
ENGROSSED HOUSE BILL 1350

State of Washington

57th Legislature

2001 Regular Session

By Representatives G. Chandler and Linville

Read first time 01/24/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to appeals of water right decisions regarding water
2 rights subject to a general stream adjudication; amending RCW
3 43.21B.310 and 90.03.210; reenacting and amending RCW 43.21B.110 and
4 34.05.514; creating new sections; and declaring an emergency.

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

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

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

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

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
3 90.56.330.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
6 90.14.130, 90.48.120, and 90.56.330.

7 (c) Except as provided in RCW 90.03.210(2), the issuance,
8 modification, or termination of any permit, certificate, or license by
9 the department or any air authority in the exercise of its
10 jurisdiction, including the issuance or termination of a waste disposal
11 permit, the denial of an application for a waste disposal permit, the
12 modification of the conditions or the terms of a waste disposal permit,
13 or a decision to approve or deny an application for a solid waste
14 permit exemption under RCW 70.95.300.

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

17 (e) Decisions of local health departments regarding the issuance
18 and enforcement of permits to use or dispose of biosolids under RCW
19 70.95J.080.

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

23 (g) Decisions of local conservation districts related to the denial
24 of approval or denial of certification of a dairy nutrient management
25 plan; conditions contained in a plan; application of any dairy nutrient
26 management practices, standards, methods, and technologies to a
27 particular dairy farm; and failure to adhere to the plan review and
28 approval timelines in RCW 90.64.026.

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

32 (2) The following hearings shall not be conducted by the hearings
33 board:

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

36 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
37 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

38 (c) Proceedings conducted by the department (~~relating to general~~
39 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW~~).

1 or the department's designee, under RCW 90.03.160 through 90.03.210 or
2 90.44.220.

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

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

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

10 (1) Except as provided in subsections (2) and (3) of this section,
11 proceedings for review under this chapter shall be instituted by paying
12 the fee required under RCW 36.18.020 and filing a petition in the
13 superior court, at the petitioner's option, for (a) Thurston county,
14 (b) the county of the petitioner's residence or principal place of
15 business, or (c) in any county where the property owned by the
16 petitioner and affected by the contested decision is located.

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

21 (3) For proceedings involving decisions of the department on
22 applications for changes or transfers of water rights that are the
23 subject of a general adjudication of water rights that is being
24 litigated actively under chapter 90.03 or 90.44 RCW, the petition must
25 be filed with the superior court conducting the adjudication, to be
26 consolidated by the court with the general adjudication.

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

29 (1) Except as provided in RCW 90.03.210(2), any order issued by the
30 department, the administrator of the office of marine safety, or
31 authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190,
32 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after
33 July 26, 1987, or any permit, certificate, or license issued by the
34 department may be appealed to the pollution control hearings board if
35 the appeal is filed with the board and served on the department or
36 authority within thirty days after receipt of the order. Except as

1 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the
2 exclusive means of appeal of such an order.

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

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

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

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

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

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

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

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

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

21 (5) Upon failure to comply with any final order of the department
22 or the administrator, the attorney general, on request of the
23 department or the administrator, may bring an action in the superior
24 court of the county where the violation occurred or the potential
25 violation is about to occur to obtain such relief as necessary,
26 including injunctive relief, to insure compliance with the order. The
27 air authorities may bring similar actions to enforce their orders.

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

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

34 (1) During the pendency of such adjudication proceedings prior to
35 judgment or upon review by an appellate court, the stream or other
36 water involved shall be regulated or partially regulated according to
37 the schedule of rights specified in the department's report upon an
38 order of the court authorizing such regulation: PROVIDED, Any

1 interested party may file a bond and obtain an order staying the
2 regulation of said stream as to him, in which case the court shall make
3 such order regarding the regulation of the stream or other water as he
4 may deem just. The bond shall be filed within five days following the
5 service of notice of appeal in an amount to be fixed by the court and
6 with sureties satisfactory to the court, conditioned to perform the
7 judgment of the court.

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

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

15 (b) If the appeal includes a challenge to the portion of the
16 department's decision that contains tentative determinations of the
17 validity and extent of the water right, review of those tentative
18 determinations shall be conducted by the court consistent with the
19 provisions of RCW 34.05.510 through 34.05.598, except that the review
20 shall be de novo.

21 (c) If the appeal includes a challenge to any portion of the
22 department's decision other than the tentative determinations of the
23 validity and extent of the right, the court must certify to the
24 pollution control hearings board for review and decision those portions
25 of the department's decision. Review by the pollution control hearings
26 board shall be conducted consistent with chapter 43.21B RCW and the
27 board's implementing regulations, except that:

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

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

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

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

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

8 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 immediately.

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