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HOUSE BILL 1082

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State of Washington

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By Representatives Bailey, Chandler, Finn, and Angel

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1 AN ACT Relating to local governments and state agencies providing  
2 assistance to citizens prior to issuing penalties for violating certain  
3 laws; amending RCW 90.58.210, 90.58.220, and 90.48.144; reenacting and  
4 amending RCW 43.21B.300; adding a new section to chapter 36.70A RCW;  
5 adding a new section to chapter 90.48 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that the  
8 Washington Constitution establishes that the powers of government are  
9 derived from the consent of the people and that government efforts are  
10 to protect and maintain individual rights. The role of government is  
11 to benefit the people and to do so in a way that is best suited to the  
12 people, not the government. Over the years, this constitutional limit  
13 has been diluted as agency powers have grown and more government  
14 requirements have been placed on the people.

15 The legislature finds that the people have complained to its  
16 representatives that state agencies exhibit an attitude not of service  
17 to the people but are adversarial in situations where there are alleged  
18 violations of environmental laws. The legislature further finds, in  
19 enforcing environmental laws, the public benefit is greater if a

1 citizen corrects the action that leads to a violation rather than  
2 merely receiving citations and being fined penalties. In many  
3 instances where there are environmental concerns, individuals may be  
4 unaware that their actions are harmful to the environment, and they may  
5 not know how to rectify the problem when they receive a notice of  
6 violation.

7 The legislature intends state agencies to provide warnings to  
8 individuals that are in violation of laws and provide them with  
9 information on how to voluntarily comply with laws and provide them  
10 with the time to correct alleged violations before issuing fines or  
11 penalties.

12 Agencies should establish a culture of working with people to  
13 improve our environment instead of relying on the ability to issue  
14 citations and penalize individuals.

15 **Sec. 2.** RCW 90.58.210 and 2010 c 210 s 39 are each amended to read  
16 as follows:

17 (1) Except as provided in RCW 43.05.060 through 43.05.080 and  
18 43.05.150, the attorney general or the attorney for the local  
19 government shall bring such injunctive, declaratory, or other actions  
20 as are necessary to ensure that no uses are made of the shorelines of  
21 the state in conflict with the provisions and programs of this chapter,  
22 and to otherwise enforce the provisions of this chapter.

23 (2) Any person who shall fail to conform to the terms of a permit  
24 issued under this chapter or who shall undertake development on the  
25 shorelines of the state without first obtaining any permit required  
26 under this chapter shall also be subject to a civil penalty not to  
27 exceed one thousand dollars for each violation. Each permit violation  
28 or each day of continued development without a required permit shall  
29 constitute a separate violation.

30 (3)(a) Prior to a penalty being issued under this section, the  
31 department or local government shall seek voluntary compliance actions  
32 from the person identified under subsection (2) of this section and  
33 work in good faith with any person who indicates an interest in  
34 voluntary compliance. In seeking voluntary compliance actions under  
35 this subsection, the department or local government shall provide the  
36 person with educational information on methods of correcting the  
37 alleged violation and technical assistance for expeditiously achieving

1 compliance with: (i) The terms of a permit issued under this chapter;  
2 or (ii) requirements for undertaking development on the shorelines of  
3 the state. If the provided information and assistance do not result in  
4 a voluntary rectification of the violation, the department or local  
5 government may impose a penalty upon the person in accordance with this  
6 section.

7 (b) Nothing in this subsection (3) lessens or otherwise affects the  
8 authority of a local government to take actions necessary to address an  
9 immediate threat to human health or safety.

10 (4) The penalty provided for in this section shall be imposed by a  
11 notice in writing, either by certified mail with return receipt  
12 requested or by personal service, to the person incurring the same from  
13 the department or local government, describing the violation with  
14 reasonable particularity and ordering the act or acts constituting the  
15 violation or violations to cease and desist or, in appropriate cases,  
16 requiring necessary corrective action to be taken within a specific and  
17 reasonable time.

18 ((+4)) (5) The person incurring the penalty may appeal within  
19 thirty days from the date of receipt of the penalty. The term "date of  
20 receipt" has the same meaning as provided in RCW 43.21B.001. Any  
21 penalty imposed pursuant to this section by the department shall be  
22 subject to review by the shorelines hearings board. Any penalty  
23 imposed pursuant to this section by local government shall be subject  
24 to review by the local government legislative authority. Any penalty  
25 jointly imposed by the department and local government shall be  
26 appealed to the shorelines hearings board.

27 **Sec. 3.** RCW 90.58.220 and 1983 c 138 s 3 are each amended to read  
28 as follows:

29 In addition to incurring civil liability under RCW 90.58.210, any  
30 person found to have willfully engaged in activities on the shorelines  
31 of the state in violation of the provisions of this chapter or any of  
32 the master programs, rules, or regulations adopted pursuant thereto  
33 shall be guilty of a gross misdemeanor, and shall be punished by a fine  
34 of not less than twenty-five nor more than one thousand dollars or by  
35 imprisonment in the county jail for not more than ninety days, or by  
36 both such fine and imprisonment: PROVIDED, That the enforcing agency  
37 first attempted to achieve voluntary compliance: PROVIDED FURTHER,

1 That the fine for the third and all subsequent violations in any five-  
2 year period shall be not less than five hundred nor more than ten  
3 thousand dollars: PROVIDED FURTHER, That fines for violations of RCW  
4 90.58.550, or any rule adopted thereunder, shall be determined under  
5 RCW 90.58.560.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW  
7 to read as follows:

8 (1) Prior to issuing a penalty authorized in a local ordinance  
9 adopted in accordance with the requirements of this chapter, counties  
10 and cities must seek voluntary compliance actions from the alleged  
11 violator and work in good faith with any person who indicates an  
12 interest in voluntary compliance. In seeking voluntary compliance  
13 actions, the county or city must provide the alleged violator with  
14 educational information on methods of correcting the alleged violation  
15 and technical assistance for expeditiously achieving compliance with  
16 the local ordinance. If the provided information and assistance do not  
17 result in a voluntary rectification of the violation, the county or  
18 city, in accordance with the applicable local ordinance, may impose a  
19 penalty upon the alleged violator.

20 (2) Nothing in this section lessens or otherwise affects the  
21 authority of a county or city to take actions necessary to address an  
22 immediate threat to human health or safety.

23 **Sec. 5.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to  
24 read as follows:

25 Except as provided in RCW 43.05.060 through 43.05.080 and  
26 43.05.150, every person who:

27 (1) Violates the terms or conditions of a waste discharge permit  
28 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

29 (2) Conducts a commercial or industrial operation or other point  
30 source discharge operation without a waste discharge permit as required  
31 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

32 (3) Violates the provisions of RCW 90.48.080, or other sections of  
33 this chapter or chapter 90.56 RCW or rules or orders adopted or issued  
34 pursuant to either of those chapters, shall incur, in addition to any  
35 other penalty as provided by law, a penalty in an amount of up to ten  
36 thousand dollars a day for every such violation. Each and every such

1 violation shall be a separate and distinct offense, and in case of a  
2 continuing violation, every day's continuance shall be and be deemed to  
3 be a separate and distinct violation. Every act of commission or  
4 omission which procures, aids or abets in the violation shall be  
5 considered a violation under the provisions of this section and subject  
6 to the penalty herein provided for. The penalty amount shall be set in  
7 consideration of the previous history of the violator and the severity  
8 of the violation's impact on public health and/or the environment in  
9 addition to other relevant factors. The penalty herein provided for  
10 shall be imposed pursuant to the procedures set forth in section 6 of  
11 this act and RCW 43.21B.300.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.48 RCW  
13 to read as follows:

14 (1) Prior to issuing a penalty authorized under RCW 90.48.144, the  
15 department must seek voluntary compliance actions from the alleged  
16 violator and work in good faith with any person who indicates an  
17 interest in voluntary compliance. In seeking voluntary compliance  
18 actions, the department must provide the alleged violator with  
19 educational information on methods of correcting the alleged violation  
20 and technical assistance for expeditiously achieving compliance with:  
21 (a) The provisions of this chapter; or (b) rules and orders adopted or  
22 issued to implement the requirements of this chapter. If the provided  
23 information and assistance do not result in a voluntary rectification  
24 of the violation, the department may impose a penalty upon the alleged  
25 violator.

26 (2) Nothing in this section lessens or otherwise affects the  
27 authority of the department to take actions necessary to address an  
28 immediate threat to human health or safety.

29 **Sec. 7.** RCW 43.21B.300 and 2010 c 210 s 12 and 2010 c 84 s 4 are  
30 each reenacted and amended to read as follows:

31 (1)(a) Except as provided in (b) of this subsection, any civil  
32 penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080,  
33 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
34 90.56.330, and 90.64.102 and chapter 90.76 RCW shall be imposed by a  
35 notice in writing, either by certified mail with return receipt  
36 requested or by personal service, to the person incurring the penalty

1 from the department or the local air authority, describing the  
2 violation with reasonable particularity. For penalties issued by local  
3 air authorities, within thirty days after the notice is received, the  
4 person incurring the penalty may apply in writing to the authority for  
5 the remission or mitigation of the penalty. Upon receipt of the  
6 application, the authority may remit or mitigate the penalty upon  
7 whatever terms the authority in its discretion deems proper. The  
8 authority may ascertain the facts regarding all such applications in  
9 such reasonable manner and under such rules as it may deem proper and  
10 shall remit or mitigate the penalty only upon a demonstration of  
11 extraordinary circumstances such as the presence of information or  
12 factors not considered in setting the original penalty.

13 (b) Prior to imposing a civil penalty under RCW 90.48.144, the  
14 department of ecology must provide technical assistance as required  
15 under section 6 of this act.

16 (2) Any penalty imposed under this section may be appealed to the  
17 pollution control hearings board in accordance with this chapter if the  
18 appeal is filed with the hearings board and served on the department or  
19 authority thirty days after the date of receipt by the person penalized  
20 of the notice imposing the penalty or thirty days after the date of  
21 receipt of the notice of disposition by a local air authority of the  
22 application for relief from penalty.

23 (3) A penalty shall become due and payable on the later of:

24 (a) Thirty days after receipt of the notice imposing the penalty;

25 (b) Thirty days after receipt of the notice of disposition by a  
26 local air authority on application for relief from penalty, if such an  
27 application is made; or

28 (c) Thirty days after receipt of the notice of decision of the  
29 hearings board if the penalty is appealed.

30 (4) If the amount of any penalty is not paid to the department  
31 within thirty days after it becomes due and payable, the attorney  
32 general, upon request of the department, shall bring an action in the  
33 name of the state of Washington in the superior court of Thurston  
34 county, or of any county in which the violator does business, to  
35 recover the penalty. If the amount of the penalty is not paid to the  
36 authority within thirty days after it becomes due and payable, the  
37 authority may bring an action to recover the penalty in the superior

1 court of the county of the authority's main office or of any county in  
2 which the violator does business. In these actions, the procedures and  
3 rules of evidence shall be the same as in an ordinary civil action.

4 (5) All penalties recovered shall be paid into the state treasury  
5 and credited to the general fund except those penalties imposed  
6 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
7 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
8 disposition of which shall be governed by that provision, RCW  
9 70.105.080, which shall be credited to the hazardous waste control and  
10 elimination account created by RCW 70.105.180, RCW 90.56.330, which  
11 shall be credited to the coastal protection fund created by RCW  
12 90.48.390, and RCW 90.76.080, which shall be credited to the  
13 underground storage tank account created by RCW 90.76.100.

14 NEW SECTION. **Sec. 8.** All provisions of this act must be  
15 administered and funded within existing resources.

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