
SENATE BILL 6833

State of Washington

60th Legislature

2008 Regular Session

By Senators Kline, Weinstein, Rockefeller, Shin, Hobbs, Kohl-Welles,
and McAuliffe

Read first time 01/25/08. Referred to Committee on Water, Energy &
Telecommunications.

1 AN ACT Relating to citizen enforcement of health and environmental
2 laws; adding a new chapter to Title 4 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) Each person has an interest in the protection of the state's
6 environmental quality, including air, water, land, and other natural
7 resources, and an interest in the protection of human health from
8 environmental pollutants;

9 (b) It is in the public's interest to enable persons to act as
10 citizens' attorney general in seeking enforcement of environmental
11 quality, land use, and environmental health standards when governmental
12 authorities charged with the primary responsibility for enforcement do
13 not institute or maintain effective actions; and

14 (c) It is therefore, the purpose of this act to provide an adequate
15 civil remedy through citizen causes of action to enforce environmental
16 quality, land use, and environmental health standards.

17 (2) The legislature further finds that under chapter 353, Laws of
18 2007, the legislature created a temporary delay in amending or adopting
19 provisions of certain critical area ordinances, and set out duties and

1 requirements for the William D. Ruckelshaus center to seek progress in
2 resolving, harmonizing, and advancing commonly held environmental
3 protection and agricultural viability goals. The legislature fully
4 expects these efforts to be successful and to address mechanisms to
5 assure compliance with the planning and regulatory requirements
6 relating to such critical areas ordinances. For these reasons, this
7 act does not in any manner affect the existing legal venues or
8 mechanisms to enforce compliance with planning or regulatory
9 requirements relating to critical areas ordinances which are intended
10 to be addressed in the future by the legislature upon completion of the
11 review conducted under chapter 353, Laws of 2007.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Citizen" means any person or persons.

15 (2) "Person" means an individual, corporation, partnership,
16 association, state, commission, or other government entity.

17 (3) "Environmental or public health standard or requirement" means:

18 (a) Any condition placed in or on the issuance of any permit or
19 authorization under chapter 43.21C RCW;

20 (b) Any prohibition or requirement adopted under chapter 36.70A or
21 90.58 RCW or other zoning or land use law if the prohibition or
22 requirement has been enacted or adopted for the purpose of protecting
23 sensitive areas, natural resources or human health;

24 (c) The requirement to have a permit or authorization, to submit an
25 application for a permit or authorization, to comply with any condition
26 or requirement of a permit or authorization, or to comply with any
27 prohibition, requirement, or order adopted under:

28 (i) Chapter 77.55 RCW, hydraulic projects;

29 (ii) Chapter 76.09 RCW, the forest practices act;

30 (iii) Chapter 90.48 RCW, water pollution control;

31 (iv) Chapter 70.95 RCW, solid waste;

32 (v) Chapter 70.105 RCW, the hazardous waste management act;

33 (vi) Chapter 90.76 RCW, underground storage tanks;

34 (vii) Chapter 15.58 RCW, the Washington pesticide control act;

35 (viii) Chapter 70.94 RCW, the Washington clean air act;

36 (ix) Chapters 90.03, 90.44, and 90.14 RCW, surface and ground water

1 permits, change certificates, and water rights abandonment and
2 relinquishment actions;

3 (x) Chapters 58.17, 36.70, 35A.63, and 35.63 RCW, platting and
4 zoning authority for counties and cities;

5 (xi) Chapter 77.57 RCW, fishways, flows, and screening;

6 (d) A requirement to adopt, revise, or review a plan or to adopt
7 development regulations by a city or county under chapter 36.70A RCW,
8 except for the adoption or revision of critical areas ordinances on
9 agricultural resource lands.

10 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of
11 this section, any citizen may commence a civil action on his or her own
12 behalf against any person who is alleged to have violated an
13 environmental or public health standard or requirement, or an order
14 issued by a governmental agency with respect to such a standard or
15 requirement, if there is evidence of more than one day or instance of
16 violation. Such civil action may be brought in the superior court for
17 the county in which the alleged violation occurred or as otherwise
18 provided in chapter 4.12 RCW or RCW 36.01.050. The superior court
19 shall have jurisdiction to enforce the environmental or public health
20 standard or requirement or order, to grant other injunctive relief as
21 justice may require, to assess civil penalties consistent with
22 subsection (5) of this section, and to award costs of litigation,
23 including reasonable attorneys' and expert witness' fees consistent
24 with subsection (6) of this section.

25 (2) No action may be commenced under subsection (1) of this
26 section:

27 (a) Prior to sixty days after the plaintiff has given notice by
28 certified mail or personal service of the violation; or

29 (b) If an agency with authority to enforce the standard or
30 requirement alleged to be violated has commenced and is diligently
31 prosecuting an administrative or in-court action, if that action:

32 (i) Has resulted or will result in a cessation of all alleged
33 violations;

34 (ii) Has resulted or may result in assessment of a monetary penalty
35 in an amount greater than the violator's economic benefit from the
36 violations;

1 (iii) Involves or involved a significant opportunity for public
2 participation; and

3 (iv) Was commenced before the commencement of an action under
4 subsection (1) of this section.

5 (3) Notice under this section shall be by certified mail or
6 personal service:

7 (a) To the alleged violator of the standard or requirement;

8 (b) To the state attorney general;

9 (c) To the agency with primary responsibility for enforcement of
10 the standard or requirement;

11 (d) Specific enough to allow the alleged violator to identify the
12 actions, conduct, or circumstances that will be the subject of the
13 action; and

14 (e) Considered served on the postmark date or date of actual
15 service, whichever is earlier.

16 (4) An action under subsection (1) of this section may be brought
17 immediately upon giving notice only if the violations present a risk of
18 immediate and substantial endangerment to human health or the
19 environment.

20 (5) The court, upon finding violation of an environmental or public
21 health standard or requirement, shall assess a civil penalty against
22 the violator in an amount not to exceed ten thousand dollars per
23 violation per day of violation unless justice so requires. In
24 determining an appropriate penalty, the court shall consider the
25 seriousness of the violations, any good faith efforts or lack of good
26 faith efforts to, the duration of the violations, the economic benefit
27 of the violations to the violator, and such other matters as justice
28 may require. Unless injustice would result, the court shall assess a
29 civil penalty greater than the economic benefit of the violations to
30 the violator. Civil penalties assessed under this section shall be
31 deposited as provided by the statutes upon which the violation is
32 based.

33 (6) Unless injustice would result, the court, in issuing any final
34 order in any action brought under this section, shall award costs of
35 litigation, including reasonable attorneys' and expert witness' fees,
36 to a prevailing or substantially prevailing party, payable by the
37 opposing party or parties.

1 (7) This section does not restrict any right which any person or
2 class of persons may have under any statute or common law to seek
3 enforcement of any standard or requirement or to seek any other relief.

4 NEW SECTION. **Sec. 4.** This chapter does not alter or diminish any
5 legal obligation otherwise required in common law or by statute or
6 rule, and nothing in this chapter creates or enlarges any defense in
7 any action to enforce such legal obligation. Penalties and sanctions
8 imposed under this chapter are in addition to any penalties or
9 sanctions otherwise prescribed by law. This chapter does not impose
10 any additional liability upon any local government for failure to
11 enforce any violation subject to this chapter.

12 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute
13 a new chapter in Title 4 RCW.

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