

# SENATE BILL REPORT

## HB 2074

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As of February 15, 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:** Passed House: 2/7/24, 96-0.

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/15/24.

### 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.

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## SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Staff:** Karen Epps (786-7424)

**Background:** The 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

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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:** Ecology may not levy a civil penalty 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.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is about making sure that when enforcing a water code violation, it is done fairly and that the people who are responsible for the action are the ones facing the enforcement action and the people who have no role in the water code violation are not brought into the enforcement action. The law needs to apply to the people who actually have control over the land when they irrigate the land. This bill makes sure that enforcement actions are applied to the right people. There was an enforcement action that was applied to both the landowner and the lessee and the enforcement action against the landowner was ultimately dropped but not without pain and financial costs. The landowner had no control over what was planted, when it was watered, or how it was irrigated, and tried to help resolve the issue by offering to transfer water rights but was told by Ecology it was past the deadline to do so. Fines were assessed against the landowner and the lessee, but the landowner was exonerated. This bill establishes sideboards to keep this type of enforcement from happening to another landowner with a lessee that is not complying with the water code.

OTHER: There is support for the concept that penalties should be borne by responsible parties. When landowners have no culpability, they should not be responsible for penalties and this bill clarifies that intent. Some of these cases are very complicated and without all the information, it makes enforcement actions challenging and they can end up in court

before that information comes to light.

**Persons Testifying:** PRO: Representative Mary Dye, Prime Sponsor; Michele Kiesz; Brian Kiesz.

OTHER: Dave Christensen, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** No one.