
ENGROSSED SUBSTITUTE HOUSE BILL 2039

State of Washington 68th Legislature 2024 Regular Session

By House Environment & Energy (originally sponsored by Representatives Fitzgibbon, Ramel, Reed, Ormsby, Fosse, and Duerr)

READ FIRST TIME 01/26/24.

1 AN ACT Relating to modifying the appeals process for
2 environmental and land use matters; amending RCW 34.05.518,
3 34.05.518, 90.58.180, 70A.230.080, 70A.300.120, 70A.430.070, and
4 86.16.081; reenacting and amending RCW 43.21B.110 and 43.21B.300;
5 adding a new section to chapter 43.21B RCW; repealing RCW
6 70A.205.145; providing an effective date; and providing an expiration
7 date.

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

9 **Sec. 1.** RCW 34.05.518 and 2021 c 305 s 2 are each amended to
10 read as follows:

11 (1) (a) The final decision of an administrative agency in an
12 adjudicative proceeding under this chapter may be directly reviewed
13 by the court of appeals (~~(upon)~~) either: (i) Upon certification by
14 the superior court pursuant to this ((section)) subsection and
15 subsections (2) and (3) of this section; or (ii) if the final
16 decision is from an environmental board as identified in RCW
17 43.21B.005 and the final decision relates to a clean energy project
18 as defined in RCW 43.158.010, pursuant to subsection (4) of this
19 section.

20 (~~Transfer of cases pursuant to this section does not require the~~
21 ~~filing of a motion for discretionary review with the court of~~

1 ~~appeals.~~) (b) The superior court may certify cases for transfer to
2 the court of appeals upon finding that:

3 ~~((a))~~ (i) All parties have consented to the transfer to the
4 court of appeals and agreed that the judicial review can occur based
5 upon the agency record developed before the administrative body
6 without supplementing the record pursuant to RCW 34.05.562; or

7 ~~((b))~~ (ii) One or more of the parties have not consented to the
8 transfer, but the superior court finds that transfer would serve the
9 interest of justice, would not cause substantial prejudice to any
10 party, including any unrepresented party, and further finds that:

11 ~~((i))~~ (A) The judicial review can occur based upon the agency
12 record developed before the administrative body without supplementing
13 the record pursuant to RCW 34.05.562; or

14 ~~((ii))~~ (B) The superior court has completed any necessary
15 supplementation of the record pursuant to RCW 34.05.562, such that
16 only issues of law remain for determination.

17 (2) If the superior court certifies a final decision of an
18 administrative agency in an adjudicative proceeding, the superior
19 court shall transfer the matter to the court of appeals as a direct
20 appeal.

21 (3) A party contesting a superior court decision granting or
22 denying certification for direct review may file a motion for
23 discretionary review with the court of appeals.

24 (4)(a) For the appeal of a permit related to a clean energy
25 project, as defined in RCW 43.158.010, that is the subject of a final
26 adjudicative decision of an environmental board, as identified in RCW
27 43.21B.005, upon a motion filed by any party to the appeal, the
28 superior court shall certify a case for transfer to the court of
29 appeals upon a finding that:

30 (i) The judicial review can occur based upon the agency record
31 developed before the administrative body without supplementing the
32 record pursuant to RCW 34.05.562; or

33 (ii) The superior court has completed any necessary
34 supplementation of the record pursuant to RCW 34.05.562.

35 (b) If the superior court certifies a final decision of an
36 administrative agency in an adjudicative proceeding, the superior
37 court shall transfer the matter to the court of appeals as a direct
38 appeal.

39 (c) A party contesting a superior court decision granting or
40 denying certification for direct review may file a motion for

1 discretionary review with the court of appeals. Where a contesting
2 party demonstrates that substantial prejudice would result from
3 direct review by the court of appeals, the court of appeals may
4 remand to the superior court.

5 (5) Transfer of cases pursuant to this section does not require
6 the filing of a motion for discretionary review with the court of
7 appeals.

8 **Sec. 2.** RCW 34.05.518 and 2021 c 305 s 5 are each amended to
9 read as follows:

10 (1) The final decision of an administrative agency in an
11 adjudicative proceeding under this chapter may be directly reviewed
12 by the court of appeals either (a) upon certification by the superior
13 court pursuant to subsection (2) of this section ~~((~~or~~))~~; (b) if the
14 final decision is from an environmental board as ~~((defined in))~~
15 identified in RCW 43.21B.005 and the final decision relates to a
16 clean energy project as defined in RCW 43.158.010, pursuant to
17 subsection (3) of this section ~~((, upon acceptance by the court of~~
18 ~~appeals after a certificate of appealability has been filed by the~~
19 ~~environmental board that rendered the final decision))~~; or (c) if the
20 final decision is from an environmental board identified in RCW
21 43.21B.005 and the final decision does not relate to a clean energy
22 project as defined in RCW 43.158.010, pursuant to subsection (4) of
23 this section. Transfer of a case pursuant to subsections (3) or (4)
24 of this section does not require the filing of a motion for
25 discretionary review with the court of appeals.

26 (2) (a) For direct review upon certification by the superior
27 court, an application for direct review must be filed with the
28 superior court within thirty days of the filing of the petition for
29 review in superior court. The superior court may certify a case for
30 direct review only if the judicial review is limited to the record of
31 the agency proceeding and the court finds that:

32 ~~((a))~~ (i) Fundamental and urgent issues affecting the future
33 administrative process or the public interest are involved which
34 require a prompt determination;

35 ~~((b))~~ (ii) Delay in obtaining a final and prompt determination
36 of such issues would be detrimental to any party or the public
37 interest;

38 ~~((c))~~ (iii) An appeal to the court of appeals would be likely
39 regardless of the determination in superior court; and

1 ~~((d))~~ (iv) The appellate court's determination in the
2 proceeding would have significant precedential value.

3 (b) Procedures for certification shall be established by court
4 rule.

5 (3) (a) For the ~~((purposes of direct review of final decisions of~~
6 ~~environmental boards, environmental boards include those boards~~
7 ~~identified in RCW 43.21B.005 and the growth management hearings board~~
8 ~~as identified in RCW 36.70A.250.~~

9 ~~(b) An environmental board may issue a certificate of~~
10 ~~appealability if it finds that delay in obtaining a final and prompt~~
11 ~~determination of the issues would be detrimental to any party or the~~
12 ~~public interest and either:~~

13 ~~(i) Fundamental and urgent statewide or regional issues are~~
14 ~~raised; or~~

15 ~~(ii) The proceeding is likely to have significant precedential~~
16 ~~value.~~

17 ~~(4) The environmental board shall state in the certificate of~~
18 ~~appealability which criteria it applied, explain how that criteria~~
19 ~~was met, and file with the certificate a copy of the final decision.~~

20 ~~(5) For an appellate court to accept direct review of a final~~
21 ~~decision of an environmental board, it shall consider the same~~
22 ~~criteria outlined in subsection (3) of this section.~~

23 ~~(6) The procedures for direct review of final decisions of~~
24 ~~environmental boards include:~~

25 ~~(a) Within thirty days after filing the petition for review with~~
26 ~~the superior court, a party may file an application for direct review~~
27 ~~with the superior court and serve the appropriate environmental board~~
28 ~~and all parties of record. The application shall request the~~
29 ~~environmental board to file a certificate of appealability.~~

30 ~~(b) If an issue on review is the jurisdiction of the~~
31 ~~environmental board, the board may file an application for direct~~
32 ~~review on that issue.~~

33 ~~(c) The environmental board shall have thirty days to grant or~~
34 ~~deny the request for a certificate of appealability and its decision~~
35 ~~shall be filed with the superior court and served on all parties of~~
36 ~~record.~~

37 ~~(d) If a certificate of appealability is issued, the parties~~
38 ~~shall have fifteen days from the date of service to file a notice of~~
39 ~~discretionary review in the superior court, and the notice shall~~

1 ~~include a copy of the certificate of appealability and a copy of the~~
2 ~~final decision.~~

3 ~~(e) If the appellate court accepts review, the certificate of~~
4 ~~appealability shall be transmitted to the court of appeals as part of~~
5 ~~the certified record.~~

6 ~~(f) If a certificate of appealability is denied, review shall be~~
7 ~~by the superior court. The superior court's decision may be appealed~~
8 ~~to the court of appeals.)) appeal of a permit related to a clean~~
9 ~~energy project, as defined in RCW 43.158.010, that is the subject of~~
10 ~~a final adjudicative decision of an environmental board, as~~
11 ~~identified in RCW 43.21B.005, upon a motion filed by any party to the~~
12 ~~appeal, the superior court shall certify a case for transfer to the~~
13 ~~court of appeals upon a finding that:~~

14 ~~(i) The judicial review can occur based upon the agency record~~
15 ~~developed before the administrative body without supplementing the~~
16 ~~record pursuant to RCW 34.05.562; or~~

17 ~~(ii) The superior court has completed any necessary~~
18 ~~supplementation of the record pursuant to RCW 34.05.562.~~

19 ~~(b) If the superior court certifies a final decision of an~~
20 ~~administrative agency in an adjudicative proceeding, the superior~~
21 ~~court shall transfer the matter to the court of appeals as a direct~~
22 ~~appeal.~~

23 ~~(c) A party contesting a superior court decision granting or~~
24 ~~denying certification for direct review may file a motion for~~
25 ~~discretionary review with the court of appeals. Where a contesting~~
26 ~~party demonstrates that substantial prejudice would result from~~
27 ~~direct review by the court of appeals, the court of appeals may~~
28 ~~remand to superior court.~~

29 ~~(4) (a) The final adjudicative decision of an environmental board,~~
30 ~~as identified in RCW 43.21B.005, that does not relate to a clean~~
31 ~~energy project as defined in RCW 43.158.010, may be directly reviewed~~
32 ~~by the court of appeals upon certification by the superior court~~
33 ~~pursuant to this subsection. The superior court shall certify cases~~
34 ~~for transfer to the court of appeals upon finding that:~~

35 ~~(i) All parties have consented to the transfer to the court of~~
36 ~~appeals and agreed that the judicial review can occur based upon the~~
37 ~~agency record developed before the administrative body without~~
38 ~~supplementing the record pursuant to RCW 34.05.562; or~~

39 ~~(ii) One or more of the parties have not consented to the~~
40 ~~transfer, but the superior court finds that transfer would serve the~~

1 interest of justice, would not cause substantial prejudice to any
2 party, including any unrepresented party, and further finds that:

3 (A) The judicial review can occur based upon the agency record
4 developed before the administrative body without supplementing the
5 record pursuant to RCW 34.05.562; or

6 (B) The superior court has completed any necessary
7 supplementation of the record pursuant to RCW 34.05.562, such that
8 only issues of law remain for determination.

9 (b) If the superior court certifies a final decision of an
10 administrative agency in an adjudicative proceeding, the superior
11 court shall transfer the matter to the court of appeals as a direct
12 appeal.

13 (c) A party contesting a superior court decision granting or
14 denying certification for direct review may file a motion for
15 discretionary review with the court of appeals. Where a contesting
16 party demonstrates that substantial prejudice would result from
17 direct review by the court of appeals, the court of appeals may
18 remand to the superior court.

19 NEW SECTION. Sec. 3. A new section is added to chapter 43.21B
20 RCW to read as follows:

21 (1) Where multiple permits for the same underlying clean energy
22 project, as defined in RCW 43.158.010, are appealed to one or more of
23 the environmental boards, as identified in RCW 43.21B.005, the
24 presiding officer shall consolidate the appeals for hearing when one
25 or more of the following criteria are met:

26 (a) When appeals for the permits related to the same underlying
27 project are either:

28 (i) Filed within 60 days of each other; or

29 (ii) If the permits are not filed within 60 days of each other
30 and the environmental board issues a stay of the appeal of the permit
31 pursuant to RCW 43.21B.320 following the applicant's request. Such a
32 stay must include a stay of the construction of the project pending
33 appeal, to allow other anticipated appeals of permits for the same
34 underlying project to be filed with the environmental boards to
35 accommodate consolidation pursuant to this section, but the
36 environmental board may set a deadline after which an appeal may
37 proceed in the absence of other permit appeals in order to ensure
38 efficient resolution of appeals; or

1 (b) The presiding officer determines that the following three
2 criteria have been met:

3 (i) Consolidation will expedite disposition of the appeals;

4 (ii) Consolidation will avoid duplication of testimony; and

5 (iii) Consolidation will not prejudice the rights of the parties.

6 (2) When all appeals of individual permits consolidated pursuant
7 to this section are within the jurisdiction of the pollution control
8 hearings board, the pollution control hearings board shall retain
9 jurisdiction over the consolidated matter. When all appeals of
10 individual permits consolidated pursuant to this section are within
11 the jurisdiction of the shorelines hearings board, the shorelines
12 hearings board shall retain jurisdiction over the consolidated
13 matter. When appeals to the pollution control hearings board and
14 appeals to the shorelines hearings board are consolidated pursuant to
15 this section, the following applies:

16 (a) The consolidated appeals must be heard by the pollution
17 control hearings board;

18 (b) The pollution control hearings board must issue its decision
19 on the consolidated appeal within 240 days, which must be measured
20 from the date that the last of the consolidated appeals was filed;
21 and

22 (c) The time period in (b) of this subsection may be extended on
23 motion from a party or by the pollution control hearings board upon a
24 showing that the consolidated appeal raises issues of unique
25 complexity and that delay is not against the public interest. In no
26 case may the time period in (b) of this subsection be extended for a
27 period greater than 30 days unless the time period is waived by all
28 parties.

29 **Sec. 4.** RCW 90.58.180 and 2011 c 277 s 4 are each amended to
30 read as follows:

31 (1) (a) Any person aggrieved by the granting, denying, or
32 rescinding of a permit on shorelines of the state pursuant to RCW
33 90.58.140 may seek review from the shorelines hearings board by
34 filing a petition for review within (~~(twenty-one)~~) 21 days of the
35 date of filing of the decision as defined in RCW 90.58.140(6).

36 (b) Within seven days of the filing of any petition for review
37 with the board as provided in this section pertaining to a final
38 decision of a local government, the petitioner shall serve copies of
39 the petition on the department, the office of the attorney general,

1 and the local government. The department and the attorney general may
2 intervene to protect the public interest and ensure that the
3 provisions of this chapter are complied with at any time within
4 (~~fifteen~~) 15 days from the date of the receipt by the department or
5 the attorney general of a copy of the petition for review filed
6 pursuant to this section. The shorelines hearings board shall
7 schedule review proceedings on the petition for review without regard
8 as to whether the period for the department or the attorney general
9 to intervene has or has not expired.

10 (2) The department or the attorney general may obtain review of
11 any final decision granting a permit, or granting or denying an
12 application for a permit issued by a local government by filing a
13 written petition with the shorelines hearings board and the
14 appropriate local government within (~~twenty-one~~) 21 days from the
15 date the final decision was filed as provided in RCW 90.58.140(6).

16 (3) The review proceedings authorized in subsections (1) and (2)
17 of this section are subject to the provisions of chapter 34.05 RCW
18 pertaining to procedures in adjudicative proceedings. Judicial review
19 of such proceedings of the shorelines hearings board is governed by
20 chapter 34.05 RCW. The board shall issue its decision on the appeal
21 authorized under subsections (1) and (2) of this section within (~~one~~
22 ~~hundred-eighty~~) 180 days after the date the petition is filed with
23 the board or a petition to intervene is filed by the department or
24 the attorney general, whichever is later. The time period may be
25 extended by the board for a period of (~~thirty~~) 30 days upon a
26 showing of good cause or may be waived by the parties.

27 (4) Any person may appeal any rules, regulations, or guidelines
28 adopted or approved by the department within (~~thirty~~) 30 days of
29 the date of the adoption or approval. The board shall make a final
30 decision within (~~sixty~~) 60 days following the hearing held thereon.

31 (5) The board shall find the rule, regulation, or guideline to be
32 valid and enter a final decision to that effect unless it determines
33 that the rule, regulation, or guideline:

34 (a) Is clearly erroneous in light of the policy of this chapter;
35 or

36 (b) Constitutes an implementation of this chapter in violation of
37 constitutional or statutory provisions; or

38 (c) Is arbitrary and capricious; or

1 (d) Was developed without fully considering and evaluating all
2 material submitted to the department during public review and
3 comment; or

4 (e) Was not adopted in accordance with required procedures.

5 (6) If the board makes a determination under subsection (5)(a)
6 through (e) of this section, it shall enter a final decision
7 declaring the rule, regulation, or guideline invalid, remanding the
8 rule, regulation, or guideline to the department with a statement of
9 the reasons in support of the determination, and directing the
10 department to adopt, after a thorough consultation with the affected
11 local government and any other interested party, a new rule,
12 regulation, or guideline consistent with the board's decision.

13 (7) A decision of the board on the validity of a rule,
14 regulation, or guideline shall be subject to review in superior
15 court, if authorized pursuant to chapter 34.05 RCW. A petition for
16 review of the decision of the shorelines hearings board on a rule,
17 regulation, or guideline shall be filed within (~~thirty~~) 30 days
18 after the date of final decision by the shorelines hearings board.

19 (8) Where multiple permits for the same underlying clean energy
20 project, as defined in RCW 43.158.010, have been appealed to one or
21 more of the environmental boards, as identified in RCW 43.21B.005,
22 the presiding officer shall consolidate the appeals, including
23 appeals to the shorelines hearings board, pursuant to section 3 of
24 this act.

25 **Sec. 5.** RCW 43.21B.110 and 2023 c 455 s 5, 2023 c 434 s 20, 2023
26 c 344 s 5, and 2023 c 135 s 6 are each reenacted and amended to read
27 as follows:

28 (1) The hearings board shall only have jurisdiction to hear and
29 decide appeals from the following decisions of the department, the
30 director, local conservation districts, the air pollution control
31 boards or authorities as established pursuant to chapter 70A.15 RCW,
32 local health departments, the department of natural resources, the
33 department of fish and wildlife, the parks and recreation commission,
34 and authorized public entities described in chapter 79.100 RCW:

35 (a) Civil penalties imposed pursuant to chapter 70A.230 RCW and
36 RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.205.280,
37 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100, 70A.505.110,
38 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050,
39 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200,

1 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, 76.09.170,
2 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
3 90.56.310, 90.56.330, and 90.64.102.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530,
6 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070,
7 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, 86.16.020,
8 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ((and))
9 90.48.240, 90.56.330, and 90.64.040.

10 (c) Except as provided in RCW 90.03.210(2), the issuance,
11 modification, or termination of any permit, certificate, or license
12 by the department or any air authority in the exercise of its
13 jurisdiction, including the issuance or termination of a waste
14 disposal permit, the denial of an application for a waste disposal
15 permit, the modification of the conditions or the terms of a waste
16 disposal permit, ((~~or~~)) a decision to approve or deny a solid waste
17 management plan under RCW 70A.205.055, approval or denial of an
18 application for a ((solid waste permit exemption)) beneficial use
19 determination under RCW 70A.205.260, an application for a change
20 under RCW 90.03.383, or a permit to distribute reclaimed water under
21 RCW 90.46.220.

22 (d) Decisions of local health departments regarding the ((grant))
23 granting or denial of solid waste permits pursuant to chapter 70A.205
24 RCW, including appeals by the department as provided in RCW
25 70A.205.130.

26 (e) Decisions of local health departments regarding the issuance
27 and enforcement of permits to use or dispose of biosolids under RCW
28 70A.226.090.

29 (f) Decisions of the department regarding waste-derived
30 fertilizer or micronutrient fertilizer under RCW 15.54.820 ((~~and~~
31 ~~decisions of the department regarding waste-derived soil amendments~~
32 ~~under RCW 70A.205.145~~)).

33 (g) Decisions of local conservation districts related to the
34 denial of approval or denial of certification of a dairy nutrient
35 management plan; conditions contained in a plan; application of any
36 dairy nutrient management practices, standards, methods, and
37 technologies to a particular dairy farm; and failure to adhere to the
38 plan review and approval timelines in RCW 90.64.026 as provided in
39 RCW 90.64.028.

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

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

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

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
14 comply, to issue a civil penalty, or to issue a notice of intent to
15 disapprove applications.

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

18 (m) Decisions of an authorized public entity under RCW 79.100.010
19 to take temporary possession or custody of a vessel or to contest the
20 amount of reimbursement owed that are reviewable by the hearings
21 board under RCW 79.100.120.

22 (n) Decisions of the department of ecology that are appealable
23 under RCW 70A.245.020 to set recycled minimum postconsumer content
24 for covered products or to temporarily exclude types of covered
25 products in plastic containers from minimum postconsumer recycled
26 content requirements.

27 (o) Orders by the department of ecology under RCW 70A.455.080.

28 (2) The following hearings shall not be conducted by the hearings
29 board:

30 (a) Hearings required by law to be conducted by the shorelines
31 hearings board pursuant to chapter 90.58 RCW, except where appeals to
32 the pollution control hearings board and appeals to the shorelines
33 hearings board have been consolidated pursuant to section 3 of this
34 act.

35 (b) Hearings conducted by the department pursuant to RCW
36 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
37 70A.15.3110, and 90.44.180.

38 (c) Appeals of decisions by the department under RCW 90.03.110
39 and 90.44.220.

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

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

6 **Sec. 6.** RCW 43.21B.300 and 2023 c 455 s 6, 2023 c 434 s 21, and
7 2023 c 135 s 7 are each reenacted and amended to read as follows:

8 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
9 70A.205.280, 70A.230.080, 70A.300.090, 70A.20.050, 70A.245.040,
10 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140,
11 70A.65.200, 70A.430.070, 70A.455.090, 70A.500.260, 70A.505.110,
12 70A.555.110, 70A.560.020, 86.16.081, 88.46.090, 90.03.600, 90.46.270,
13 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355
14 RCW shall be imposed by a notice in writing, either by certified mail
15 with return receipt requested or by personal service, to the person
16 incurring the penalty from the department or the local air authority,
17 describing the violation with reasonable particularity. For penalties
18 issued by local air authorities, within 30 days after the notice is
19 received, the person incurring the penalty may apply in writing to
20 the authority for the remission or mitigation of the penalty. Upon
21 receipt of the application, the authority may remit or mitigate the
22 penalty upon whatever terms the authority in its discretion deems
23 proper. The authority may ascertain the facts regarding all such
24 applications in such reasonable manner and under such rules as it may
25 deem proper and shall remit or mitigate the penalty only upon a
26 demonstration of extraordinary circumstances such as the presence of
27 information or factors not considered in setting the original
28 penalty.

29 (2) Any penalty imposed under this section may be appealed to the
30 pollution control hearings board in accordance with this chapter if
31 the appeal is filed with the hearings board and served on the
32 department or authority 30 days after the date of receipt by the
33 person penalized of the notice imposing the penalty or 30 days after
34 the date of receipt of the notice of disposition by a local air
35 authority of the application for relief from penalty.

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

37 (a) 30 days after receipt of the notice imposing the penalty;

1 (b) 30 days after receipt of the notice of disposition by a local
2 air authority on application for relief from penalty, if such an
3 application is made; or

4 (c) 30 days after receipt of the notice of decision of the
5 hearings board if the penalty is appealed.

6 (4) If the amount of any penalty is not paid to the department
7 within 30 days after it becomes due and payable, the attorney
8 general, upon request of the department, shall bring an action in the
9 name of the state of Washington in the superior court of Thurston
10 county, or of any county in which the violator does business, to
11 recover the penalty. If the amount of the penalty is not paid to the
12 authority within 30 days after it becomes due and payable, the
13 authority may bring an action to recover the penalty in the superior
14 court of the county of the authority's main office or of any county
15 in which the violator does business. In these actions, the procedures
16 and rules of evidence shall be the same as in an ordinary civil
17 action.

18 (5) All penalties recovered shall be paid into the state treasury
19 and credited to the general fund except (~~those penalties imposed~~
20 ~~pursuant to RCW 18.104.155, which shall be credited to the~~
21 ~~reclamation account as provided in RCW 18.104.155(7), RCW~~
22 ~~70A.15.3160, the disposition of which shall be governed by that~~
23 ~~provision, RCW 70A.245.040 and 70A.245.050, which shall be credited~~
24 ~~to the recycling enhancement account created in RCW 70A.245.100, RCW~~
25 ~~70A.300.090, 70A.555.110, and 70A.560.020, which shall be credited to~~
26 ~~the model toxics control operating account created in RCW~~
27 ~~70A.305.180, RCW 70A.65.200, which shall be credited to the climate~~
28 ~~investment account created in RCW 70A.65.250, RCW 90.56.330, which~~
29 ~~shall be credited to the coastal protection fund created by RCW~~
30 ~~90.48.390, and RCW 70A.355.070, which shall be credited to the~~
31 ~~underground storage tank account created by RCW 70A.355.090)) the
32 following:~~

33 (a) Penalties imposed pursuant to RCW 18.104.155 must be credited
34 to the reclamation account as provided in RCW 18.104.155(7);

35 (b) Penalties imposed pursuant to RCW 70A.15.3160 must be
36 disposed of pursuant to RCW 70A.15.3160;

37 (c) Penalties imposed pursuant to RCW 70A.230.080, 70A.300.090,
38 70A.430.070, 70A.555.110, and 70A.560.020 must be credited to the
39 model toxics control operating account created in RCW 70A.305.180;

1 (d) Penalties imposed pursuant to RCW 70A.245.040 and 70A.245.050
2 must be credited to the recycling enhancement account created in RCW
3 70A.245.100;

4 (e) Penalties imposed pursuant to RCW 70A.500.260 must be
5 deposited into the electronic products recycling account created in
6 RCW 70A.500.130;

7 (f) Penalties imposed pursuant to RCW 70A.65.200 must be credited
8 to the climate investment account created in RCW 70A.65.250;

9 (g) Penalties imposed pursuant to RCW 90.56.330 must be credited
10 to the coastal protection fund established in RCW 90.48.390; and

11 (h) Penalties imposed pursuant to RCW 70A.355.070 must be
12 credited to the underground storage tank account created in RCW
13 70A.355.090.

14 **Sec. 7.** RCW 70A.230.080 and 2020 c 20 s 1245 are each amended to
15 read as follows:

16 A violation of this chapter is punishable by a civil penalty not
17 to exceed (~~one thousand dollars~~) \$1,000 for each violation in the
18 case of a first violation. Repeat violators are liable for a civil
19 penalty not to exceed (~~five thousand dollars~~) \$5,000 for each
20 repeat violation. Penalties collected under this section must be
21 deposited in the model toxics control operating account created in
22 RCW 70A.305.180. The penalties provided in this section must be
23 imposed pursuant to RCW 43.21B.300 and may be appealed to the
24 pollution control hearings board.

25 **Sec. 8.** RCW 70A.300.120 and 2012 c 117 s 417 are each amended to
26 read as follows:

27 (1) Whenever on the basis on any information the department
28 determines that a person has violated or is about to violate any
29 provision of this chapter, the department may issue an order
30 requiring compliance either immediately or within a specified period
31 of time. The order shall be delivered by registered mail or
32 personally to the person against whom the order is directed.

33 (2) Any person who fails to take corrective action as specified
34 in a compliance order shall be liable for a civil penalty of not more
35 than (~~ten thousand dollars~~) \$10,000 for each day of continued
36 noncompliance. In addition, the department may suspend or revoke any
37 permits and/or certificates issued under the provisions of this

1 chapter to a person who fails to comply with an order directed
2 against him or her.

3 (3) Any order or penalty may be appealed pursuant to RCW
4 (~~43.21B.310~~) 43.21B.300.

5 **Sec. 9.** RCW 70A.430.070 and 2020 c 20 s 1409 are each amended to
6 read as follows:

7 (1) A manufacturer of products that are restricted under this
8 chapter must notify persons that sell the manufacturer's products in
9 this state about the provisions of this chapter no less than
10 (~~ninety~~) 90 days prior to the effective date of the restrictions.

11 (2) A manufacturer that produces, sells, or distributes a product
12 prohibited from manufacture, sale, or distribution in this state
13 under this chapter must recall the product and reimburse the retailer
14 or any other purchaser for the product.

15 (3) A manufacturer of products in violation of this chapter is
16 subject to a civil penalty not to exceed (~~five thousand dollars~~)
17 \$5,000 for each violation in the case of a first offense.
18 Manufacturers who are repeat violators are subject to a civil penalty
19 not to exceed (~~ten thousand dollars~~) \$10,000 for each repeat
20 offense. Penalties collected under this section must be deposited in
21 the model toxics control operating account created in RCW
22 70A.305.180. The penalties provided in this section must be imposed
23 pursuant to RCW 43.21B.300 and may be appealed to the pollution
24 control hearings board.

25 (4) Retailers who unknowingly sell products that are restricted
26 from sale under this chapter are not liable under this chapter.

27 (5) The sale or purchase of any previously owned products
28 containing a chemical restricted under this chapter made in casual or
29 isolated sales as defined in RCW 82.04.040, or by a nonprofit
30 organization, is exempt from this chapter.

31 **Sec. 10.** RCW 86.16.081 and 1995 c 403 s 634 are each amended to
32 read as follows:

33 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
34 43.05.150, the attorney general or the attorney for the local
35 government shall bring such injunctive, declaratory, or other actions
36 as are necessary to ensure compliance with this chapter.

37 (2) Any person who fails to comply with this chapter shall also
38 be subject to a civil penalty not to exceed (~~one thousand dollars~~)

1 \$1,000 for each violation. Each violation or each day of
2 noncompliance shall constitute a separate violation.

3 (3) The penalty provided for in this section (~~(shall)~~) must be
4 imposed by a notice in writing (~~(, either by certified mail with~~
5 ~~return receipt requested or by personal service, to the person~~
6 ~~incurring the same from the department or local government,~~
7 ~~describing the violation with reasonable particularity and ordering))~~
8 and must be imposed consistent with the procedures of RCW 43.21B.300.
9 The notice in writing must also order the act or acts constituting
10 the violation or violations to cease and desist or, in appropriate
11 cases, (~~(requiring)~~) must require necessary corrective action to be
12 taken within a specific and reasonable time.

13 (4) Any penalty imposed pursuant to this section by the
14 department shall be subject to review by the pollution control
15 hearings board under chapter 43.21B RCW. Any penalty imposed pursuant
16 to this section by local government shall be subject to review by the
17 local government legislative authority. Any penalty jointly imposed
18 by the department and local government shall be appealed to the
19 pollution control hearings board under chapter 43.21B RCW.

20 NEW SECTION. Sec. 11. Section 1 of this act expires July 1,
21 2026.

22 NEW SECTION. Sec. 12. Section 2 of this act takes effect July
23 1, 2026.

24 NEW SECTION. Sec. 13. RCW 70A.205.145 (Exemption from solid
25 waste permit requirements—Waste-derived soil amendments—Application
26 —Revocation of exemption—Appeal) and 2020 c 20 s 1175, 2016 c 119 s
27 7, & 1998 c 36 s 18 are each repealed.

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