

HOUSE BILL REPORT

HB 2074

As Passed House:

February 7, 2024

Title: An act relating to limiting the application of certain civil penalties to protect landowners from incurring penalties based on the actions of the landowner's lessee.

Brief Description: Limiting the application of certain civil penalties to protect landowners from incurring penalties based on the actions of the landowner's lessee.

Sponsors: Representatives Dye, Dent, Jacobsen, Graham and Sandlin.

Brief History:

Committee Activity:

Agriculture and Natural Resources: 1/16/24, 1/30/24 [DP].

Floor Activity:

Passed House: 2/7/24, 96-0.

Brief Summary of Bill

- Prohibits the Department of Ecology (Ecology) from levying a civil penalty against a landowner for a violation of the water code if the actions of the landowner's lessee are the basis for the violation.
- Establishes that, in such cases, Ecology may levy the civil penalty against the lessee.

HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Majority Report: Do pass. Signed by 10 members: Representatives Chapman, Chair; Morgan, Vice Chair; Reeves, Vice Chair; Dent, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Kretz, Lekanoff, Orcutt, Schmick and Springer.

Minority Report: Without recommendation. Signed by 1 member: Representative Kloba.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Robert Hatfield (786-7117).

Background:

Water Code—Civil Enforcement.

Washington's water code specifies a sequence of enforcement measures the Department of Ecology (Ecology) must follow to achieve compliance with the state's water laws and rules. Ecology must first prepare and distribute technical and educational information to the general public to assist the public to comply with water rights and water law requirements. When it determines a violation has occurred or is about to occur, Ecology must first attempt to achieve voluntary compliance. If this is not successful, Ecology issues a notice of violation or a formal administrative order or assesses penalties unless noncompliance is corrected expeditiously or Ecology determines no impairment or harm has occurred. Ecology may take immediate action if in its opinion the nature of the violation is causing harm to other water rights or public resources.

Ecology may levy civil penalties of ranging from \$100 to \$5,000 per day for violation of the surface and ground water, minimum water flows and levels, and water supply facilities statutes. In determining the amount of the penalty, Ecology must consider the seriousness of the violation, whether the violation is repeated or continuous after notice is given of the violation, and whether any damage has occurred to the health or property of other persons. In situations involving the waste of water—a misdemeanor—Ecology may alternatively follow the sequence of enforcement actions specified in the water code.

Summary of Bill:

The Department of Ecology (Ecology) may not levy a civil penalty for a violation of the water code against a landowner if the actions of the landowner's lessee are the basis for the violation. In such cases, Ecology may levy the civil penalty against the lessee.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is about how the Department of Ecology (Ecology) enforces its rules.

The bill would prevent Ecology from taking enforcement actions against landowners where the actions of the lessee are the cause of the violation.

This bill will prevent Ecology from levying civil penalties against landowners for the sole acts of their lessees.

(Opposed) None.

(Other) Historically the state has held landowners liable only where the landowner knew of or contributed to the violation, and this bill is consistent with that approach. The bill clarifies the culpability of a lessee in a water rights violation.

Persons Testifying: (In support) Representative Mary Dye, prime sponsor; Michele Kiesz; and Robert Hailey.

(Other) Ria Berns, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.