SENATE BILL REPORT
2ESSB 5360

As Passed Senate, February 17, 2026

Title: An act relating to environmental crimes.

Brief Description: Concerning environmental crimes.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Trudeau, Lovelett, Frame, Hasegawa, Krishnadasan, Nobles and Valdez).

Brief History:

Committee Activity: Environment, Energy & Technology: 1/24/25, 2/07/25 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 3/4/25, 29-20; 2/17/26, 27-22.

Brief Summary of Second Engrossed Substitute Bill

- Establishes a three-tiered system of crimes for certain violations of the state Water Pollution Control Act, Clean Air Act, and Hazardous Waste Management Act (environmental statutes), with associated penalties and exemptions.
- Includes certain first- and second-degree felony violations of environmental statutes in the state sentencing grid, as seriousness level three and one offenses, respectively.
- Repeals existing criminal penalty provisions in environmental statutes.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5360 be substituted therefor, and the substitute bill do pass.

Signed by Senators Shewmake, Chair; Slatter, Vice Chair; Dhingra, Harris, Liias, Lovelett, Ramos and Wellman.

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.

Minority Report: Do not pass.
Signed by Senators Boehnke, Ranking Member; Short.

Minority Report: That it be referred without recommendation.
Signed by Senator MacEwen.

Staff: Matt Shepard-Koningsor (786-7627)

Background: General Requirements of Culpability. In criminal law generally, there are four main types of mental states required to be found guilty of committing a crime, including intent, knowledge, recklessness, and criminal negligence. Under the Washington State Criminal Code (Criminal Code), a person:

- acts with intent or intentionally when the person acts with the objective or purpose to accomplish a result which constitutes a crime;
- acts knowingly or with knowledge when the person is aware of a fact, facts, or circumstances or result described by a statute defining an offense, or the person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by a statute defining an offense;
- is reckless or acts recklessly when the person knows of and disregards a substantial risk that a wrongful act may occur and the person's disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation; and
- is criminally negligent or acts with criminal negligence when the person fails to be aware of a substantial risk that a wrongful act may occur and the person's failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

Entity Liability. Under the Criminal Code, a corporation is guilty of an offense when the conduct constituting the offense:

- consists of an omission to discharge a specific duty of performance imposed on entities by law;
- is engaged in, authorized, solicited, requested, commanded, or tolerated by a high managerial agent acting within the scope of the agent's duties and on behalf of the entity; or
- is engaged in by an agent of the entity, other than a high managerial agent, while acting within the scope of the agent's duties and on behalf of the entity and the offense is a gross misdemeanor or misdemeanor, or the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on an entity.

An individual is criminally liable for conduct constituting an offense, which the individual performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in the individual's own name or on the individual's behalf.

Whenever a duty to act is legally imposed upon a corporation, any agent who knows the agent shares primary responsibility for the duty is criminally liable for a reckless, or if a high managerial agent, a criminally negligent omission to perform the required act to the same extent as if the duty were imposed directly upon the agent. Every corporation convicted of criminal conspiracy to commit any offense forfeits the right to do business in Washington.

Classification of Crimes, Maximum Penalties, and the Sentencing Grid. Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement—prison or jail—fine imposed, or both, relating to an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

Classification	Maximum Confinement	Maximum Fine
Misdemeanor	90 days	$1,000
Gross Misdemeanor	364 days	$5,000
Class C Felony	5 years	$10,000
Class B Felony	10 years	$20,000
Class A Felony	Life	$50,000

When a person is convicted of a felony, the Sentencing Reform Act generally applies and determines a specific range of confinement within the statutory maximum. Ranges are determined by a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or seriousness level, of the offense and the convicted person's offender score, which is based on the offender's criminal history. Seriousness levels range from I to XVI, and offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer statutory maximum sentence. If an offense does not have a designated seriousness level, also referred to as an unranked offense, then the maximum sentence is one year.

When a person is convicted of multiple offenses in the same case, the court imposes separate sentences, including terms of confinement, for each offense. In this context, the sentences generally run concurrently, which means the person serves both sentences simultaneously, with the longest period of confinement controlling. There are exceptions to this requirement for concurrent sentences. For example, sentences must run consecutively if the person committed two or more serious violent offenses arising from separate and distinct criminal conduct.

Except where a special fine for entities is expressly specified for an offense, the maximum fines are as follows:

Classification	Maximum Fine
Misdemeanor	$50,000
Gross Misdemeanor	$250,000
Class C Felony	$500,000
Class B Felony	$750,000
Class A Felony	$1,000,000

Water Pollution Control Act Generally and Criminal Penalties. The Water Pollution Control Act (WPCA), sometimes referred to as the state Clean Water Act, grants the Department of Ecology (Ecology) authority to control and prevent the pollution of certain waters of Washington State including lakes, rivers, ponds, streams, salt waters, and other waters within the state. Under this authority, Ecology, among other things, establishes water quality standards for regulated waters and issues permits relating to the discharge of pollutants into such waters.

The WPCA contains both civil and criminal penalties. A person found guilty of willfully violating any provisions of the WPCA or Oil and Hazardous Substance Spill Prevention and Response Act, or any final written orders or directive of Ecology or a court is guilty of a gross misdemeanor. If convicted, the person may be punished by a fine of up to $10,000, imprisonment for up to 364 days, or both, which is in the discretion of the court. Each day of a willful violation may be deemed as a separate and additional violation.

Clean Air Act Generally and Criminal Penalties. The state Clean Air Act (CAA) grants Ecology, clean air agencies, and tribal governments authority to regulate outdoor air pollution in Washington. Under this authority, the relevant regulating entity, among other things, issues air quality permits, sets emission standards for certain sources of air pollution, declares air pollution episodes, and requires greenhouse gas reporting.

The CAA contains both civil and criminal penalties. A person who knowingly violates any provisions of the CAA or other specified statutes relating to motor vehicle emission control, hydrofluorocarbons, or any ordinance, resolution, or regulations implementing those provisions is guilty of a gross misdemeanor. If convicted, the person may be punished by a fine of up to $10,000, imprisonment for up to 364 days, or both.

A person who negligently releases into the ambient air any substance listed by Ecology as a hazardous air pollutant, other than in compliance with an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or

substantial bodily harm is guilty of a gross misdemeanor. If convicted, the person may be punished by a fine of up to $10,000, imprisonment for up to 364 days, or both. A person who knowingly commits the offense is guilty of a Class C Felony, which is punishable by a fine of up to $50,000, imprisonment for up to five years, or both. A separate gross misdemeanor offense exists for certain clean air agency members failing to disclose a conflict of interest.

Hazardous Waste Management Act Generally and Criminal Penalties. The Hazardous Waste Management Act (HWMA) grants Ecology authority to regulate the management of hazardous wastes and releases of hazardous substances. Under this authority, Ecology, among other things, adopts regulations relating to properly designating and managing certain dangerous or hazardous wastes.

The HWMA contains both civil and criminal penalties. A person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of the HWMA is guilty of a:

- Class B Felony, if the person knows at the time the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or
- Class C Felony, if the person knows the conduct constituting the violation places any property of another person or any natural resources owned by the state or any of its local governments in imminent danger of harm.

A Class B Felony under this section is punishable by up to a $20,000 fine, ten years of imprisonment, or both. A Class C Felony is punishable by up to a $10,000 fine, five years of imprisonment, or both. Imminent danger means there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated, and knowingly refers to an awareness of facts, not awareness of law.

A person who violates any provisions of the HWMA, or any implementing rules, and a person who knowingly aids or abets another in conducting any such violation is guilty of a gross misdemeanor. If convicted, the person must be punished by a $100 to $10,000 fine, imprisonment for up to 364 days, or both, for each separate violation. Each violation is a separate and distinct offense.

Summary of Second Engrossed Substitute Bill: Relevant Terminology. The terms "knows" or "knowingly," and "criminal negligence" are defined to reference the terms "knowledge" and "criminal negligence" in the Washington Criminal Code. Where applicable, "imminent danger" means that there is a substantial likelihood that harm will be experienced should the danger not be eliminated; and "substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

Water Pollution Control Act Violations. *First-Degree Violation*. A person is guilty of a

WPCA violation in the first-degree if the person knowingly violates any provisions of the WPCA, the Oil and Hazardous Substance Prevention and Response Act, or any permit issued under the WPCA or the federal Clean Water Act, and the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily harm. A first-degree violation is punishable as a Class B Felony.

Second-Degree Violation. A person is guilty of a WPCA violation in the second-degree if the person, under circumstances not amounting to a first-degree violation, knowingly violates any provisions of the WPCA, the Oil and Hazardous Substance Prevention and Response Act, or any permit issued under the WPCA or the federal Clean Water Act. A second-degree violation is punishable as a Class C Felony.

Third-Degree Violation. A person is guilty of a WPCA violation in the third-degree if the person, under circumstances not amounting to a first- or second- degree violation, while acting with criminal negligence, violates any provisions of the WPCA, the Oil and Hazardous Substance Prevention and Response Act, or any permit issued under the WPCA or the federal Clean Water Act. A third-degree violation is a gross misdemeanor, punishable by a fine of up to $10,000 and costs of prosecution, by imprisonment for up to 364 days, or both, which is in the discretion of the court.

Exemptions. The WPCA violations do not apply to silt and sediment discharges permitted by a construction stormwater general permit.

Clean Air Act Violations. *First-Degree Violation*. A person is guilty of a CAA violation in the first-degree if the person knowingly releases into the ambient air any substance listed by Ecology as a hazardous or toxic air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and the person knows at the time that the person thereby places another person in imminent danger of death or substantial bodily harm, or any property of another person, or any natural resources owned by the state of Washington, or any of its local governments, in imminent danger of harm. A first-degree violation is punishable as a Class B Felony.

Second-Degree Violation. A person is guilty of a CAA violation in the second-degree if the person, under circumstances not amounting to a first-degree violation:

- knowingly violates any provisions of the CAA or other specified statutes relating to motor vehicle emission control, hydrofluorocarbons, the Clean Fuels Program, or any ordinance, resolution, or regulations implementing those provisions; or
- while acting with criminal negligence releases into the ambient air any substance listed by Ecology as a hazardous or toxic air pollutant, other than in compliance with the terms of an applicable permit or emission limit.

A second-degree violation of the CAA is punishable as a Class C Felony.

Third-Degree Violation. A person is guilty of a CAA violation in the third-degree if the

person, under circumstances not amounting to a first- or second-degree violation:

- while acting with criminal negligence, violates any provisions of the CAA or other specified statutes relating to motor vehicle emission control, hydrofluorocarbons, the Clean Fuels Program, or any ordinance, resolution, or regulations implementing those provisions; or
- knowingly fails to disclose a potential conflict of interest as a clean air agency board member in certain circumstances.

A third-degree violation is a gross misdemeanor, punishable by a fine of up to $10,000 and costs of prosecution, by imprisonment for up to 364 days, or both.

Exemptions. The following are exempt from the CAA violations:

- certain activities relating to outdoor burning permitted by the Department of Natural Resources or permitted or conducted by a state or local authority;
- odors or fugitive dust caused by agricultural activity consistent with good agricultural practices; and
- air pollutants emitted in compliance with the Washington Pesticide Application Act.

The term air pollutant does not include an odorous substance unless it is listed by Ecology as hazardous or toxic, or ammonia emissions resulting from the storage, distribution, transport, or application of ammonia as an agricultural or silvicultural fertilizer.

Hazardous Waste Management Act Violations. *First-Degree Violation*. A person is guilty of a HWMA violation in the first-degree if the person knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of the HWMA and the person knows at the time that the conduct constituting the violation:

- places another person in imminent danger of death or substantial bodily harm; or
- places any property of another person, any natural resources owned by the state, or any of its local governments, in imminent danger of harm.

A first-degree violation is punishable as a Class B Felony.

Second-Degree Violation. A person is guilty of a HWMA violation in the second-degree if the person, under circumstances not amounting to a first-degree violation, knowingly violates any provisions of the HWMA or the implementing rules. A second-degree violation of the HWMA is punishable as a Class C Felony.

Third-Degree Violation. A person is guilty of a HWMA violation in the third-degree if the person, under circumstances not amounting to a first- or second- degree violation, while acting with criminal negligence, violates any provisions of the HWMA or the implementing rules. A third-degree violation is a gross misdemeanor, punishable by a fine of up to $10,000 and costs of prosecution, by imprisonment for up to 364 days, or both.

Sentencing Grid. First-degree violations environmental statutes are included in the

sentencing grid as seriousness level three offenses. Second-degree violations are included in the sentencing grid as seriousness level one offenses.

Provisions Applying to Each Degree of Violation. *Entity Liability*. An entity is guilty of the offense if an agent of the entity commits the offense while acting within the scope of the agent's duties and on behalf of the entity.

Continuous Conduct under the Sentencing Reform Act. For purposes of confinement, those separate and additional violations that are continuous must be considered the same criminal conduct in accordance with provisions of the Sentencing Reform Act regarding consecutive or concurrent sentences.

Affirmative Defense. The bill provides an affirmative defense, if the defendant establishes by a preponderance of the evidence, that they:

- did not know the conduct was unlawful;
- acted within the scope of their employment; and
- engaged in the otherwise unlawful conduct under orders from their employer.

Conduct in Compliance with a Permit. Conduct in compliance with the provisions of a permit, including reporting or corrective actions taken in accordance with the permit, is not considered a violation of the applicable statute.

Conduct Performed at the Direction of Permitting Agency. It is not a violation of the applicable statute if the conduct constituting the violation was performed at the direction of the applicable permitting agency.

Other Provisions. *Penalty Information*. Within existing resources, Ecology must prepare and post on its website information about the criminal penalty provisions in the environmental statutes, in addition to the circumstances that could subject someone to those provisions. When Ecology issues or renews a permit under any of those environmental statutes, it must provide the information to the applicant.

Public Policy Statement. In each of the environmental statutes, the bill includes a statement that it is contrary to public policy to terminate or discipline an employee for refusing to violate the applicable statute, or for providing information about a violation to a supervisor or government agency.

Attorney General Reports. Beginning July 1, 2026, the Office of the Attorney General must submit an annual report to the Legislature regarding criminal enforcement actions brought by the office before a court of law under the environmental statutes, including a summary of all cases filed in the preceding year and any case resolutions reached during that period.

Severability Clause. The bill contains a state severability clause.

Repealed Statutes. The bill repeals existing criminal penalty provisions in the environmental statutes and associated cross-references in other statutes.

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 on Proposed Substitute (Regular Session 2025): *The committee recommended a different version of the bill than what was heard.* PRO: I am bringing this bill forward because I believe that criminal polluters who violate our environmental laws must pay the price for doing dirty business in Washington. Our criminal justice system often has a double standard and it comes down hard on lower-income individuals who commit crimes while businesses avoid accountability. This bill ensures we hold those who poison our water and air accountable. Corporations take these fines as a cost of doing business. People in my community are still dealing with environmental disasters years after they occurred. The bill will align state law with federal law. The bill establishes a sensible structure for the three major environmental statutes dealing with clean water, clean air, and hazardous waste management. The bill uses a graduated penalty approach similar to other states, including Oregon.

The bill establishes that companies can be held accountable for serious environmental crimes committed by its employees. Multi-billion dollar companies are committing violations and being fined $25,000. Our community has endured decades of environmental harm. This bill is not just another environmental bill, it is a justice bill. Felony charges will push management to ensure compliance with environmental laws by prioritizing training audits and oversight. We have brought over 200 cases to enforce civil penalties under the same statutes we are discussing today. I think we are now in a time where we will have much less federal government support for state, local, and federal environmental enforcement actions locally. We have a strong, immediate need to modernize our environmental enforcement codes so we can do what is needed to best protect and defend our communities. We have higher rates of asthma and other respiratory issues in my community because of pollution, so we support this bill.

CON: We have concerns the bill shifts the enforcement mechanism of current regulatory penalties from one that informs and helps educate companies to one that has civil and criminal penalties attached to it. The current system allows a balanced approach where a company is accused of wrongdoing. We agree with the basic idea behind this bill, but there is a fundamental problem. It would expose innocent landowners, operators, and Washington citizens to unfair and potentially unconstitutional penalties because Ecology interprets pollution to include not just the dumping of materials into a body of water but

also to simple digging practices. Ecology says that whenever anyone digs in a wetland, it is automatically pollution.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Bradley Roberts, Washington State Attorney Generals Office; Melissa Malott, Communities for a Healthy Bay; Stefanie Stockwell, Communities for a Healthy Bay; Sean Dixon, Puget Soundkeeper Alliance; Connar Mon.

CON: Peter Godlewski, Association of Washington Business; DUNCAN GREENE, N/A (self).

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