authority, describing  
18 the violation with reasonable particularity. Within fifteen days after  
19 the notice is received, the person incurring the penalty may apply in  
20 writing to the department, the administrator, or the authority for the  
21 remission or mitigation of the penalty. Upon receipt of the  
22 application, the department, the administrator, or authority may remit  
23 or mitigate the penalty upon whatever terms the department, the  
24 administrator, or the authority in its discretion deems proper. The  
25 department or the authority may ascertain the facts regarding all such  
26 applications in such reasonable manner and under such rules as it may  
27 deem proper and shall remit or mitigate the penalty only upon a  
28 demonstration of extraordinary circumstances such as the presence of  
29 information or factors not considered in setting the original penalty.

30 (2) Any penalty imposed under this section may be appealed to the  
31 pollution control hearings board in accordance with this chapter if the  
32 appeal is filed with the hearings board and served on the department,  
33 the administrator, or authority thirty days after receipt by the person  
34 penalized of the notice imposing the penalty or thirty days after  
35 receipt of the notice of disposition of the application for relief from  
36 penalty.

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

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

1 (b) Thirty days after receipt of the notice of disposition on  
2 application for relief from penalty, if such an application is made; or

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

5 (4) If the amount of any penalty is not paid to the department or  
6 the administrator within thirty days after it becomes due and payable,  
7 the attorney general, upon request of the department or the  
8 administrator, shall bring an action in the name of the state of  
9 Washington in the superior court of Thurston county, or of any county  
10 in which the violator does business, to recover the penalty. If the  
11 amount of the penalty is not paid to the authority within thirty days  
12 after it becomes due and payable, the authority may bring an action to  
13 recover the penalty in the superior court of the county of the  
14 authority's main office or of any county in which the violator does  
15 business. In these actions, the procedures and rules of evidence shall  
16 be the same as in an ordinary civil action.

17 (5) All penalties recovered shall be paid into the state treasury  
18 and credited to the (~~general fund~~) environmental restoration and  
19 improvement account created in section 2 of this act except those  
20 penalties imposed pursuant to RCW 18.104.155, which shall be credited  
21 to the reclamation account as provided in RCW 18.104.155(7), RCW  
22 70.94.431, the disposition of which shall be governed by that  
23 provision, RCW 70.105.080, which shall be credited to the hazardous  
24 waste control and elimination account, created by RCW 70.105.180, and  
25 RCW 90.56.330, which shall be credited to the coastal protection fund  
26 created by RCW 90.48.390.

27 **Sec. 4.** RCW 43.08.250 and 1997 c 149 s 910 are each amended to  
28 read as follows:

29 (1) Except as provided in subsection (2) of this section, the money  
30 received by the state treasurer from fees, fines, forfeitures,  
31 penalties, reimbursements or assessments by any court organized under  
32 Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the  
33 public safety and education account which is hereby created in the  
34 state treasury. The legislature shall appropriate the funds in the  
35 account to promote traffic safety education, highway safety, criminal  
36 justice training, crime victims' compensation, judicial education, the  
37 judicial information system, civil representation of indigent persons,  
38 winter recreation parking, and state game programs. During the fiscal

1 biennium ending June 30, 1999, the legislature may appropriate moneys  
2 from the public safety and education account for purposes of appellate  
3 indigent defense, the criminal litigation unit of the attorney  
4 general's office, the treatment alternatives to street crimes program,  
5 crime victims advocacy programs, justice information network  
6 telecommunication planning, sexual assault treatment, operations of the  
7 office of administrator for the courts, security in the common schools,  
8 criminal justice data collection, and Washington state patrol criminal  
9 justice activities.

10 (2) The state treasurer shall deposit in the environmental  
11 restoration and improvement account created in section 2 of this act  
12 all money received from fines and penalties imposed under RCW  
13 90.48.140, 70.94.430, 90.56.300, 70.105.085, 70.95.240, 90.95.560, and  
14 70.107.070.

15 **Sec. 5.** RCW 90.48.400 and 1994 c 264 s 93 are each amended to read  
16 as follows:

17 (1) Moneys in the coastal protection fund shall be disbursed for  
18 the following purposes and no others:

19 (a) Environmental restoration and enhancement projects intended to  
20 restore or enhance environmental, recreational, archaeological, or  
21 aesthetic resources for the benefit of Washington's citizens;

22 (b) Investigations of the long-term effects of oil spills; and

23 (c) Development and implementation of an aquatic land geographic  
24 information system.

25 (2) The director may allocate a portion of the fund to be devoted  
26 to research and development in the causes, effects, and removal of  
27 pollution caused by the discharge of oil or other hazardous substances.

28 (3) A steering committee consisting of representatives of the  
29 departments of ecology, fish and wildlife, and natural resources, and  
30 the parks and recreation commission shall authorize the expenditure of  
31 the moneys collected under RCW 90.48.366 through 90.48.368, after  
32 consulting impacted local agencies, recognized community and civic  
33 organizations with members residing in the area of the damaged  
34 resources, and local and tribal governments.

35 (4) For proposed expenditures from the coastal protection fund not  
36 governed by subsection (3) of this section to be made for environmental  
37 restoration and enhancement, the director shall consult with local and

1 tribal governments in the vicinity and with community and civic  
2 organizations with members residing in that vicinity.

3 (5) Agencies may not be reimbursed from the coastal protection fund  
4 for the salaries and benefits of permanent employees for routine  
5 operational support. Agencies may only be reimbursed under this  
6 section if money for reconnaissance and damage assessment activities is  
7 unavailable from other sources.

8 **Sec. 6.** RCW 75.20.106 and 1993 sp.s. c 2 s 35 are each amended to  
9 read as follows:

10 The department may levy civil penalties of up to one hundred  
11 dollars per day for violation of any provisions of RCW 75.20.100 or  
12 75.20.103. The penalty provided shall be imposed by notice in writing,  
13 either by certified mail or personal service to the person incurring  
14 the penalty, from the director or the director's designee describing  
15 the violation. Any person incurring any penalty under this chapter may  
16 appeal the same under chapter 34.05 RCW to the director. Appeals shall  
17 be filed within thirty days of receipt of notice imposing any penalty.  
18 The penalty imposed shall become due and payable thirty days after  
19 receipt of a notice imposing the penalty unless an appeal is filed.  
20 Whenever an appeal of any penalty incurred under this chapter is filed,  
21 the penalty shall become due and payable only upon completion of all  
22 review proceedings and the issuance of a final order confirming the  
23 penalty in whole or in part.

24 If the amount of any penalty is not paid within thirty days after  
25 it becomes due and payable the attorney general, upon the request of  
26 the director shall bring an action in the name of the state of  
27 Washington in the superior court of Thurston county or of any county in  
28 which such violator may do business, to recover such penalty. In all  
29 such actions the procedure and rules of evidence shall be the same as  
30 an ordinary civil action. All penalties recovered under this section  
31 shall be paid into the ((state's general fund)) environmental  
32 restoration and improvement account created in section 2 of this act.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.21A RCW  
34 to read as follows:

35 **SETTLEMENTS OF ENVIRONMENTAL ACTIONS.** This section applies to  
36 legal actions arising from alleged violation of environmental quality  
37 laws, under chapter 70.94, 70.95, 70.105, 70.107, 75.20, 90.03, 90.44,

1 90.48, and 90.58 RCW, in which a settlement proposed by or presented to  
2 the attorney general requires commitments by other parties in lieu of  
3 fines, penalties, or damages. The attorney general may agree to a  
4 settlement if:

5 (a) The department provides public notice of the proposed  
6 settlement and an opportunity for public comment;

7 (b) The department obtains the recommendations of the governing  
8 bodies of the cities and counties in the vicinity of the alleged  
9 violation; and

10 (c) The department finds, after public comment and consultation,  
11 that the commitments in the proposed settlement are directly related to  
12 the protection and restoration of the environmental resources in the  
13 vicinity of the alleged violation.

14 (2) Nothing in this section precludes an action for liability based  
15 upon any other claim or statute not expressly precluded by the terms of  
16 the settlement.

17 (3) Nothing in this section limits, modifies, or affects in any way  
18 the authority of the attorney general to settle any action in an  
19 administrative or judicial proceeding, except where the specific  
20 provisions of this section are applicable.

21 NEW SECTION. **Sec. 8.** CAPTIONS. Captions used in this act are not  
22 any part of the law.

23 NEW SECTION. **Sec. 9.** SEVERABILITY. If any provision of this act  
24 or its application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

--- END ---