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HOUSE BILL 2450

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Tharinger, Wylie, Zeiger, Lytton, Fitzgibbon, Upthegrove, Pollet, Ormsby, Kenney, and Moscoso

Read first time 01/13/12. Referred to Committee on Environment.

1 AN ACT Relating to adopting the Washington small rechargeable  
2 battery stewardship act; reenacting and amending RCW 43.21B.110 and  
3 43.21B.110; adding a new chapter to Title 70 RCW; prescribing  
4 penalties; providing an effective date; and providing an expiration  
5 date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds and declares that it  
8 is in the public interest of the citizens of Washington to encourage  
9 the recovery and reuse of materials, such as metals, that replace the  
10 output of mining and other extractive industries; that it is desirable  
11 to reduce the volume of the solid waste stream and resulting burdens on  
12 municipalities and to ensure the proper handling of used small  
13 rechargeable batteries; that it is important to ensure that all  
14 entities supplying small rechargeable batteries to residents of  
15 Washington, whether as stand alone units or as easily removable  
16 components of products, bear the same battery stewardship obligations;  
17 and that addressing certain existing and future barriers to  
18 implementation of voluntary industry programs to collect and recycle  
19 used small rechargeable batteries will facilitate these interests.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3        (1) "Department" means the department of ecology.

4        (2) "Easily removable" means readily detachable by a consumer  
5 without the use of tools or with the use of common household tools.

6        (3) "Free rider used small rechargeable battery" means a used small  
7 rechargeable battery that section 3 of this act requires be covered by  
8 a qualified used small battery stewardship program but as to which no  
9 manufacturer or marketer of the battery operated or participated in a  
10 qualified program at the time the used battery was collected.

11        (4) "Participate" means to appoint an organization to act as an  
12 agent to administer a qualified used small rechargeable battery program  
13 and to have that appointment accepted by the qualified program.

14        (5) "Place of business" means a location at which a retailer sells  
15 or offers for sale small rechargeable batteries or portable  
16 rechargeable products to consumers.

17        (6) "Portable rechargeable product" means a product that is  
18 packaged with or contains one or more easily removable small  
19 rechargeable batteries at the time of sale or offering for sale and is  
20 not a medical device.

21        (7) "Portable rechargeable product manufacturer or marketer" means  
22 every person, firm, or corporation that:    (a) Produces portable  
23 rechargeable products sold, offered for sale, or distributed in  
24 Washington under a brand name it owns or licenses that are packaged  
25 with or contain one or more easily removable small rechargeable  
26 batteries; (b) packages or arranges for the packaging of products  
27 packaged with or containing one or more easily removable small  
28 rechargeable batteries at the time of sale in Washington under a brand  
29 name it owns or licenses; (c) imports into the United States products  
30 packaged with or containing one or more easily removable small  
31 rechargeable batteries at the time of sale, offering for sale or  
32 distribution that are sold, offered for sale, or distributed in  
33 Washington under a brand name it owns or licenses; or (d) otherwise  
34 makes available to purchasers in Washington portable rechargeable  
35 products.

36        (8) "Private label retailer" means a retailer who sells small  
37 rechargeable batteries under one or more brand names it owns or  
38 licenses.

1 (9) "Retailer" means a person or other entity who sells or offers  
2 to sell small rechargeable batteries, or portable rechargeable  
3 products, at retail through any means including, but not limited to,  
4 remote offerings such as sales outlets, catalogs, or the internet, but  
5 does not include any sale that is a wholesale transaction with a  
6 distributor or manufacturer.

7 (10) "Qualified used small rechargeable battery stewardship  
8 program" or "qualified program" means a program for the collection,  
9 transportation, recycling, and disposal of used small rechargeable  
10 batteries that has been certified under section 4 of this act to meet  
11 the requirements set forth in section 4(2) of this act.

12 (11) "Small nonrechargeable battery" means a battery weighing less  
13 than eleven pounds that is not designed to be recharged for repeated  
14 use.

15 (12) "Small nonrechargeable battery manufacturer or marketer" means  
16 a person who: (a) Produces small nonrechargeable batteries sold,  
17 offered for sale, or distributed in Washington under a brand name it  
18 owns or licenses; (b) packages or arranges for the packaging of small  
19 nonrechargeable batteries for sale, offering for sale, or distribution  
20 in Washington under a brand name it owns or licenses; (c) imports into  
21 the United States small nonrechargeable batteries that are sold,  
22 offered for sale, or distributed in Washington under a brand name it  
23 owns or licenses; or (d) otherwise makes available to purchasers in  
24 Washington small nonrechargeable batteries, whether as stand alone  
25 items or as components of products.

26 (13) "Small rechargeable battery" means one or more voltaic or  
27 galvanic cells, electrically connected to produce electric energy and  
28 designed to be recharged and weighing less than eleven pounds, or an  
29 assembly of small rechargeable batteries in a container that has a  
30 single positive and negative connection (commonly known as a battery  
31 pack) that weighs less than eleven pounds, but does not include: (a)  
32 A battery that is not easily removable or is not intended or designed  
33 to be removed from the product, other than by the manufacturer; (b) a  
34 battery or battery pack used to start an internal combustion engine or  
35 as the principal or supplemental electric power source for a vehicle  
36 such as, but not limited to, an automobile, bicycle, boat, truck,  
37 tractor, golf cart, or wheelchair; (c) a battery or battery pack  
38 designed for use by a commercial, industrial, or institutional facility

1 for load leveling or storage of electricity generated by an alternative  
2 power source, such as solar or wind driven generators; or (d) a battery  
3 or battery pack designed for use by a commercial, industrial, or  
4 institutional facility as a backup power source for memory or program  
5 instruction storage or timekeeping.

6 (14) "Small rechargeable battery manufacturer or marketer" means  
7 every person, firm, or corporation that: (a) Produces small  
8 rechargeable batteries sold, offered for sale, or distributed in  
9 Washington under a brand name it owns or licenses; (b) packages or  
10 arranges for the packaging of small rechargeable batteries for sale,  
11 offering for sale, or distribution in Washington under a brand name it  
12 owns or licenses; (c) imports into the United States small rechargeable  
13 batteries that are sold, offered for sale, or distributed in Washington  
14 under a brand name it owns or licenses; (d) is a private label  
15 retailer; or (e) otherwise makes available to consumers in Washington  
16 small rechargeable batteries, whether as stand alone items or  
17 otherwise.

18 NEW SECTION. **Sec. 3.** Unless it is participating in a program  
19 described in section 10 of this act, no later than one hundred eighty  
20 days after the effective date of this section, each small rechargeable  
21 battery manufacturer or marketer, including private label retailers,  
22 and each portable rechargeable product manufacturer or marketer who has  
23 a reasonable basis to know that either the batteries or products, or  
24 both, it manufactures or markets are being sold or offered for sale in  
25 Washington by retailers shall operate a qualified program or  
26 participate in a qualified program operated by another entity.

27 NEW SECTION. **Sec. 4.** (1) Any entity seeking to have a used small  
28 rechargeable battery stewardship program certified as a qualified  
29 program must submit a plan for that program to the department for  
30 review no later than ninety days prior to the date the entity intends  
31 to operate the program as a qualified program. The department shall  
32 acknowledge receipt of the submission within fourteen days and state in  
33 that acknowledgment whether the plan submission appears, on its face,  
34 to include all elements required by subsection (2) of this section.

35 (2) Within sixty days of the notification required by subsection

1 (1) of this section, the department shall certify any submitted used  
2 small rechargeable battery stewardship program as a qualified program  
3 if:

4 (a) The submission was accompanied by a fee of five thousand  
5 dollars, payable to the used battery stewardship account created in  
6 section 8 of this act;

7 (b) All return acceptance, recycling, and other handling services,  
8 including post-collection transportation, are provided free to  
9 consumers;

10 (c) The submitting entity has provided to the department and  
11 committed to the department to post on the internet, promptly upon  
12 receipt of notice that the program is a qualified program, a written  
13 program plan that includes the following information: (i) The name,  
14 address, and contact information for the operator of the qualified  
15 program; (ii) contact information for all participating small  
16 rechargeable battery manufacturers or marketers, portable rechargeable  
17 product manufacturers or marketers, and all other such manufacturers or  
18 marketers whose responsibilities under this chapter are fulfilled by  
19 virtue of participation in the qualified program of another  
20 manufacturer or marketer; (iii) a description of the qualified program;  
21 and (iv) locations to which Washington residents can take used small  
22 rechargeable batteries;

23 (d) The program does not require a retailer to accept more than  
24 five used rechargeable batteries from a person on a single day; and

25 (e) Unless the program is operated by a small rechargeable battery  
26 manufacturer or marketer or portable rechargeable product manufacturer  
27 or marketer who limits its program solely to accepting batteries or  
28 products bearing its own brand, the program covers all used small  
29 rechargeable batteries, regardless of brand or other information  
30 displayed on the collected small rechargeable batteries and includes at  
31 least the following minimum elements, along with other elements as the  
32 program sponsor voluntarily includes:

33 (i) The program engages in education and outreach activities to  
34 maximize collections;

35 (ii) The program either is part of a multijurisdictional program  
36 that collects used small rechargeable batteries and has collected in  
37 Washington at least one hundred thousand pounds of these batteries in  
38 the last twelve months and does so in each year thereafter, or collects

1 at least one hundred thousand pounds of used small rechargeable  
2 batteries in Washington in its first year of operation in Washington  
3 and each year thereafter; and

4 (iii) The program includes, at a minimum: Retailer collection of  
5 used small rechargeable batteries at multiple locations; collection of  
6 used small rechargeable batteries from governmental collection  
7 facilities; the provision of at least one used small rechargeable  
8 battery collection location in each county in the state; and the  
9 provision of one collection site for each city or town with a  
10 population of greater than ten thousand, which may be the same as the  
11 location in a county.

12 (3) If the department fails to notify the entity submitting the  
13 program plan within the time limit established in subsection (1) of  
14 this section, that the plan for the program appears or does not appear,  
15 on its face, to include all requirements of subsection (2) of this  
16 section, or to notify the entity submitting the program plan within the  
17 time limit established in subsection (2) of this section that the  
18 program is certified or that the certification is denied, the program  
19 is considered to be certified as a qualified program. In the event  
20 that the department notifies the entity submitting the program plan  
21 within the time limits established in subsections (1) or (2) of this  
22 section that the program is deficient, the department shall notify the  
23 plan submitter of the deficiencies and allow a reasonable period of not  
24 less than thirty days for resubmission of the program plan. A program  
25 plan resubmitted during that resubmission period is not required to pay  
26 an additional fee under subsection (2)(a) of this section.

27 (4) Promptly upon certification of a qualified program, or upon  
28 qualification in accordance with subsection (3) of this section, the  
29 submitter of a qualified program shall post on the internet the written  
30 program plan described in subsection (2)(c) of this section. No later  
31 than March 1st of the year following certification of a qualified  
32 program, and of every year thereafter until the program is terminated,  
33 the operator of a qualified program shall pay to the used battery  
34 stewardship fund established under section 8 of this act an annual fee  
35 of five thousand dollars and shall make available on the internet and  
36 provide to the department at such address as the department may direct  
37 a report: (a) Describing its funding, collections, and recycling  
38 success; (b) identifying the small rechargeable battery manufacturers

1 and marketers, including private label retailers, and portable  
2 rechargeable product manufacturers and marketers who participate in it;  
3 and (c) describing the mechanisms employed and identifying entities  
4 involved in the final disposition of collected materials, except that  
5 if a qualified program operating in Washington is part of a program  
6 that also operates in jurisdictions outside of Washington, the funding  
7 information need not be reported on a Washington-specific basis.

8 (5) The department shall maintain on the internet a list of all  
9 qualified programs that includes a link to the qualified programs'  
10 internet web sites.

11 (6) A qualified program may be amended by submission to the  
12 department of a revised version of the qualified program plan showing  
13 proposed amendments and an administrative fee of five hundred dollars.  
14 Within sixty days of receipt, the department shall certify that the  
15 amended program remains a qualified program, if the amended program  
16 plan continues to meet the requirements of subsection (2) of this  
17 section, or shall inform the submitter with specificity of any  
18 deficiencies and allow a reasonable period for submission of revised  
19 amendments. Unless, within sixty days of submission of the further  
20 revised version of the qualified program, the department notifies the  
21 submitter with specificity of a continuing failure to meet the  
22 requirements of subsection (2) of this section, the revised plan is  
23 thereafter a qualified program plan. If at either the submission or  
24 resubmission stage the department informs the submitter of  
25 deficiencies, the unamended qualified plan remains effective unless the  
26 qualified plan is terminated by its operator.

27 (7) A qualified program may be terminated by its operator at any  
28 time after the operator gives six months' notice to program  
29 participants of the termination date.

30 NEW SECTION. **Sec. 5.** (1) If a governmental entity that operates,  
31 contracts for, establishes minimum requirements for, or supervises a  
32 location at which residents may drop off materials for recycling agrees  
33 with the operator of a qualified program on the terms of the qualified  
34 program's support for the collection of used small rechargeable  
35 batteries and for segregation of those batteries from other collected  
36 materials into containers provided by the qualified program, the

1 qualified program shall provide appropriate containers and make any  
2 mutually agreed upon payments.

3 (2) If a governmental entity that operates, contracts for,  
4 establishes minimum requirements for, or supervises the operation of a  
5 curbside collection program that includes used small rechargeable  
6 batteries agrees with the operator of a qualified program on the terms  
7 of the qualified program's support for those activities, the qualified  
8 program shall provide to the consolidation facilities supporting that  
9 curbside collection program containers for use in sorting and shipping  
10 those used small rechargeable batteries and make any mutually agreed  
11 upon payments.

12 NEW SECTION. **Sec. 6.** (1) Beginning one year after the effective  
13 date of this section, no retailer may sell or offer for sale in  
14 Washington a small rechargeable battery unless it is marked with an  
15 identification of the small rechargeable battery manufacturer or  
16 marketer.

17 (2) Beginning one year after the effective date of this section, no  
18 retailer may sell or offer for sale in Washington a portable  
19 rechargeable product unless the battery packaged with or contained in  
20 the portable rechargeable product is marked with an identification of  
21 the battery manufacturer or marketer.

22 (3) No retailer having a place of business in Washington shall be  
23 obliged to participate in a qualified used small rechargeable battery  
24 stewardship program unless it is a private label retailer. Any private  
25 label retailer who does not operate a program that meets the  
26 requirements of section 4(2)(d) of this act or is not participating in  
27 another qualified program shall cooperate with an operator of a  
28 qualified program who requests such cooperation by displaying a  
29 collection container provided by the operator and otherwise complying  
30 with that program, without requiring payment by the qualified program.

31 (4) Retailers that sell or offer to sell small rechargeable  
32 batteries or portable rechargeable products to consumers in Washington,  
33 whether through places of business or through nonretail outlets such as  
34 catalogs, by mail, telephone, or the internet, shall inform consumers  
35 with visible signage or equivalent alternative mechanisms of qualified  
36 programs that provide opportunities to return used small rechargeable  
37 batteries for recycling in Washington.



1 (5) Any retailer that has a physical presence in Washington and is  
2 cooperating with a qualified program:

3 (a) Shall ensure that all used batteries placed in any collection  
4 container located at the retailer's facility are protected from short  
5 circuiting in accordance with the instructions of the operator of the  
6 program, and shall take reasonable steps to prevent the placement into  
7 any such container of materials other than properly protected used  
8 small rechargeable batteries; and

9 (b) May require the operator of a qualified program to pay the  
10 retailer for the reasonable cost of cooperating with the plan if the  
11 qualified program does not provide all unique materials associated with  
12 its implementation to the retailer, at no cost to the retailer, or the  
13 qualified program fails to provide a mechanism for the reasonable and  
14 timely collection and transportation of collected used small  
15 rechargeable batteries from the locations at which the operator of the  
16 qualified program has requested the retailer's cooperation.

17 (6) Except as provided in subsection (5)(b) of this section, a  
18 retailer may not require the operator of a qualified program to pay the  
19 retailer for the cost of cooperating with that program.

20 (7) An operator of a qualified program may not require a retailer  
21 to pay a fee to participate in that operator's program.

22 (8) Any person who provides to a retailer a small rechargeable  
23 battery or portable rechargeable product whose manufacturer or marketer  
24 is not in compliance with section 3 of this act shall, upon request by  
25 the retailer, designate a location to which the retailer may ship the  
26 battery or product for further handling and reimburse the retailer for  
27 all costs incurred by the retailer in shipping the battery or product  
28 to the designated location.

29 NEW SECTION. **Sec. 7.** All activities undertaken by any qualified  
30 program or a participant in such a program to establish and operate the  
31 program, to coordinate that program with a program to collect used  
32 electronic waste under electronic product recycling act, chapter 70.95N  
33 RCW, or to coordinate with or participate in a program described in  
34 section 10 of this act, shall not be considered to violate the unfair  
35 business practices--consumer protection act, chapter 19.86 RCW.

1        NEW SECTION.    **Sec. 8.**    (1) Any person who violates section 3 or 10  
2 of this act shall be liable for a civil penalty recoverable in a  
3 proceeding before the department in the amount of five thousand dollars  
4 for the first violation, ten thousand dollars for the second violation,  
5 and fifty thousand dollars for the third or subsequent violation. Any  
6 person who violates section 6 of this act is liable for a civil penalty  
7 recoverable in a proceeding before the department in the amount of one  
8 thousand dollars.

9        (2) At least ninety days prior to seeking to assess any penalty  
10 authorized by subsection (1) of this section, the department shall  
11 notify the alleged violator of the department's intention to seek a  
12 penalty. No penalty is recoverable under subsection (1) of this  
13 section if, within the ninety days of receipt of such a notice, the  
14 recipient has come into compliance with this chapter. Any person that  
15 incurs a penalty under this chapter may appeal the penalty to the  
16 pollution control hearings board created under chapter 43.21B RCW.

17        (3) The used battery stewardship account is created in the custody  
18 of the state treasurer. All receipts from payments made under section  
19 4 (2) and (4) of this act and penalties levied under this chapter must  
20 be deposited into the account. Expenditures from the account may be  
21 used solely by the department for the purposes of fulfilling department  
22 responsibilities specified in this chapter. Funds in the account may  
23 not be diverted for any purpose or activity other than those specified  
24 in this section. Only the director of the department or the director's  
25 designee may authorize expenditures from the account. The account is  
26 subject to allotment procedures under chapter 43.88 RCW, but an  
27 appropriation is not required for expenditures.

28        NEW SECTION.    **Sec. 9.**    (1) The operator of a qualified small  
29 rechargeable battery stewardship program that incurs costs in excess of  
30 five thousand dollars in collecting, handling, recycling, or properly  
31 disposing in Washington of free rider used small rechargeable batteries  
32 originating from a small rechargeable battery manufacturer or marketer  
33 or portable rechargeable product manufacturer or marketer who: (a) Was  
34 required by section 3 of this act to operate or participate in a  
35 qualified program, did not at the time the used battery was collected  
36 participate in a qualified program and was not covered by the  
37 participation by another manufacturer in a qualified program; and (b)

1 can reasonably be identified from a brand or marking on a used small  
2 rechargeable battery or other information, may bring a civil action or  
3 actions to recover costs, damages, and fees specified in subsection (2)  
4 of this section, and if successful must be awarded such amounts.

5 (2) In an action brought pursuant to subsection (1) of this  
6 section, the plaintiff operator of a qualified program shall recover  
7 from the defendant small rechargeable battery manufacturer or marketer  
8 or portable rechargeable product manufacturer or marketer the costs the  
9 plaintiff incurred in collecting, handling, recycling, or properly  
10 disposing of free rider used small rechargeable batteries reasonably  
11 identified as having originated from the defendant small rechargeable  
12 battery manufacturer or marketer or portable rechargeable product  
13 manufacturer or marketer, plus an amount of damages equal to no less  
14 than three times those costs, plus the plaintiff's attorneys' fees and  
15 costs of litigation.

16 (3) An action to recover the costs specified in this section may be  
17 brought in any court in the state, without regard to the amount in  
18 dispute.

19 NEW SECTION. **Sec. 10.** Any entity that operates a program for the  
20 stewardship of multiple brands of used small nonrechargeable batteries  
21 on behalf of more than one nonrechargeable battery manufacturer or  
22 retailer shall provide to all small rechargeable battery manufacturers  
23 and marketers and portable rechargeable product manufacturers and  
24 marketers subject to this chapter the opportunity to participate in  
25 that entity's program. Such an entity may impose on the small  
26 rechargeable battery manufacturer or marketer or portable rechargeable  
27 product manufacturer or marketer fees no greater than the share of the  
28 total cost of the program of collecting, handling, and processing small  
29 rechargeable batteries that is equal to a reasonable estimate of the  
30 percentage that represents the share of sales of small rechargeable  
31 batteries sold in Washington for which the small rechargeable battery  
32 manufacturer or portable rechargeable product manufacturer would be  
33 responsible under section 3 of this act, compared to the total number  
34 of small rechargeable batteries sold in Washington as either individual  
35 units or in portable rechargeable products. Any small rechargeable  
36 battery manufacturer or marketer or portable product manufacturer or

1 marketer who participates in such a program is deemed to be in  
2 compliance with this chapter.

3 NEW SECTION. **Sec. 11.** This chapter is void if a federal law, or  
4 a combination of federal laws, takes effect that establishes a national  
5 program for the collection and recycling of both used small  
6 nonrechargeable batteries and used small rechargeable batteries.

7 NEW SECTION. **Sec. 12.** This chapter may be known and cited as the  
8 "Washington small rechargeable battery stewardship act."

9 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act  
10 constitute a new chapter in Title 70 RCW.

11 **Sec. 14.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are  
12 each reenacted and amended to read as follows:

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

20 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
21 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,  
22 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

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, 90.46.250, 90.48.120, and 90.56.330.

26 (c) A final decision by the department or director made under  
27 chapter 183, Laws of 2009.

28 (d) Except as provided in RCW 90.03.210(2), the issuance,  
29 modification, or termination of any permit, certificate, or license by  
30 the department or any air authority in the exercise of its  
31 jurisdiction, including the issuance or termination of a waste disposal  
32 permit, the denial of an application for a waste disposal permit, the  
33 modification of the conditions or the terms of a waste disposal permit,

1 or a decision to approve or deny an application for a solid waste  
2 permit exemption under RCW 70.95.300.

3 (e) Decisions of local health departments regarding the grant or  
4 denial of solid waste permits pursuant to chapter 70.95 RCW.

5 (f) Decisions of local health departments regarding the issuance  
6 and enforcement of permits to use or dispose of biosolids under RCW  
7 70.95J.080.

8 (g) Decisions of the department regarding waste-derived fertilizer  
9 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
10 department regarding waste-derived soil amendments under RCW 70.95.205.

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

17 (i) Any other decision by the department or an air authority which  
18 pursuant to law must be decided as an adjudicative proceeding under  
19 chapter 34.05 RCW.

20 (j) Decisions of the department of natural resources, the  
21 department of fish and wildlife, and the department that are reviewable  
22 under chapter 76.09 RCW, and the department of natural resources'  
23 appeals of county, city, or town objections under RCW 76.09.050(7).

24 (k) Forest health hazard orders issued by the commissioner of  
25 public lands under RCW 76.06.180.

26 (l) Decisions of the department of fish and wildlife to issue,  
27 deny, condition, or modify a hydraulic project approval permit under  
28 chapter 77.55 RCW.

29 (m) Decisions of the department of natural resources that are  
30 reviewable under RCW 78.44.270.

31 (n) Decisions of a state agency that is an authorized public entity  
32 under RCW 79.100.010 to take temporary possession or custody of a  
33 vessel or to contest the amount of reimbursement owed that are  
34 reviewable under RCW 79.100.120.

35 (o) Appeals of decisions of the department under chapter 70.--- RCW  
36 (the new chapter created in section 13 of this act).

37 (2) The following hearings shall not be conducted by the hearings  
38 board:

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

3 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
4 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

5 (c) Appeals of decisions by the department under RCW 90.03.110 and  
6 90.44.220.

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

9 ~~((e) Appeals of decisions by the department as provided in chapter  
10 43.21B RCW.))~~

11 (3) Review of rules and regulations adopted by the hearings board  
12 shall be subject to review in accordance with the provisions of the  
13 administrative procedure act, chapter 34.05 RCW.

14 **Sec. 15.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are  
15 each reenacted and amended to read as follows:

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

23 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
24 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,  
25 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

26 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
27 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
28 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

3 (e) Decisions of local health departments regarding the issuance  
4 and enforcement of permits to use or dispose of biosolids under RCW  
5 70.95J.080.

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

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

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

18 (i) Decisions of the department of natural resources, the  
19 department of fish and wildlife, and the department that are reviewable  
20 under chapter 76.09 RCW, and the department of natural resources'  
21 appeals of county, city, or town objections under RCW 76.09.050(7).

22 (j) Forest health hazard orders issued by the commissioner of  
23 public lands under RCW 76.06.180.

24 (k) Decisions of the department of fish and wildlife to issue,  
25 deny, condition, or modify a hydraulic project approval permit under  
26 chapter 77.55 RCW.

27 (l) Decisions of the department of natural resources that are  
28 reviewable under RCW 78.44.270.

29 (m) Decisions of a state agency that is an authorized public entity  
30 under RCW 79.100.010 to take temporary possession or custody of a  
31 vessel or to contest the amount of reimbursement owed that are  
32 reviewable under RCW 79.100.120.

33 (n) Appeals of decisions of the department under chapter 70.--- RCW  
34 (the new chapter created in section 13 of this act).

35 (2) The following hearings shall not be conducted by the hearings  
36 board:

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

1 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
2 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

3 (c) Appeals of decisions by the department under RCW 90.03.110 and  
4 90.44.220.

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

7 ~~((e) Appeals of decisions by the department as provided in chapter  
8 43.211 RCW.))~~

9 (3) Review of rules and regulations adopted by the hearings board  
10 shall be subject to review in accordance with the provisions of the  
11 administrative procedure act, chapter 34.05 RCW.

12 NEW SECTION. **Sec. 16.** Section 14 of this act expires June 30,  
13 2019.

14 NEW SECTION. **Sec. 17.** Section 15 of this act takes effect June  
15 30, 2019.

16 NEW SECTION. **Sec. 18.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

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