

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE HOUSE BILL 2039**

Chapter 347, Laws of 2024

68th Legislature  
2024 Regular Session

ENVIRONMENTAL AND LAND USE APPEALS—VARIOUS PROVISIONS

EFFECTIVE DATE: June 6, 2024—Except for section 2, which takes effect July 1, 2026.

Passed by the House March 5, 2024  
Yeas 72 Nays 24

LAURIE JINKINS

**Speaker of the House of  
Representatives**

Passed by the Senate February 27,  
2024  
Yeas 44 Nays 5

DENNY HECK

**President of the Senate**

Approved March 28, 2024 2:37 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2039** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

**Chief Clerk**

FILED

March 29, 2024

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2039

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AS AMENDED BY THE SENATE

Passed Legislature - 2024 Regular Session

**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,  
4 86.16.081, 70A.500.260, and 36.70C.040; reenacting and amending RCW  
5 43.21B.110 and 43.21B.300; adding a new section to chapter 43.21B  
6 RCW; repealing RCW 70A.205.145; providing an effective date; and  
7 providing an expiration 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 following the applicant's request. Such a stay must include a stay of  
32 the construction of the project pending appeal pursuant to RCW  
33 43.21B.320, to allow other anticipated appeals of permits for the  
34 same 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 60  
23 days on a motion from a party or by the pollution control hearings  
24 board upon a finding of good cause. The time period in (b) of this  
25 subsection may also be waived if agreed to by all parties.

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

28 (1) (a) Any person aggrieved by the granting, denying, or  
29 rescinding of a permit on shorelines of the state pursuant to RCW  
30 90.58.140 may seek review from the shorelines hearings board by  
31 filing a petition for review within (~~twenty-one~~) 21 days of the  
32 date of filing of the decision as defined in RCW 90.58.140(6).

33 (b) Within seven days of the filing of any petition for review  
34 with the board as provided in this section pertaining to a final  
35 decision of a local government, the petitioner shall serve copies of  
36 the petition on the department, the office of the attorney general,  
37 and the local government. The department and the attorney general may  
38 intervene to protect the public interest and ensure that the  
39 provisions of this chapter are complied with at any time within



1 ((~~fifteen~~)) 15 days from the date of the receipt by the department or  
2 the attorney general of a copy of the petition for review filed  
3 pursuant to this section. The shorelines hearings board shall  
4 schedule review proceedings on the petition for review without regard  
5 as to whether the period for the department or the attorney general  
6 to intervene has or has not expired.

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

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

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

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

31 (a) Is clearly erroneous in light of the policy of this chapter;  
32 or

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

35 (c) Is arbitrary and capricious; or

36 (d) Was developed without fully considering and evaluating all  
37 material submitted to the department during public review and  
38 comment; or

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

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

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

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

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

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

31 (a) Civil penalties imposed pursuant to chapter 70A.230 RCW and  
32 RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.205.280,  
33 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100, 70A.505.110,  
34 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050,  
35 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200,  
36 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, 76.09.170,  
37 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
38 90.56.310, 90.56.330, and 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530,  
3 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070,  
4 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, 86.16.020,  
5 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ((and))  
6 90.48.240, 90.56.330, and 90.64.040.

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

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

23 (e) Decisions of local health departments regarding the issuance  
24 and enforcement of permits to use or dispose of biosolids under RCW  
25 70A.226.090.

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

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

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

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

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

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

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

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

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

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

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

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

32 (b) Hearings conducted by the department pursuant to RCW  
33 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
34 70A.15.3110, and 90.44.180.

35 (c) Appeals of decisions by the department under RCW 90.03.110  
36 and 90.44.220.

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

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

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

6 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
7 70A.205.280, 70A.230.080, 70A.300.090, 70A.20.050, 70A.245.040,  
8 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140,  
9 70A.65.200, 70A.430.070, 70A.455.090, 70A.500.260, 70A.505.110,  
10 70A.555.110, 70A.560.020, 86.16.081, 88.46.090, 90.03.600, 90.46.270,  
11 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355  
12 RCW shall be imposed by a notice in writing, either by certified mail  
13 with return receipt requested or by personal service, to the person  
14 incurring the penalty from the department or the local air authority,  
15 describing the violation with reasonable particularity. For penalties  
16 issued by local air authorities, within 30 days after the notice is  
17 received, the person incurring the penalty may apply in writing to  
18 the authority for the remission or mitigation of the penalty. Upon  
19 receipt of the application, the authority may remit or mitigate the  
20 penalty upon whatever terms the authority in its discretion deems  
21 proper. The authority may ascertain the facts regarding all such  
22 applications in such reasonable manner and under such rules as it may  
23 deem proper and shall remit or mitigate the penalty only upon a  
24 demonstration of extraordinary circumstances such as the presence of  
25 information or factors not considered in setting the original  
26 penalty.

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

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

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

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

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

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

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

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

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

34 (c) Penalties imposed pursuant to RCW 70A.230.080, 70A.300.090,  
35 70A.430.070, 70A.555.110, and 70A.560.020 must be credited to the  
36 model toxics control operating account created in RCW 70A.305.180;

37 (d) Penalties imposed pursuant to RCW 70A.245.040 and 70A.245.050  
38 must be credited to the recycling enhancement account created in RCW  
39 70A.245.100;

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

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

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

8 (h) Penalties imposed pursuant to RCW 70A.355.070 must be  
9 credited to the underground storage tank account created in RCW  
10 70A.355.090.

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

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

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

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

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

37 (3) Any order or penalty may be appealed pursuant to RCW  
38 (~~43.21B.310~~) 43.21B.300.

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

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

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

11       (3) A manufacturer of products in violation of this chapter is  
12 subject to a civil penalty not to exceed (~~five thousand dollars~~)  
13 \$5,000 for each violation in the case of a first offense.  
14 Manufacturers who are repeat violators are subject to a civil penalty  
15 not to exceed (~~ten thousand dollars~~) \$10,000 for each repeat  
16 offense. Penalties collected under this section must be deposited in  
17 the model toxics control operating account created in RCW  
18 70A.305.180. The penalties provided in this section must be imposed  
19 pursuant to RCW 43.21B.300 and may be appealed to the pollution  
20 control hearings board.

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

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

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

29       (1) Except as provided in RCW 43.05.060 through 43.05.080 and  
30 43.05.150, the attorney general or the attorney for the local  
31 government shall bring such injunctive, declaratory, or other actions  
32 as are necessary to ensure compliance with this chapter.

33       (2) Any person who fails to comply with this chapter shall also  
34 be subject to a civil penalty not to exceed (~~one thousand dollars~~)  
35 \$1,000 for each violation. Each violation or each day of  
36 noncompliance shall constitute a separate violation.

37       (3) The penalty provided for in this section (~~shall~~) must be  
38 imposed by a notice in writing (~~, either by certified mail with~~  
39 ~~return receipt requested or by personal service, to the person~~



1 ~~incurring the same from the department or local government,~~  
2 ~~describing the violation with reasonable particularity and ordering))~~  
3 and must be imposed consistent with the procedures of RCW 43.21B.300.  
4 The notice in writing must also order the act or acts constituting  
5 the violation or violations to cease and desist or, in appropriate  
6 cases, ~~((requiring))~~ must require necessary corrective action to be  
7 taken within a specific and reasonable time.

8 (4) Any penalty imposed pursuant to this section by the  
9 department shall be subject to review by the pollution control  
10 hearings board under chapter 43.21B RCW. Any penalty imposed pursuant  
11 to this section by local government shall be subject to review by the  
12 local government legislative authority. Any penalty jointly imposed  
13 by the department and local government shall be appealed to the  
14 pollution control hearings board under chapter 43.21B RCW.

15 **Sec. 11.** RCW 70A.500.260 and 2020 c 20 s 1259 are each amended  
16 to read as follows:

17 (1) No manufacturer may sell or offer for sale a covered  
18 electronic product in or into the state unless the manufacturer of  
19 the covered electronic product is participating in an approved plan.  
20 The department shall send a written warning to a manufacturer that  
21 does not have an approved plan or is not participating in an approved  
22 plan as required under RCW 70A.500.050. The written warning must  
23 inform the manufacturer that it must participate in an approved plan  
24 within ~~((thirty))~~ 30 days of the notice. Any violation after the  
25 initial written warning shall be assessed a penalty of up to ~~((ten~~  
26 ~~thousand dollars))~~ \$10,000 for each violation.

27 (2) If the authority or any authorized party fails to implement  
28 their approved plan, the department must assess a penalty of up to  
29 ~~((five thousand dollars))~~ \$5,000 for the first violation along with  
30 notification that the authority or authorized party must implement  
31 its plan within ~~((thirty))~~ 30 days of the violation. After ~~((thirty))~~  
32 30 days, the authority or any authorized party failing to implement  
33 their approved plan must be assessed a penalty of up to ~~((ten~~  
34 ~~thousand dollars))~~ \$10,000 for the second and each subsequent  
35 violation.

36 (3) Any person that does not comply with manufacturer  
37 registration requirements under RCW 70A.500.040, education and  
38 outreach requirements under RCW 70A.500.120, reporting requirements  
39 under RCW 70A.500.140, labeling requirements under RCW 70A.500.160,

1 retailer responsibility requirements under RCW 70A.500.170, collector  
2 or transporter registration requirements under RCW 70A.500.240, or  
3 requirements under RCW 70A.500.250, must first receive a written  
4 warning consistent with the procedures of RCW 43.21B.300, including a  
5 copy of the requirements under this chapter and ((~~thirty~~)) 30 days to  
6 correct the violation. After ((~~thirty~~)) 30 days, a person must be  
7 assessed a penalty of up to ((~~one thousand dollars~~)) \$1,000 for the  
8 first violation and up to ((~~two thousand dollars~~)) \$2,000 for the  
9 second and each subsequent violation. The penalties provided in this  
10 section must be imposed pursuant to RCW 43.21B.300 and may be  
11 appealed to the pollution control hearings board.

12 (4) All penalties levied under this section must be deposited  
13 into the electronic products recycling account created under RCW  
14 70A.500.130.

15 (5) The department shall enforce this section.

16 **Sec. 12.** RCW 36.70C.040 and 1995 c 347 s 705 are each amended to  
17 read as follows:

18 (1) Proceedings for review under this chapter shall be commenced  
19 by filing a land use petition in superior court.

20 (2) A land use petition is barred, and the court may not grant  
21 review, unless the petition is timely filed with the court and timely  
22 served on the following persons who shall be parties to the review of  
23 the land use petition:

24 (a) The local jurisdiction, which for purposes of the petition  
25 shall be the jurisdiction's corporate entity and not an individual  
26 decision maker or department;

27 (b) Each of the following persons if the person is not the  
28 petitioner:

29 (i) Each person identified by name and address in the local  
30 jurisdiction's written decision as an applicant for the permit or  
31 approval at issue; and

32 (ii) Each person identified by name and address in the local  
33 jurisdiction's written decision as an owner of the property at issue;

34 (c) If no person is identified in a written decision as provided  
35 in (b) of this subsection, each person identified by name and address  
36 as a taxpayer for the property at issue in the records of the county  
37 assessor, based upon the description of the property in the  
38 application; and

1 (d) Each person named in the written decision who filed an appeal  
2 to a local jurisdiction quasi-judicial decision maker regarding the  
3 land use decision at issue, unless the person has abandoned the  
4 appeal or the person's claims were dismissed before the  
5 quasi-judicial decision was rendered. Persons who later intervened or  
6 joined in the appeal are not required to be made parties under this  
7 subsection.

8 (3) The petition is timely if it is filed and served on all  
9 parties listed in subsection (2) of this section within  
10 (~~twenty-one~~) 21 days of the issuance of the land use decision.

11 (4) For the purposes of this section, the date on which a land  
12 use decision is issued is:

13 (a) Three days after a written decision is mailed by the local  
14 jurisdiction or, if not mailed, the date on which the local  
15 jurisdiction provides notice that a written decision is publicly  
16 available;

17 (b) If the land use decision is made by ordinance or resolution  
18 by a legislative body sitting in a quasi-judicial capacity, the date  
19 the body passes the ordinance or resolution; or

20 (c) If neither (a) nor (b) of this subsection applies, the date  
21 the decision is entered into the public record.

22 (5) Service on the local jurisdiction must be by delivery of a  
23 copy of the petition to the (~~persons~~) office of a person identified  
24 by or pursuant to RCW 4.28.080 to receive service of process, or as  
25 otherwise designated by the local jurisdiction. Service on the local  
26 jurisdiction is effective upon delivery. Service on other parties  
27 must be in accordance with the superior court civil rules or by  
28 first-class mail to:

29 (a) The address stated in the written decision of the local  
30 jurisdiction for each person made a party under subsection (2)(b) of  
31 this section;

32 (b) The address stated in the records of the county assessor for  
33 each person made a party under subsection (2)(c) of this section; and

34 (c) The address stated in the appeal to the quasi-judicial  
35 decision maker for each person made a party under subsection (2)(d)  
36 of this section.

37 (6) Service by mail is effective on the date of mailing and proof  
38 of service shall be by affidavit or declaration under penalty of  
39 perjury.

1        NEW SECTION.    **Sec. 13.**    Section 1 of this act expires July 1,  
2 2026.

3        NEW SECTION.    **Sec. 14.**    Section 2 of this act takes effect July  
4 1, 2026.

5        NEW SECTION.    **Sec. 15.**    RCW 70A.205.145 (Exemption from solid  
6 waste permit requirements—Waste-derived soil amendments—Application  
7 —Revocation of exemption—Appeal) and 2020 c 20 s 1175, 2016 c 119 s  
8 7, & 1998 c 36 s 18 are each repealed.

Passed by the House March 5, 2024.

Passed by the Senate February 27, 2024.

Approved by the Governor March 28, 2024.

Filed in Office of Secretary of State March 29, 2024.

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