
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 90.58.180, 70A.230.080, 70A.300.120, 70A.430.070, and 86.16.081;
4 reenacting and amending RCW 43.21B.110 and 43.21B.300; adding a new
5 section to chapter 43.21B RCW; repealing RCW 70A.205.145; and
6 providing an effective date.

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

8 **Sec. 1.** 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 this section or (b) if the final decision is from
14 an environmental board as ~~((defined in))~~ identified in RCW 43.21B.005
15 and the final decision relates to a clean energy project as defined
16 in RCW 43.158.010, pursuant to subsection (3) of this section~~((, upon~~
17 ~~acceptance by the court of appeals after a certificate of~~
18 ~~appealability has been filed by the environmental board that rendered~~
19 ~~the final decision))~~. Transfer of a case pursuant to subsection (3)
20 of this section does not require the filing of a motion for
21 discretionary review with the court of appeals.

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

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

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

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

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

17 (b) Procedures for certification shall be established by court
18 rule.

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

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

27 ~~(i) Fundamental and urgent statewide or regional issues are~~
28 ~~raised; or~~

29 ~~(ii) The proceeding is likely to have significant precedential~~
30 ~~value.~~

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

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

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

39 ~~(a) Within thirty days after filing the petition for review with~~
40 ~~the superior court, a party may file an application for direct review~~

1 ~~with the superior court and serve the appropriate environmental board~~
2 ~~and all parties of record. The application shall request the~~
3 ~~environmental board to file a certificate of appealability.~~

4 ~~(b) If an issue on review is the jurisdiction of the~~
5 ~~environmental board, the board may file an application for direct~~
6 ~~review on that issue.~~

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

11 ~~(d) If a certificate of appealability is issued, the parties~~
12 ~~shall have fifteen days from the date of service to file a notice of~~
13 ~~discretionary review in the superior court, and the notice shall~~
14 ~~include a copy of the certificate of appealability and a copy of the~~
15 ~~final decision.~~

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

19 ~~(f) If a certificate of appealability is denied, review shall be~~
20 ~~by the superior court. The superior court's decision may be appealed~~
21 ~~to the court of appeals.)) appeal of a permit related to a clean~~
22 ~~energy project, as defined in RCW 43.158.010, that is the subject of~~
23 ~~a final adjudicative decision of an environmental board, as~~
24 ~~identified in RCW 43.21B.005, upon a motion filed by any party to the~~
25 ~~appeal, the superior court may certify a case for transfer to the~~
26 ~~court of appeals upon a finding that:~~

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

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

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

36 ~~(c) A party contesting a superior court decision granting or~~
37 ~~denying certification for direct review may file a motion for~~
38 ~~discretionary review with the court of appeals. Where a contesting~~
39 ~~party demonstrates that substantial prejudice would result from~~

1 direct review by the court of appeals, the court of appeals may
2 remand to superior court.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21B
4 RCW to read as follows:

5 (1) Where multiple permits for the same underlying project are
6 appealed to one or more of the environmental boards, as identified in
7 RCW 43.21B.005, the presiding officer shall consolidate the appeals
8 for hearing when one or more of the following criteria are met:

9 (a) Upon the consent of the parties; or

10 (b) When appeals for the permits related to the same underlying
11 project are either:

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

13 (ii) If the permits are not filed within 60 days of each other,
14 the environmental board issues a stay of the appeal of the permit at
15 the applicant's request, which must include a stay of the
16 construction of the project pending appeal, to allow other
17 anticipated appeals of permits for the same underlying project to be
18 filed with the environmental boards to accommodate consolidation
19 pursuant to this section; or

20 (c) The presiding officer determines that the following three
21 criteria have been met:

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

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

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

25 (2) When all appeals of individual permits consolidated pursuant
26 to this section are within the jurisdiction of the pollution control
27 hearings board, the pollution control hearings board shall retain
28 jurisdiction over the consolidated matter. When appeals to the
29 pollution control hearings board and appeals to the shorelines
30 hearings board are consolidated pursuant to this section, the
31 following applies:

32 (a) The consolidated appeals must be heard by the shorelines
33 hearings board;

34 (b) The deadline for decision in RCW 90.58.180(3) must be
35 extended to 240 days and must be measured from the date that the last
36 of the consolidated appeals was filed; and

37 (c) The time period in (b) of this subsection may be extended on
38 motion from a party or by the board upon a showing that the
39 consolidated appeal raises issues of unique complexity and that delay

1 is not against the public interest. In no case may the time period in
2 (b) of this subsection be extended for a period greater than 30 days
3 unless the time period is waived by all parties.

4 **Sec. 3.** RCW 90.58.180 and 2011 c 277 s 4 are each amended to
5 read as follows:

6 (1) (a) Any person aggrieved by the granting, denying, or
7 rescinding of a permit on shorelines of the state pursuant to RCW
8 90.58.140 may seek review from the shorelines hearings board by
9 filing a petition for review within (~~(twenty-one)~~) 21 days of the
10 date of filing of the decision as defined in RCW 90.58.140(6).

11 (b) Within seven days of the filing of any petition for review
12 with the board as provided in this section pertaining to a final
13 decision of a local government, the petitioner shall serve copies of
14 the petition on the department, the office of the attorney general,
15 and the local government. The department and the attorney general may
16 intervene to protect the public interest and ensure that the
17 provisions of this chapter are complied with at any time within
18 (~~(fifteen)~~) 15 days from the date of the receipt by the department or
19 the attorney general of a copy of the petition for review filed
20 pursuant to this section. The shorelines hearings board shall
21 schedule review proceedings on the petition for review without regard
22 as to whether the period for the department or the attorney general
23 to intervene has or has not expired.

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

30 (3) The review proceedings authorized in subsections (1) and (2)
31 of this section are subject to the provisions of chapter 34.05 RCW
32 pertaining to procedures in adjudicative proceedings. Judicial review
33 of such proceedings of the shorelines hearings board is governed by
34 chapter 34.05 RCW. The board shall issue its decision on the appeal
35 authorized under subsections (1) and (2) of this section within (~~(one~~
36 ~~hundred-eighty)~~) 180 days after the date the petition is filed with
37 the board or a petition to intervene is filed by the department or
38 the attorney general, whichever is later. The time period may be

1 extended by the board for a period of (~~thirty~~) 30 days upon a
2 showing of good cause or may be waived by the parties.

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

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

10 (a) Is clearly erroneous in light of the policy of this chapter;
11 or

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

14 (c) Is arbitrary and capricious; or

15 (d) Was developed without fully considering and evaluating all
16 material submitted to the department during public review and
17 comment; or

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

19 (6) If the board makes a determination under subsection (5)(a)
20 through (e) of this section, it shall enter a final decision
21 declaring the rule, regulation, or guideline invalid, remanding the
22 rule, regulation, or guideline to the department with a statement of
23 the reasons in support of the determination, and directing the
24 department to adopt, after a thorough consultation with the affected
25 local government and any other interested party, a new rule,
26 regulation, or guideline consistent with the board's decision.

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

33 (8) Where multiple permits for the same underlying project have
34 been appealed to one or more of the environmental boards, as
35 identified in RCW 43.21B.005, the presiding officer of the pollution
36 control hearings board shall consolidate the appeals, including
37 appeals to the shorelines hearings board, pursuant to section 2 of
38 this act.

1 **Sec. 4.** RCW 43.21B.110 and 2023 c 455 s 5, 2023 c 434 s 20, 2023
2 c 344 s 5, and 2023 c 135 s 6 are each reenacted and amended to read
3 as follows:

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

11 (a) Civil penalties imposed pursuant to chapter 70A.230 RCW and
12 RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.205.280,
13 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100, 70A.505.110,
14 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050,
15 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200,
16 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, 76.09.170,
17 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
18 90.56.310, 90.56.330, and 90.64.102.

19 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
20 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530,
21 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070,
22 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, 86.16.020,
23 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ((and))
24 90.48.240, 90.56.330, and 90.64.040.

25 (c) Except as provided in RCW 90.03.210(2), the issuance,
26 modification, or termination of any permit, certificate, or license
27 by the department or any air authority in the exercise of its
28 jurisdiction, including the issuance or termination of a waste
29 disposal permit, the denial of an application for a waste disposal
30 permit, the modification of the conditions or the terms of a waste
31 disposal permit, ((~~or~~)) a decision to approve or deny a solid waste
32 management plan under RCW 70A.205.055, approval or denial of an
33 application for a ((solid waste permit exemption)) beneficial use
34 determination under RCW 70A.205.260, an application for a change
35 under RCW 90.03.383, or a permit to distribute reclaimed water under
36 RCW 90.46.220.

37 (d) Decisions of local health departments regarding the ((grant))
38 granting or denial of solid waste permits pursuant to chapter 70A.205
39 RCW, including appeals by the department as provided in RCW
40 70A.205.130.

1 (e) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70A.226.090.

4 (f) Decisions of the department regarding waste-derived
5 fertilizer or micronutrient fertilizer under RCW 15.54.820 (~~(, and~~
6 ~~decisions of the department regarding waste-derived soil amendments~~
7 ~~under RCW 70A.205.145)~~).

8 (g) Decisions of local conservation districts related to the
9 denial of approval or denial of certification of a dairy nutrient
10 management plan; conditions contained in a plan; application of any
11 dairy nutrient management practices, standards, methods, and
12 technologies to a particular dairy farm; and failure to adhere to the
13 plan review and approval timelines in RCW 90.64.026 as provided in
14 RCW 90.64.028.

15 (h) Any other decision by the department or an air authority
16 which pursuant to law must be decided as an adjudicative proceeding
17 under 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
20 reviewable under chapter 76.09 RCW, and the department of natural
21 resources' appeals of county, city, or town objections under RCW
22 76.09.050(7).

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

25 (k) Decisions of the department of fish and wildlife to issue,
26 deny, condition, or modify a hydraulic project approval permit under
27 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
28 comply, to issue a civil penalty, or to issue a notice of intent to
29 disapprove applications.

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

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

36 (n) Decisions of the department of ecology that are appealable
37 under RCW 70A.245.020 to set recycled minimum postconsumer content
38 for covered products or to temporarily exclude types of covered
39 products in plastic containers from minimum postconsumer recycled
40 content requirements.

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

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

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

6 (b) Hearings conducted by the department pursuant to RCW
7 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
8 70A.15.3110, and 90.44.180.

9 (c) Appeals of decisions by the department under RCW 90.03.110
10 and 90.44.220.

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

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

16 **Sec. 5.** RCW 43.21B.300 and 2023 c 455 s 6, 2023 c 434 s 21, and
17 2023 c 135 s 7 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

27 (5) All penalties recovered shall be paid into the state treasury
28 and credited to the general fund except (~~those penalties imposed~~
29 ~~pursuant to RCW 18.104.155, which shall be credited to the~~
30 ~~reclamation account as provided in RCW 18.104.155(7), RCW~~
31 ~~70A.15.3160, the disposition of which shall be governed by that~~
32 ~~provision, RCW 70A.245.040 and 70A.245.050, which shall be credited~~
33 ~~to the recycling enhancement account created in RCW 70A.245.100, RCW~~
34 ~~70A.300.090, 70A.555.110, and 70A.560.020, which shall be credited to~~
35 ~~the model toxics control operating account created in RCW~~
36 ~~70A.305.180, RCW 70A.65.200, which shall be credited to the climate~~
37 ~~investment account created in RCW 70A.65.250, RCW 90.56.330, which~~
38 ~~shall be credited to the coastal protection fund created by RCW~~
39 ~~90.48.390, and RCW 70A.355.070, which shall be credited to the~~

1 ~~underground storage tank account created by RCW 70A.355.090))~~ the
2 following:

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

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

7 (c) Penalties imposed pursuant to RCW 70A.230.080, 70A.300.090,
8 70A.430.070, 70A.555.110, and 70A.560.020 must be credited to the
9 model toxics control operating account created in RCW 70A.305.180;

10 (d) Penalties imposed pursuant to RCW 70A.245.040 and 70A.245.050
11 must be credited to the recycling enhancement account created in RCW
12 70A.245.100;

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

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

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

20 (h) Penalties imposed pursuant to RCW 70A.355.070 must be
21 credited to the underground storage tank account created in RCW
22 70A.355.090.

23 **Sec. 6.** RCW 70A.230.080 and 2020 c 20 s 1245 are each amended to
24 read as follows:

25 A violation of this chapter is punishable by a civil penalty not
26 to exceed (~~one thousand dollars~~) \$1,000 for each violation in the
27 case of a first violation. Repeat violators are liable for a civil
28 penalty not to exceed (~~five thousand dollars~~) \$5,000 for each
29 repeat violation. Penalties collected under this section must be
30 deposited in the model toxics control operating account created in
31 RCW 70A.305.180. The penalties provided in this section must be
32 imposed pursuant to RCW 43.21B.300 and may be appealed to the
33 pollution control hearings board.

34 **Sec. 7.** RCW 70A.300.120 and 2012 c 117 s 417 are each amended to
35 read as follows:

36 (1) Whenever on the basis on any information the department
37 determines that a person has violated or is about to violate any
38 provision of this chapter, the department may issue an order

1 requiring compliance either immediately or within a specified period
2 of time. The order shall be delivered by registered mail or
3 personally to the person against whom the order is directed.

4 (2) Any person who fails to take corrective action as specified
5 in a compliance order shall be liable for a civil penalty of not more
6 than (~~ten thousand dollars~~) \$10,000 for each day of continued
7 noncompliance. In addition, the department may suspend or revoke any
8 permits and/or certificates issued under the provisions of this
9 chapter to a person who fails to comply with an order directed
10 against him or her.

11 (3) Any order or penalty may be appealed pursuant to RCW
12 (~~43.21B.310~~) 43.21B.300.

13 **Sec. 8.** RCW 70A.430.070 and 2020 c 20 s 1409 are each amended to
14 read as follows:

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

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

23 (3) A manufacturer of products in violation of this chapter is
24 subject to a civil penalty not to exceed (~~five thousand dollars~~)
25 \$5,000 for each violation in the case of a first offense.
26 Manufacturers who are repeat violators are subject to a civil penalty
27 not to exceed (~~ten thousand dollars~~) \$10,000 for each repeat
28 offense. Penalties collected under this section must be deposited in
29 the model toxics control operating account created in RCW
30 70A.305.180. The penalties provided in this section must be imposed
31 pursuant to RCW 43.21B.300 and may be appealed to the pollution
32 control hearings board.

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

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

1 **Sec. 9.** RCW 86.16.081 and 1995 c 403 s 634 are each amended to
2 read as follows:

3 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
4 43.05.150, the attorney general or the attorney for the local
5 government shall bring such injunctive, declaratory, or other actions
6 as are necessary to ensure compliance with this chapter.

7 (2) Any person who fails to comply with this chapter shall also
8 be subject to a civil penalty not to exceed (~~one thousand dollars~~)
9 \$1,000 for each violation. Each violation or each day of
10 noncompliance shall constitute a separate violation.

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

21 (4) Any penalty imposed pursuant to this section by the
22 department shall be subject to review by the pollution control
23 hearings board under chapter 43.21B RCW. Any penalty imposed pursuant
24 to this section by local government shall be subject to review by the
25 local government legislative authority. Any penalty jointly imposed
26 by the department and local government shall be appealed to the
27 pollution control hearings board under chapter 43.21B RCW.

28 NEW SECTION. **Sec. 10.** Section 1 of this act takes effect July
29 1, 2026.

30 NEW SECTION. **Sec. 11.** RCW 70A.205.145 (Exemption from solid
31 waste permit requirements—Waste-derived soil amendments—Application
32 —Revocation of exemption—Appeal) and 2020 c 20 s 1175, 2016 c 119 s
33 7, & 1998 c 36 s 18 are each repealed.

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