

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5590

58th Legislature
2004 Regular Session

Passed by the Senate February 13, 2004
YEAS 48 NAYS 0

President of the Senate

Passed by the House March 3, 2004
YEAS 95 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5590 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5590

Passed Legislature - 2004 Regular Session

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Fraser, Honeyford, Hewitt, Doumit and Regala; by request of Environmental Hearings Office)

READ FIRST TIME 03/03/03.

1 AN ACT Relating to determining the appeals period for certain
2 environmental appeals; amending RCW 43.21B.001, 43.21B.190, 43.21B.230,
3 and 43.21B.300; and reenacting and amending RCW 43.21B.310.

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

5 **Sec. 1.** RCW 43.21B.001 and 1987 c 109 s 4 are each amended to read
6 as follows:

7 (~~As used in~~) The definitions in this section apply throughout
8 this chapter((,)) unless the context clearly requires otherwise.

9 (1) "Business days" means Monday through Friday exclusive of any
10 state or federal holiday.

11 (2) "Date of receipt" means:

12 (a) Five business days after the date of mailing; or

13 (b) The date of actual receipt, when the actual receipt date can be
14 proven by a preponderance of the evidence. The recipient's sworn
15 affidavit or declaration indicating the date of receipt, which is
16 unchallenged by the agency, shall constitute sufficient evidence of
17 actual receipt. The date of actual receipt, however, may not exceed
18 forty-five days from the date of mailing.

19 (3) "Department" means the department of ecology((, and)).

1 (4) "Director" means the director of ecology.

2 **Sec. 2.** RCW 43.21B.190 and 1995 c 382 s 4 are each amended to read
3 as follows:

4 (~~Within thirty days~~) After the final decision and order of the
5 hearings board (~~upon such an appeal~~) has been (~~communicated to~~)
6 received by the (~~interested~~) parties, (~~such interested~~) any party
7 aggrieved by the decision and order of the hearings board may appeal to
8 the superior court within thirty days from the date of receipt of the
9 final decision and order.

10 **Sec. 3.** RCW 43.21B.230 and 1997 c 125 s 2 are each amended to read
11 as follows:

12 Consistent with RCW 43.21B.110, any person having received notice
13 of ((a)) denial of a petition, a notice of determination, or notice of
14 ((e)) an order made by the department may appeal to the hearings
15 board, within thirty days from the date of receipt of the notice of
16 such denial, order, or determination (~~is posted in the United States~~
17 ~~mail, properly addressed, postage prepaid, to~~) by the appealing party.
18 The appeal shall be perfected by serving a copy of the notice of appeal
19 upon the department or air pollution authority established pursuant to
20 chapter 70.94 RCW, as the case may be, within the time specified herein
21 and by filing the original thereof with proof of service with the clerk
22 of the hearings board.

23 **Sec. 4.** RCW 43.21B.300 and 2001 c 36 s 2 are each amended to read
24 as follows:

25 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
26 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
27 90.56.330 shall be imposed by a notice in writing, either by certified
28 mail with return receipt requested or by personal service, to the
29 person incurring the penalty from the department or the local air
30 authority, describing the violation with reasonable particularity.
31 Within (~~fifteen~~) thirty days after the notice is received, the person
32 incurring the penalty may apply in writing to the department or the
33 authority for the remission or mitigation of the penalty. Upon receipt
34 of the application, the department or authority may remit or mitigate
35 the penalty upon whatever terms the department or the authority in its

1 discretion deems proper. The department or the authority may ascertain
2 the facts regarding all such applications in such reasonable manner and
3 under such rules as it may deem proper and shall remit or mitigate the
4 penalty only upon a demonstration of extraordinary circumstances such
5 as the presence of information or factors not considered in setting the
6 original penalty.

7 (2) Any penalty imposed under this section may be appealed to the
8 pollution control hearings board in accordance with this chapter if the
9 appeal is filed with the hearings board and served on the department or
10 authority thirty days after the date of receipt by the person penalized
11 of the notice imposing the penalty or thirty days after the date of
12 receipt of the notice of disposition of the application for relief from
13 penalty.

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

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

16 (b) Thirty days after receipt of the notice of disposition on
17 application for relief from penalty, if such an application is made; or

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

20 (4) If the amount of any penalty is not paid to the department
21 within thirty days after it becomes due and payable, the attorney
22 general, upon request of the department, shall bring an action in the
23 name of the state of Washington in the superior court of Thurston
24 county, or of any county in which the violator does business, to
25 recover the penalty. If the amount of the penalty is not paid to the
26 authority within thirty days after it becomes due and payable, the
27 authority may bring an action to recover the penalty in the superior
28 court of the county of the authority's main office or of any county in
29 which the violator does business. In these actions, the procedures and
30 rules of evidence shall be the same as in an ordinary civil action.

31 (5) All penalties recovered shall be paid into the state treasury
32 and credited to the general fund except those penalties imposed
33 pursuant to RCW 18.104.155, which shall be credited to the reclamation
34 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
35 disposition of which shall be governed by that provision, RCW
36 70.105.080, which shall be credited to the hazardous waste control and
37 elimination account, created by RCW 70.105.180, and RCW 90.56.330,

1 which shall be credited to the coastal protection fund created by RCW
2 90.48.390.

3 **Sec. 5.** RCW 43.21B.310 and 2001 c 220 s 4 and 2001 c 36 s 3 are
4 each reenacted and amended to read as follows:

5 (1) Except as provided in RCW 90.03.210(2), any order issued by the
6 department or local air authority pursuant to RCW 70.94.211, 70.94.332,
7 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any
8 provision enacted after July 26, 1987, or any permit, certificate, or
9 license issued by the department may be appealed to the pollution
10 control hearings board if the appeal is filed with the board and served
11 on the department or authority within thirty days after the date of
12 receipt of the order. Except as provided under chapter 70.105D RCW and
13 RCW 90.03.210(2), this is the exclusive means of appeal of such an
14 order.

15 (2) The department or the authority in its discretion may stay the
16 effectiveness of an order during the pendency of such an appeal.

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

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

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

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

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

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

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

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

32 (5) Upon failure to comply with any final order of the department,
33 the attorney general, on request of the department, may bring an action
34 in the superior court of the county where the violation occurred or the
35 potential violation is about to occur to obtain such relief as
36 necessary, including injunctive relief, to insure compliance with the

1 order. The air authorities may bring similar actions to enforce their
2 orders.

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

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