

**SSB 5028** - H AMD TO AGNR COMM AMD (H2679.1) **468**  
By Representative Chandler

1 Beginning on page 1, after line 2 of the amendment, strike all  
2 material through "same." on page 2, line 10, and insert the following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW  
4 to read as follows:

5 (1) When a water quality violation cannot be resolved through the  
6 issuance of permits or regulatory orders issued under the authority of  
7 this chapter, the department may use any other existing statutory  
8 authority to seek to resolve the violation through collaborative and  
9 incentive-based methods. Such methods may include funding of water  
10 conservation projects, lease and purchase of water rights, development  
11 of new storage projects, habitat restoration projects, or other  
12 voluntary programs to prevent, reduce, or eliminate water pollution  
13 when the department is unable to address the water quality violation.

14 (2) The department may not abrogate, supersede, or impair the  
15 ability of a water right holder to fully divert or withdraw water under  
16 a water right permit, certificate, statutory exemption, or claim  
17 authorized under chapter 90.03, 90.14, or 90.44 RCW through the  
18 authority granted to the department in this chapter.

19 (3) Nothing in this act shall be construed to affect the  
20 department's authority related to the issuance of certifications under  
21 section 401 of the federal clean water act.

22 **Sec. 2.** RCW 90.03.400 and 1917 c 117 s 40 are each amended to read  
23 as follows:

24 (1) The unauthorized use of water to which another person is  
25 entitled or the willful or negligent waste of water to the detriment of  
26 another, shall be a misdemeanor. The possession or use of water  
27 without legal right shall be prima facie evidence of the guilt of the  
28 person using it. It shall also be a misdemeanor to use, store or  
29 divert any water until after the issuance of permit to appropriate such  
30 water.

1       (2) For instances of the waste of water under subsection (1) of  
2 this section, the department may alternatively follow the sequence of  
3 enforcement actions as provided in RCW 90.03.605.

4       **Sec. 3.** RCW 90.03.600 and 1995 c 403 s 635 are each amended to  
5 read as follows:

6       In determining the amount of a penalty to be levied, the department  
7 shall consider the seriousness of the violation, whether the violation  
8 is repeated or continuous after notice of the violation is given, and  
9 whether any damage has occurred to the health or property of other  
10 persons. Except as provided in RCW 43.05.060 through 43.05.080 and  
11 43.05.150, (~~the power is granted to~~) the department of ecology (~~to~~)  
12 may levy civil penalties (~~of up to~~) ranging from one hundred dollars  
13 to five thousand dollars per day for violation of any of the provisions  
14 of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules,  
15 permits, and similar documents and regulatory orders of the department  
16 of ecology adopted or issued pursuant to such chapters. The procedures  
17 of RCW 90.48.144 shall be applicable to all phases of the levying of a  
18 penalty as well as review and appeal of the same."

**EFFECT:**       (1) Removes the water pollution definition and enforcement provisions.

(2) Allows the Department of Ecology (DOE), when a water quality violation cannot be resolved through issuing water quality permits or regulatory orders, to use any other existing statutory authority to seek to resolve the violation through collaborative and incentive-based methods.

(3) Prohibits the DOE from abrogating, superseding, or impairing through water quality authority the ability of a water right holder to fully exercise a water right permit, certificate, statutory exemption, or claim.

(4) Specifies these provisions do not affect the DOE's authority regarding issuing water quality certifications according to the federal Clean Water Act, including application of federally authorized water quality standards, for federally licensed hydropower projects.

(5) Allows the DOE to follow the water code's sequence of enforcement actions for circumstances of water waste.

(6) Requires the DOE, when levying civil penalties under the water code, to consider specified factors.

(7) Changes the civil penalties under the water code from up to \$100 per day to a range from \$100 to \$5,000 per day.

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