

2 **HB 1350** - H AMD **ADOPTED 4/10/01**

3 By Representative

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature intends to assure that  
8 appeals of department of ecology decisions regarding changes or  
9 transfers of water rights that are the subject of an ongoing general  
10 adjudication of water rights are governed by an appeals process that is  
11 efficient and eliminates unnecessary duplication, while fully  
12 preserving the rights of all affected parties.

13 **Sec. 2.** RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and  
14 1998 c 36 s 22 are each reenacted and amended to read as follows:

15 (1) The hearings board shall only have jurisdiction to hear and  
16 decide appeals from the following decisions of the department, the  
17 director, local conservation districts, and the air pollution control  
18 boards or authorities as established pursuant to chapter 70.94 RCW, or  
19 local health departments:

20 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
21 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
22 90.56.330.

23 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
24 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
25 90.14.130, 90.48.120, and 90.56.330.

26 (c) Except as provided in RCW 90.03.210(2), the issuance,  
27 modification, or termination of any permit, certificate, or license by  
28 the department or any air authority in the exercise of its  
29 jurisdiction, including the issuance or termination of a waste disposal  
30 permit, the denial of an application for a waste disposal permit, the  
31 modification of the conditions or the terms of a waste disposal permit,  
32 or a decision to approve or deny an application for a solid waste  
33 permit exemption under RCW 70.95.300.

34 (d) Decisions of local health departments regarding the grant or  
35 denial of solid waste permits pursuant to chapter 70.95 RCW.

1 (e) Decisions of local health departments regarding the issuance  
2 and enforcement of permits to use or dispose of biosolids under RCW  
3 70.95J.080.

4 (f) Decisions of the department regarding waste-derived fertilizer  
5 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
6 department regarding waste-derived soil amendments under RCW 70.95.205.

7 (g) Decisions of local conservation districts related to the denial  
8 of approval or denial of certification of a dairy nutrient management  
9 plan; conditions contained in a plan; application of any dairy nutrient  
10 management practices, standards, methods, and technologies to a  
11 particular dairy farm; and failure to adhere to the plan review and  
12 approval timelines in RCW 90.64.026.

13 (h) Any other decision by the department or an air authority which  
14 pursuant to law must be decided as an adjudicative proceeding under  
15 chapter 34.05 RCW.

16 (2) The following hearings shall not be conducted by the hearings  
17 board:

18 (a) Hearings required by law to be conducted by the shorelines  
19 hearings board pursuant to chapter 90.58 RCW.

20 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
21 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

22 (c) Proceedings conducted by the department (~~relating to general~~  
23 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW~~),  
24 or the department's designee, under RCW 90.03.160 through 90.03.210 or  
25 90.44.220.

26 (d) Hearings conducted by the department to adopt, modify, or  
27 repeal rules.

28 (3) Review of rules and regulations adopted by the hearings board  
29 shall be subject to review in accordance with the provisions of the  
30 Administrative Procedure Act, chapter 34.05 RCW.

31 **Sec. 3.** RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9 are  
32 each reenacted and amended to read as follows:

33 (1) Except as provided in subsections (2) and (3) of this section,  
34 proceedings for review under this chapter shall be instituted by paying  
35 the fee required under RCW 36.18.020 and filing a petition in the  
36 superior court, at the petitioner's option, for (a) Thurston county,  
37 (b) the county of the petitioner's residence or principal place of

1 business, or (c) in any county where the property owned by the  
2 petitioner and affected by the contested decision is located.

3 (2) For proceedings involving institutions of higher education, the  
4 petition shall be filed either in the county in which the principal  
5 office of the institution involved is located or in the county of a  
6 branch campus if the action involves such branch.

7 (3) For proceedings involving decisions of the department on  
8 applications for changes or transfers of water rights that are the  
9 subject of a general adjudication of water rights that is being  
10 litigated actively under chapter 90.03 or 90.44 RCW, the petition must  
11 be filed with the superior court conducting the adjudication, to be  
12 consolidated by the court with the general adjudication.

13 **Sec. 4.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read  
14 as follows:

15 (1) Except as provided in RCW 90.03.210(2), any order issued by the  
16 department, the administrator of the office of marine safety, or  
17 authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190,  
18 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after  
19 July 26, 1987, or any permit, certificate, or license issued by the  
20 department may be appealed to the pollution control hearings board if  
21 the appeal is filed with the board and served on the department or  
22 authority within thirty days after receipt of the order. Except as  
23 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the  
24 exclusive means of appeal of such an order.

25 (2) The department, the administrator, or the authority in its  
26 discretion may stay the effectiveness of an order during the pendency  
27 of such an appeal.

28 (3) At any time during the pendency of an appeal of such an order  
29 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the  
30 hearings board for a stay of the order or for the removal thereof.

31 (4) Any appeal must contain the following in accordance with the  
32 rules of the hearings board:

33 (a) The appellant's name and address;

34 (b) The date and docket number of the order, permit, or license  
35 appealed;

36 (c) A description of the substance of the order, permit, or license  
37 that is the subject of the appeal;

1 (d) A clear, separate, and concise statement of every error alleged  
2 to have been committed;

3 (e) A clear and concise statement of facts upon which the requester  
4 relies to sustain his or her statements of error; and

5 (f) A statement setting forth the relief sought.

6 (5) Upon failure to comply with any final order of the department  
7 or the administrator, the attorney general, on request of the  
8 department or the administrator, may bring an action in the superior  
9 court of the county where the violation occurred or the potential  
10 violation is about to occur to obtain such relief as necessary,  
11 including injunctive relief, to insure compliance with the order. The  
12 air authorities may bring similar actions to enforce their orders.

13 (6) An appealable decision or order shall be identified as such and  
14 shall contain a conspicuous notice to the recipient that it may be  
15 appealed only by filing an appeal with the hearings board and serving  
16 it on the department within thirty days of receipt.

17 **Sec. 5.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to read  
18 as follows:

19 (1) During the pendency of such adjudication proceedings prior to  
20 judgment or upon review by an appellate court, the stream or other  
21 water involved shall be regulated or partially regulated according to  
22 the schedule of rights specified in the department's report upon an  
23 order of the court authorizing such regulation: PROVIDED, Any  
24 interested party may file a bond and obtain an order staying the  
25 regulation of said stream as to him, in which case the court shall make  
26 such order regarding the regulation of the stream or other water as he  
27 may deem just. The bond shall be filed within five days following the  
28 service of notice of appeal in an amount to be fixed by the court and  
29 with sureties satisfactory to the court, conditioned to perform the  
30 judgment of the court.

31 (2) Any appeal of a decision of the department on an application to  
32 change or transfer a water right subject to a general adjudication that  
33 is being litigated actively and was commenced before October 13, 1977,  
34 shall be conducted as follows:

35 (a) The appeal shall be filed with the court conducting the  
36 adjudication and served under RCW 34.05.542(3). The content of the  
37 notice of appeal shall conform to RCW 34.05.546.

1       (b) If the appeal includes a challenge to the portion of the  
2 department's decision that contains tentative determinations of the  
3 validity and extent of the water right, review of those tentative  
4 determinations shall be conducted by the court consistent with the  
5 provisions of RCW 34.05.510 through 34.05.598, except that the review  
6 shall be de novo.

7       (c) If the appeal includes a challenge to any portion of the  
8 department's decision other than the tentative determinations of the  
9 validity and extent of the right, the court must certify to the  
10 pollution control hearings board for review and decision those portions  
11 of the department's decision. Review by the pollution control hearings  
12 board shall be conducted consistent with chapter 43.21B RCW and the  
13 board's implementing regulations, except that:

14       (i) The requirements for filing, service, and content of the notice  
15 of appeal shall be governed by (a) of this subsection; and

16       (ii) The board shall render a decision on the issues certified by  
17 the court within one hundred eighty days after the date the  
18 certification is received by the board. The time period may be  
19 extended by the board for a period of thirty days upon a showing of  
20 good cause or may be waived by the parties.

21       (d) Any person wishing to appeal the decision of the board made  
22 under (c) of this subsection shall seek review of the decision in  
23 accordance with chapter 34.05 RCW, except that the petition for review  
24 must be filed with the superior court conducting the adjudication.

25       (3) Nothing in this section shall be construed to affect or modify  
26 any treaty or other federal rights of an Indian tribe, or the rights of  
27 any federal agency or other person or entity arising under federal law.

28       NEW SECTION. Sec. 6. Nothing in this act shall be construed to  
29 affect or modify any treaty or other federal rights of an Indian tribe,  
30 or the rights of any federal agency or other person or entity arising  
31 under federal law.

32       NEW SECTION. Sec. 7. This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and takes effect  
35 immediately."

1 Correct the title.

--- END ---