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SENATE BILL 5235

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Fraser, Barr, Sutherland, Owen and Winsley; by request of Department of Health

Read first time 01/18/93. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to enforcement of public water system requirements;  
2 amending RCW 70.119A.030, 70.119A.040, and 70.119A.050; adding a new  
3 section to chapter 70.119A RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 70.119A.030 and 1991 c 304 s 3 are each amended to  
6 read as follows:

7 (1) The secretary or his or her designee or the local health  
8 officer may declare a public health emergency. As limited by RCW  
9 70.119A.040, the department may impose penalties for violations of laws  
10 or regulations that are determined to be a public health emergency.

11 (2) As limited by RCW 70.119A.040, the department may impose  
12 penalties for ~~((failure to comply with an order of the department, or~~  
13 ~~of an authorized local board of health, when the order:~~

14 ~~(a) Directs any person to stop work on the construction or~~  
15 ~~alteration of a public water system when plans and specifications for~~  
16 ~~the construction or alteration have not been approved as required by~~  
17 ~~the regulations, or when the work is not being done in conformity with~~  
18 ~~approved plans and specifications;~~

1       ~~(b) Requires any person to eliminate a cross-connection to a public~~  
2 ~~water system by a specified time; or~~  
3       ~~(c) Requires any person to cease violating any regulation relating~~  
4 ~~to public water systems, to take specific actions within a specified~~  
5 ~~time to place a public water system in compliance with regulations~~  
6 ~~adopted under chapters 43.20 and 70.119 RCW, to apply for an operating~~  
7 ~~permit as required under RCW 70.119A.110 or to comply with any~~  
8 ~~conditions or requirements imposed as part of an operating permit))~~  
9 violation of laws or rules regulating public water systems and  
10 administered by the department of health.

11       **Sec. 2.** RCW 70.119A.040 and 1990 c 133 s 8 are each amended to  
12 read as follows:

13       (1) In addition to or as an alternative to any other penalty  
14 ~~((provided)) or action allowed by law, ((every)) any person who~~  
15 ~~((commits any of the acts or omissions in RCW 70.119A.030 shall be~~  
16 ~~subjected)) violates a law or rule regulating public water systems and~~  
17 administered by the department of health is subject to a penalty ((in  
18 an amount of not less than five hundred dollars. The maximum penalty  
19 ~~shall be)) of not more than five thousand dollars per day for every~~  
20 such violation, or, in the case of a violation that has been determined  
21 to be a public health emergency, a penalty of not more than ten  
22 thousand dollars per day for every such violation. Every such  
23 violation shall be a separate and distinct offense. The amount of fine  
24 shall reflect the health significance of the violation and the previous  
25 record of compliance on the part of the public water supplier. In case  
26 of continuing violation, every day's continuance shall be a separate  
27 and distinct violation. In addition, a person who constructs,  
28 modifies, or expands a public water system or who commences the  
29 construction, modification, or expansion of a public water system  
30 without first obtaining the required departmental approval is subject  
31 to fines of not more than ten thousand dollars per service connection,  
32 or, in the case of a system serving a transient population, a fine of  
33 not more than four hundred dollars per person based on the highest  
34 average daily population the system is anticipated to serve. Every  
35 person who, through an act of commission or omission, procures, aids,  
36 or abets ((in the)) a violation ((shall be)) is considered to have  
37 violated the provisions of this section and ((shall be)) is subject to  
38 the penalty provided in this section.

1 (2) The penalty provided for in this section shall be imposed by a  
2 notice in writing to the person against whom the civil fine is assessed  
3 and shall describe the violation. The notice shall be personally  
4 served in the manner of service of a summons in a civil action or in a  
5 manner that shows proof of receipt. A penalty imposed by this section  
6 is due twenty-eight days after receipt of notice unless application for  
7 ~~((remission or mitigation is made as provided in subsection (3) of this~~  
8 ~~section or unless application for))~~ an adjudicative proceeding is filed  
9 as provided in subsection ~~((4))~~ (3) of this section.

10 (3) ~~((Within fourteen days after the notice is received, the person~~  
11 ~~incurring the penalty may apply in writing to the department for the~~  
12 ~~remission or mitigation of such penalty. Upon receipt of the~~  
13 ~~application, the department may remit or mitigate the penalty upon~~  
14 ~~whatever terms the department in its discretion deems proper, giving~~  
15 ~~consideration to the degree of hazard associated with the violation,~~  
16 ~~provided the department deems such remission or mitigation to be in the~~  
17 ~~best interests of carrying out the purposes of this chapter. The~~  
18 ~~department shall not mitigate the fines below the minimum penalty~~  
19 ~~prescribed in subsection (1) of this section. The department shall~~  
20 ~~have authority to ascertain the facts regarding all such applications~~  
21 ~~in such reasonable manner as it may deem proper. When an application~~  
22 ~~for remission or mitigation is made, a penalty incurred under this~~  
23 ~~section is due twenty-eight days after receipt of the notice setting~~  
24 ~~forth the disposition of the application, unless an application for an~~  
25 ~~adjudicative proceeding to contest the disposition is filed as provided~~  
26 ~~in subsection (4) of this section.~~

27 ~~(4))~~ Within twenty-eight days after notice is received, the person  
28 incurring the penalty may file an application for an adjudicative  
29 proceeding and may pursue subsequent review as provided in chapter  
30 34.05 RCW and applicable rules of the department or board of health.

31 ~~((5))~~ (4) A penalty imposed by a final administrative order  
32 ~~((after an adjudicative proceeding))~~ is due upon service of the final  
33 administrative order. A person who fails to pay a penalty assessed by  
34 a final administrative order within thirty days of service of the final  
35 administrative order shall pay, in addition to the amount of the  
36 penalty, interest at the rate of one percent of the unpaid balance of  
37 the assessed penalty for each month or part of a month that the penalty  
38 remains unpaid, commencing with the month in which the notice of  
39 penalty was served.

1       (5) A person who institutes proceedings for judicial review of a  
2 final administrative order assessing a civil penalty under this chapter  
3 shall place the full amount of the penalty in an interest bearing  
4 account in the registry of the reviewing court. At the conclusion of  
5 the proceeding the court shall, as appropriate, enter a judgment on  
6 behalf of the department and order that the judgment be satisfied to  
7 the extent possible from moneys paid into the registry of the court or  
8 shall enter a judgment in favor of the person appealing the penalty  
9 assessment and order return of the moneys paid into the registry of the  
10 court together with accrued interest to the person appealing.

11       ~~(6) ((The attorney general may bring an action in the name of the~~  
12 ~~department in the superior court of Thurston county, or of any county~~  
13 ~~in which such violator may do business, to collect a penalty.~~

14       ~~(7))~~ If no appeal is taken from a final administrative order  
15 assessing a civil penalty under this chapter, the department may file  
16 a certified copy of the final administrative order with the clerk of  
17 the superior court in which the public water system is located or in  
18 Thurston county, and the clerk shall enter judgment in the name of the  
19 department and in the amount of the penalty assessed in the final  
20 administrative order.

21       (7) A judgment entered under subsection (5) or (6) of this section  
22 shall have the same force and effect as, and shall be subject to all of  
23 the provisions of law relating to, a judgment in a civil action, and  
24 may be enforced in the same manner as any other judgment of the court  
25 in which it is entered.

26       (8) All penalties imposed under this section shall be payable to  
27 the state treasury and credited to the ((general fund)) safe drinking  
28 water account established under RCW 70.119A.120.

29       **Sec. 3.** RCW 70.119A.050 and 1989 c 422 s 8 are each amended to  
30 read as follows:

31       Each local board of health that is enforcing the regulations under  
32 an agreement with the department allocating state and local  
33 responsibility is authorized to impose and collect civil penalties for  
34 violations within the area of its responsibility under the same  
35 limitations and requirements imposed upon the department by RCW  
36 70.119A.030 and 70.119A.040, except that judgment shall be entered in  
37 the name of the local board of health and penalties shall be placed  
38 into the general fund of the county, city, or town operating the local

1 board of health(~~(, and the prosecuting attorney, or city, or town~~  
2 ~~attorney shall bring the actions to collect the unpaid penalties))~~).

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.119A  
4 RCW to read as follows:

5 (1) The secretary or his or her designee have the right to enter a  
6 premises under the control of a public water system at a reasonable  
7 time in order to determine compliance with laws and rules administered  
8 by the department of health, and to that end may test, inspect, or  
9 sample features of a public water system and inspect, copy, or  
10 photograph monitoring equipment or other features of a public water  
11 system, or records required to be kept under laws or rules regulating  
12 public water systems.

13 (2) The secretary or his or her designee may apply for an  
14 administrative search warrant to a court official authorized to issue  
15 a criminal search warrant. An administrative search warrant may be  
16 issued for the purposes of inspecting or examining property, buildings,  
17 premises, place, books, records, or other physical evidence, or  
18 conducting tests or taking samples. The warrant shall be issued upon  
19 probable cause. It is sufficient probable cause to show any of the  
20 following:

21 (a) The inspection, examination, test, or sampling is pursuant to  
22 a general administrative plan to determine compliance with laws or  
23 rules administered by the department;

24 (b) The secretary or his or her designee has reason to believe that  
25 a violation of a law or rule administered by the department has  
26 occurred, is occurring, or may occur; or

27 (c) The secretary or his or her designee has been refused access to  
28 the property, buildings, premises, place, books, records, or physical  
29 evidence, or has been prevented from conducting tests or taking  
30 samples.

31 (3) The local health officer or the designee of a local health  
32 officer of a local board of health that is enforcing rules regulating  
33 public water systems under an agreement with the department allocating  
34 state and local responsibility is authorized to conduct investigations  
35 and to apply for, obtain, and execute administrative search warrants  
36 necessary to perform the local board's agreed-to responsibilities under

1 the same limitations and requirements imposed on the department under  
2 this section.

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