

5028-S

Sponsor(s): Senate Committee on Natural Resources, Energy & Water
(originally sponsored by Senators Morton and Hale)

Brief Description: Clarifying the state's authority to regulate water pollution.

SB 5028-S.E - DIGEST

(DIGEST AS ENACTED)

Finds that the courts have rendered decisions in Elkhorn (*Public Utility District No. 1 v. Washington Department of Ecology*, 511 U.S. 700, 114 S. Ct. 1900, 128 L.Ed. 2d 716 (1994)) and Sullivan Creek (*Public Utility District No. 1 of Pend Oreille County v. Washington Department of Ecology*, 146 Wn.2d 778, 51 P.3d 744 (2002)) related to water quality certifications issued under section 401 of the clean water act, 33 U.S.C. 1251 et seq. Enactment of this legislation does not expand or contract the legal holdings of these decisions and does not affect in any way the application of these holdings to any future case or fact pattern related to water quality certifications issued for federally licensed hydropower facilities under section 401 of the clean water act, 33 U.S.C. 1251 et seq.

Provides that, when a water quality standard cannot be reasonably met through the issuance of permits or regulatory orders issued under the authority of this act, the department may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.

Provides that, for instances of the waste of water under RCW 90.03.400, the department may alternatively follow the sequence of enforcement actions as provided in RCW 90.03.605.

Provides that, in determining the amount of a penalty to be levied, the department shall consider the seriousness of the violation, whether the violation is repeated or continuous after notice of the violation is given, and whether any damage has occurred to the health or property of other persons.

Provides that, except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the department of ecology may levy civil penalties ranging from one hundred dollars to five thousand dollars per day for violation of any of the provisions of chapter 90.03 RCW and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same.