

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 1350**

57th Legislature  
2001 Regular Legislative Session

Passed by the House April 22, 2001  
Yeas 83 Nays 0

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**Speaker of the House of Representatives**

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**Speaker of the House of Representatives**

Passed by the Senate April 21, 2001  
Yeas 44 Nays 1

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**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1350** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED HOUSE BILL 1350

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AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington                      57th Legislature                      2001 Regular Session

By Representatives G. Chandler and Linville

Read first time 01/24/2001. Referred to Committee on Agriculture & Ecology.

1            AN ACT Relating to appeals of water right decisions regarding water  
2 rights subject to a general stream adjudication; amending RCW  
3 43.21B.310 and 90.03.210; reenacting and amending RCW 43.21B.110 and  
4 34.05.514; creating new sections; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**    The legislature intends to assure that  
7 appeals of department of ecology decisions regarding changes or  
8 transfers of water rights that are the subject of an ongoing general  
9 adjudication of water rights are governed by an appeals process that is  
10 efficient and eliminates unnecessary duplication, while fully  
11 preserving the rights of all affected parties. The legislature intends  
12 to address only the judicial review process for certain decisions of  
13 the pollution control hearings board when a general adjudication is  
14 being actively litigated. The legislature intends to fully preserve  
15 the role of the pollution control hearings board, except as  
16 specifically provided in this act.

17            **Sec. 2.**    RCW 43.21B.110 and 1998 c 262 s 18, 1998 c 156 s 8, and  
18 1998 c 36 s 22 are each reenacted and amended to read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and  
2 decide appeals from the following decisions of the department, the  
3 director, local conservation districts, and the air pollution control  
4 boards or authorities as established pursuant to chapter 70.94 RCW, or  
5 local health departments:

6 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
7 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
8 90.56.330.

9 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
10 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
11 90.14.130, 90.48.120, and 90.56.330.

12 (c) Except as provided in RCW 90.03.210(2), the issuance,  
13 modification, or termination of any permit, certificate, or license by  
14 the department or any air authority in the exercise of its  
15 jurisdiction, including the issuance or termination of a waste disposal  
16 permit, the denial of an application for a waste disposal permit, the  
17 modification of the conditions or the terms of a waste disposal permit,  
18 or a decision to approve or deny an application for a solid waste  
19 permit exemption under RCW 70.95.300.

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

22 (e) Decisions of local health departments regarding the issuance  
23 and enforcement of permits to use or dispose of biosolids under RCW  
24 70.95J.080.

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

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

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

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

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

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

5 (c) Proceedings conducted by the department (~~relating to general~~  
6 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW~~),  
7 or the department's designee, under RCW 90.03.160 through 90.03.210 or  
8 90.44.220.

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

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

14 **Sec. 3.** RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9 are  
15 each reenacted and amended to read as follows:

16 (1) Except as provided in subsections (2) and (3) of this section,  
17 proceedings for review under this chapter shall be instituted by paying  
18 the fee required under RCW 36.18.020 and filing a petition in the  
19 superior court, at the petitioner's option, for (a) Thurston county,  
20 (b) the county of the petitioner's residence or principal place of  
21 business, or (c) in any county where the property owned by the  
22 petitioner and affected by the contested decision is located.

23 (2) For proceedings involving institutions of higher education, the  
24 petition shall be filed either in the county in which the principal  
25 office of the institution involved is located or in the county of a  
26 branch campus if the action involves such branch.

27 (3) For proceedings conducted by the pollution control hearings  
28 board pursuant to chapter 43.21B RCW or as otherwise provided in RCW  
29 90.03.210(2) involving decisions of the department of ecology on  
30 applications for changes or transfers of water rights that are the  
31 subject of a general adjudication of water rights that is being  
32 litigated actively under chapter 90.03 or 90.44 RCW, the petition must  
33 be filed with the superior court conducting the adjudication, to be  
34 consolidated by the court with the general adjudication. A party to  
35 the adjudication shall be a party to the appeal under this chapter only  
36 if the party files or is served with a petition for review to the  
37 extent required by this chapter.

1       **Sec. 4.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read  
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

38       (6) An appealable decision or order shall be identified as such and  
39 shall contain a conspicuous notice to the recipient that it may be

1 appealed only by filing an appeal with the hearings board and serving  
2 it on the department within thirty days of receipt.

3 **Sec. 5.** RCW 90.03.210 and 1988 c 202 s 92 are each amended to read  
4 as follows:

5 (1) During the pendency of such adjudication proceedings prior to  
6 judgment or upon review by an appellate court, the stream or other  
7 water involved shall be regulated or partially regulated according to  
8 the schedule of rights specified in the department's report upon an  
9 order of the court authorizing such regulation: PROVIDED, Any  
10 interested party may file a bond and obtain an order staying the  
11 regulation of said stream as to him, in which case the court shall make  
12 such order regarding the regulation of the stream or other water as he  
13 may deem just. The bond shall be filed within five days following the  
14 service of notice of appeal in an amount to be fixed by the court and  
15 with sureties satisfactory to the court, conditioned to perform the  
16 judgment of the court.

17 (2) Any appeal of a decision of the department on an application to  
18 change or transfer a water right subject to a general adjudication that  
19 is being litigated actively and was commenced before October 13, 1977,  
20 shall be conducted as follows:

21 (a) The appeal shall be filed with the court conducting the  
22 adjudication and served under RCW 34.05.542(3). The content of the  
23 notice of appeal shall conform to RCW 34.05.546. Standing to appeal  
24 shall be based on the requirements of RCW 34.05.530 and is not limited  
25 to parties to the adjudication.

26 (b) If the appeal includes a challenge to the portion of the  
27 department's decision that pertains to tentative determinations of the  
28 validity and extent of the water right, review of those tentative  
29 determinations shall be conducted by the court consistent with the  
30 provisions of RCW 34.05.510 through 34.05.598, except that the review  
31 shall be de novo.

32 (c) If the appeal includes a challenge to any portion of the  
33 department's decision other than the tentative determinations of the  
34 validity and extent of the right, the court must certify to the  
35 pollution control hearings board for review and decision those portions  
36 of the department's decision. Review by the pollution control hearings  
37 board shall be conducted consistent with chapter 43.21B RCW and the  
38 board's implementing regulations, except that the requirements for

1 filing, service, and content of the notice of appeal shall be governed  
2 by (a) of this subsection.

3 (d) Appeals shall be scheduled to afford all parties full  
4 opportunity to participate before the superior court and the pollution  
5 control hearings board.

6 (e) Any person wishing to appeal the decision of the board made  
7 under (c) of this subsection shall seek review of the decision in  
8 accordance with chapter 34.05 RCW, except that the petition for review  
9 must be filed with the superior court conducting the adjudication.

10 (3) Nothing in this section shall be construed to affect or modify  
11 any treaty or other federal rights of an Indian tribe, or the rights of  
12 any federal agency or other person or entity arising under federal law.  
13 Nothing in this section is intended or shall be construed as affecting  
14 or modifying any existing right of a federally recognized Indian tribe  
15 to protect from impairment its federally reserved water rights in  
16 federal court.

17 NEW SECTION. Sec. 6. Nothing in this act shall be construed to  
18 affect or modify any treaty or other federal rights of an Indian tribe,  
19 or the rights of any federal agency or other person or entity arising  
20 under federal law. Nothing in this act is intended or shall be  
21 construed as affecting or modifying any existing right of a federally  
22 recognized Indian tribe to protect from impairment its federally  
23 reserved water rights in federal court.

24 NEW SECTION. Sec. 7. This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately.

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