
HOUSE BILL 1705

State of Washington

56th Legislature

1999 Regular Session

By Representatives Keiser, Linville, Miloscia, Mitchell, Schual-Berke, O'Brien and Constantine

Read first time 02/03/1999. Referred to Committee on Agriculture & Ecology.

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

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

5 NEW SECTION. **Sec. 1.** FINDINGS AND PURPOSE. The legislature finds
6 that water pollution incidents result in fines and penalties that are
7 presently used for a variety of purposes unrelated to restoring the
8 damage caused by the pollution or otherwise benefiting the water and
9 other natural resources enjoyed by Washington citizens. The
10 legislature further finds that often the settlement of enforcement
11 actions relating to environmental violations does not adequately
12 involve the communities in which the violations occurred and allow for
13 the recommendations of those communities on expending funds under
14 consideration in the settlement.

15 Therefore the purpose of this act is to dedicate water pollution
16 fines and penalties to the restoration and improvement of Washington's
17 environmental quality and to ensure a greater voice in the expenditure
18 of settlement funds by communities in which the environmental violation
19 occurred.

1 **Sec. 2.** RCW 90.48.400 and 1994 c 264 s 93 are each amended to read
2 as follows:

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

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

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

9 (c) Development and implementation of an aquatic land geographic
10 information system.

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

14 (3) A steering committee consisting of representatives of the
15 departments of ecology, fish and wildlife, and natural resources, and
16 the parks and recreation commission shall authorize the expenditure of
17 the moneys collected under RCW 90.48.140, 90.48.144, and 90.48.366
18 through 90.48.368, after consulting impacted local agencies and local
19 and tribal governments.

20 (4) For proposed expenditures from the fund not governed by
21 subsection (3) of this section to be made for the purpose of
22 environmental restoration and enhancement, the director shall consult
23 with local governments in the vicinity of the proposed expenditure, and
24 give priority to protection and restoration of environmental resources
25 in areas impacted by the violations for which penalties are collected.

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

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

33 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
34 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
35 90.56.330 shall be imposed by a notice in writing, either by certified
36 mail with return receipt requested or by personal service, to the
37 person incurring the penalty from the department(~~(, the administrator~~
38 ~~of the office of marine safety,)) or the local air authority,~~

1 describing the violation with reasonable particularity. Within fifteen
2 days after the notice is received, the person incurring the penalty may
3 apply in writing to the department(~~(, the administrator,)~~) or the
4 authority for the remission or mitigation of the penalty. Upon receipt
5 of the application, the department(~~(, the administrator,)~~) or the
6 authority may remit or mitigate the penalty upon whatever terms the
7 department(~~(, the administrator,)~~) or the authority in its discretion
8 deems proper. The department or the authority may ascertain the facts
9 regarding all such applications in such reasonable manner and under
10 such rules as it may deem proper and shall remit or mitigate the
11 penalty only upon a demonstration of extraordinary circumstances such
12 as the presence of information or factors not considered in setting the
13 original penalty.

14 (2) Any penalty imposed under this section may be appealed to the
15 pollution control hearings board in accordance with this chapter if the
16 appeal is filed with the hearings board and served on the department(~~(, the administrator,)~~) or the authority thirty days after receipt by the
17 person penalized of the notice imposing the penalty or thirty days
18 after receipt of the notice of disposition of the application for
19 relief from penalty.

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

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

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

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

27 (4) If the amount of any penalty is not paid to the department (~~or~~
28 ~~the administrator~~) within thirty days after it becomes due and
29 payable, the attorney general, upon request of the department (~~or the~~
30 ~~administrator~~), shall bring an action in the name of the state of
31 Washington in the superior court of Thurston county, or of any county
32 in which the violator does business, to recover the penalty. If the
33 amount of the penalty is not paid to the authority within thirty days
34 after it becomes due and payable, the authority may bring an action to
35 recover the penalty in the superior court of the county of the
36 authority's main office or of any county in which the violator does
37 business. In these actions, the procedures and rules of evidence shall
38 be the same as in an ordinary civil action.

1 (5) All penalties recovered shall be paid into the state treasury
2 and credited to the general fund except those penalties imposed
3 pursuant to RCW 18.104.155, which shall be credited to the reclamation
4 account as provided in RCW 18.104.155(7)((~~7~~)); RCW 70.94.431, the
5 disposition of which shall be (~~governed by that provision, RCW~~
6 ~~70.105.080, which shall be credited to the hazardous waste control and~~
7 ~~elimination account, created by RCW 70.105.180,~~) credited to the state
8 toxics control account created in RCW 70.105D.070; RCW 88.46.090, which
9 shall be credited to the oil spill administration account; and RCW
10 90.48.140, 90.48.144, and 90.56.330, which shall be credited to the
11 coastal protection fund created by RCW 90.48.390.

12 NEW SECTION. Sec. 4. A new section is added to chapter 43.21A RCW
13 to read as follows:

14 SETTLEMENTS OF ENVIRONMENTAL ACTIONS. (1) This section shall be
15 applicable when the department imposes a civil penalty of ten thousand
16 dollars or more for a violation of chapter 90.48 RCW or its
17 implementing rules, and the attorney general proposes to settle an
18 appeal of such a civil penalty, in which the proposed settlement
19 requires commitments or actions by the person in lieu of payment of the
20 penalty. The attorney general or the department shall:

21 (a) Consider proposals submitted by affected local governments in
22 the vicinity of the alleged violation; and

23 (b) Attempt to dedicate settlement funds to the protection and
24 restoration of the environmental resources in the vicinity of the
25 alleged violation.

26 (2) This section shall not be construed to preclude an action for
27 liability based upon any other claim or statute not expressly precluded
28 by the terms of the settlement.

29 (3) This section shall not be construed to limit, modify, or affect
30 in any way the authority of the attorney general to settle any action
31 in an administrative or judicial proceeding, except where the specific
32 provisions of this section are applicable.

33 NEW SECTION. Sec. 5. CAPTIONS NOT LAW. Captions used in this act
34 are not any part of the law.

35 NEW SECTION. Sec. 6. If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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