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SECOND SUBSTITUTE HOUSE BILL 1278

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State of Washington

64th Legislature

2015 Regular Session

**By** House General Government & Information Technology (originally sponsored by Representatives Fitzgibbon, Dunshee, Farrell, S. Hunt, Peterson, Fey, and Tarleton)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to building energy use disclosure requirements;  
2 amending RCW 19.27A.140, 19.27A.170, 43.21B.110, and 43.21B.110;  
3 adding new sections to chapter 19.27A RCW; creating a new section;  
4 prescribing penalties; providing an effective date; and providing an  
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that reducing  
8 the energy use of buildings is an important component of the state's  
9 effort to meet its greenhouse gas emissions reduction obligations  
10 required by state law. Recent analysis considered by the 2014 climate  
11 change task force established by executive order indicates that more  
12 than one-third of the state's greenhouse gas emissions are  
13 attributable to sources that are associated with building energy use:  
14 Electricity generation and residential, commercial, and industrial  
15 uses of oil, coal, and natural gas.

16 (2) The establishment of meaningful, enforceable requirements for  
17 buildings to disclose their energy use data creates an important  
18 signal to building owners, prospective building owners, tenants, and  
19 others in real estate markets about the true environmental and  
20 financial costs associated with the use of that building. The  
21 disclosure of this information allows real estate market participants

1 to make decisions that will save them money by lowering their utility  
2 bills and can provide an important incentive for real estate market  
3 participants to invest in emissions-reducing and energy-saving  
4 upgrades. Real-world experience confirms that the addition of  
5 building energy use information to real estate markets provides  
6 incentive for buildings to lower their energy use and associated  
7 greenhouse gas emissions: Analysis by the United States environmental  
8 protection agency has shown that commercial buildings that  
9 participate in a benchmarking program achieve a seven percent  
10 reduction in energy use over their first three years in the program.  
11 By simply providing information to real estate markets through  
12 required disclosure, the state will achieve substantial greenhouse  
13 gas emission reductions by reducing the energy use of buildings.

14 (3) In 2009, the legislature established requirements that  
15 certain nonresidential building owners maintain information about  
16 their building energy use at the time of sale. In the years following  
17 the 2009 legislature's enactment of the current building energy use  
18 disclosure requirements, local governments in Washington and  
19 elsewhere have built upon the lessons learned from the state's  
20 implementation of its groundbreaking benchmarking efforts. These  
21 jurisdictions have been able to introduce more complete benchmarking  
22 information across their real estate markets by requiring procedures  
23 to support the consistent submission of building energy use  
24 information, including the establishment of penalties for violations  
25 of energy use disclosure requirements.

26 (4) In recognition of the benefits of establishing compliance  
27 mechanisms to accompany benchmarking requirements, the state energy  
28 strategy recommends improvements to the state's benchmarking law.  
29 This strategic energy report includes a recommendation that the state  
30 receive energy benchmarking data to assess the impact of the program  
31 and to better ensure statewide compliance with building energy  
32 benchmarking requirements. This act moves the state towards meeting  
33 the goals laid out in the state energy strategy by encouraging  
34 market-wide participation in the energy benchmarking program and by  
35 encouraging the consideration of building energy use information  
36 during market transactions.

37 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27A  
38 RCW to read as follows:

1 (1)(a) The proprietor of each reporting building shall establish  
2 a United States environmental protection agency portfolio manager  
3 account and shall request that a qualifying utility servicing the  
4 reporting building provide the proprietor with energy consumption and  
5 energy cost data for all accounts associated with the reporting  
6 building. The proprietor shall identify to the qualifying utility the  
7 accounts associated with each reporting building.

8 (b) A proprietor of a reporting building shall disclose the  
9 United States environmental protection agency's energy star statement  
10 of energy performance produced using a portfolio manager account to a  
11 prospective buyer, lessee, or lender for the preceding calendar year.  
12 A proprietor who delivers the United States environmental protection  
13 agency's energy star statement of energy performance to a prospective  
14 buyer, lessee, or lender is not required to provide additional  
15 information regarding energy consumption and the information is  
16 deemed to be adequate to inform the prospective buyer, lessee, or  
17 lender regarding the United States environmental protection agency's  
18 energy star statement of energy performance for each month of the  
19 preceding calendar year for the building that is being sold, leased,  
20 financed, or refinanced.

21 (2) By April 1, 2017, and April 1st of each year thereafter, the  
22 proprietor of a reporting building must transfer the United States  
23 environmental protection agency's energy star portfolio manager  
24 building characteristics, energy consumption, and energy cost data  
25 for each month of the preceding calendar year to the commerce  
26 portfolio manager account using the portfolio manager sharing  
27 feature. At the time of transfer or within a reasonable time of  
28 transferring data, the proprietor may include an explanatory comment  
29 for each reporting building for the purpose of identifying specific  
30 energy variations, such as occupancy variances or high energy use  
31 tenants. At the time of transfer, the proprietor must indicate to the  
32 department if the reporting building is occupied solely by the  
33 proprietor or by a single tenant, and if the energy consumption,  
34 energy cost, and other benchmarking data of the building relates to  
35 proprietary commercial activity.

36 (3) If any proprietor of a reporting building discloses  
37 information in good faith concerning a building's energy consumption,  
38 energy cost, or other benchmarking data in accordance with this  
39 chapter, no cause of action shall arise from the disclosure and the

1 proprietor is not liable to others for the disclosure or its  
2 consequences.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A  
4 RCW to read as follows:

5 (1) The department shall establish a United States environmental  
6 protection agency energy star portfolio manager account to support  
7 data sharing transfers from proprietors.

8 (2)(a) The department shall make publicly available the building  
9 characteristics, annual energy consumption, energy cost, ratings, and  
10 other energy use data of reporting buildings, other than buildings  
11 that the proprietor indicates are occupied by the proprietor or by a  
12 single tenant and whose energy data relates to proprietary commercial  
13 activity. The department may not make publicly available building  
14 energy consumption, energy cost, or other benchmarking data that  
15 pertains to buildings occupied solely by the proprietor or by a  
16 single tenant and whose energy use relates to proprietary commercial  
17 activity, unless that data is aggregated with data from other  
18 buildings.

19 (b) For each reporting building, the department shall identify  
20 the city, county, and qualifying utility that provides service to the  
21 reporting building. The department must periodically update the  
22 building characteristics, energy consumption, and energy cost data  
23 and ratings that it makes available under this subsection. The  
24 department must make any explanatory comments received under section  
25 2(2) of this act publicly available.

26 (3) Beginning June 1, 2017, and by June 1st of each subsequent  
27 year, the department shall analyze the data sharing transfers from  
28 proprietors and other supporting information to determine:

29 (a) Which reporting buildings in Washington have disclosed and  
30 transferred the information required by section 2 of this act during  
31 the preceding calendar year; and

32 (b) Which reporting buildings in Washington have failed to  
33 disclose and transfer the information required by section 2 of this  
34 act.

35 (4) If the department makes publicly available reporting building  
36 energy consumption, energy cost data, or other benchmarking data or  
37 information in good faith in accordance with this chapter, no cause  
38 of action shall arise from the disclosure and the department is not  
39 liable to others for the disclosure or its consequences.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 19.27A  
2    RCW to read as follows:

3        The department is authorized to enforce the disclosure  
4    requirements of RCW 19.27A.170 and section 2 of this act. The  
5    department is authorized to investigate and determine if a qualifying  
6    utility or proprietor has not complied with the requirements of RCW  
7    19.27A.170 or section 2 of this act. The department shall work with  
8    qualifying utilities and proprietors to come into compliance with the  
9    energy benchmarking requirements of this chapter.

10       **Sec. 5.**    RCW 19.27A.140 and 2011 1st sp.s. c 43 s 245 are each  
11    amended to read as follows:

12       The definitions in this section apply to RCW 19.27A.130 through  
13    19.27A.190 (~~and~~), 19.27A.020, and sections 2, 3, and 4 of this act  
14    unless the context clearly requires otherwise.

15       (1) "Benchmark" means the energy used by a facility as recorded  
16    monthly for at least one year and the facility characteristics  
17    information inputs required for a portfolio manager account.

18       (2) "Conditioned space" means conditioned space, as defined in  
19    the Washington state energy code.

20       (3) "Consumer-owned utility" includes a municipal electric  
21    utility formed under Title 35 RCW, a public utility district formed  
22    under Title 54 RCW, an irrigation district formed under chapter 87.03  
23    RCW, a cooperative formed under chapter 23.86 RCW, a mutual  
24    corporation or association formed under chapter 24.06 RCW, a port  
25    district formed under Title 53 RCW, or a water-sewer district formed  
26    under Title 57 RCW, that is engaged in the business of distributing  
27    electricity to one or more retail electric customers in the state.

28       (4) "Cost-effectiveness" means that a project or resource is  
29    forecast:

30       (a) To be reliable and available within the time it is needed;  
31    and

32       (b) To meet or reduce the power demand of the intended consumers  
33    at an estimated incremental system cost no greater than that of the  
34    least-cost similarly reliable and available alternative project or  
35    resource, or any combination thereof.

36       (5) "Council" means the state building code council.

37       (6) "Embodied energy" means the total amount of fossil fuel  
38    energy consumed to extract raw materials and to manufacture,  
39    assemble, transport, and install the materials in a building and the

1 life-cycle cost benefits including the recyclability and energy  
2 efficiencies with respect to building materials, taking into account  
3 the total sum of current values for the costs of investment, capital,  
4 installation, operating, maintenance, and replacement as estimated  
5 for the lifetime of the product or project.

6 (7) "Energy consumption data" means the monthly amount of energy  
7 consumed by a customer as recorded by the applicable energy meter for  
8 the most recent twelve-month period.

9 (8) "Energy service company" has the same meaning as in RCW  
10 43.19.670.

11 (9) "Enterprise services" means the department of enterprise  
12 services.

13 (10) "Greenhouse gas" and "greenhouse gases" includes carbon  
14 dioxide, methane, nitrous oxide, hydrofluorocarbons,  
15 perfluorocarbons, and sulfur hexafluoride.

16 (11) "Investment grade energy audit" means an intensive  
17 engineering analysis of energy efficiency and management measures for  
18 the facility, net energy savings, and a cost-effectiveness  
19 determination.

20 (12) "Investor-owned utility" means a corporation owned by  
21 investors that meets the definition of "corporation" as defined in  
22 RCW 80.04.010 and is engaged in distributing either electricity or  
23 natural gas, or both, to more than one retail electric customer in  
24 the state.

25 (13) "Major facility" means any publicly owned or leased  
26 building, or a group of such buildings at a single site, having ten  
27 thousand square feet or more of conditioned floor space.

28 (14) "National energy performance rating" means the score  
29 provided by the energy star program, to indicate the energy  
30 efficiency performance of the building compared to similar buildings  
31 in that climate as defined in the United States environmental  
32 protection agency "ENERGY STAR® Performance Ratings Technical  
33 Methodology."

34 (15) "Net zero energy use" means a building with net energy  
35 consumption of zero over a typical year.

36 (16) "Portfolio manager" means the United States environmental  
37 protection agency's energy star portfolio manager (~~(or an equivalent~~  
38 ~~tool adopted by the department of enterprise services)).~~

39 (17) "Preliminary energy audit" means a quick evaluation by an  
40 energy service company of the energy savings potential of a building.

1 (18) "Qualifying public agency" includes all state agencies,  
2 colleges, and universities.

3 (19) "Qualifying utility" means a consumer-owned or investor-  
4 owned gas or electric utility that serves more than twenty-five  
5 thousand customers in the state of Washington.

6 (20) "Reporting public facility" means any of the following:

7 (a) A building or structure, or a group of buildings or  
8 structures at a single site, owned by a qualifying public agency,  
9 that exceed ten thousand square feet of conditioned space;

10 (b) Buildings, structures, or spaces leased by a qualifying  
11 public agency that exceeds ten thousand square feet of conditioned  
12 space, where the qualifying public agency purchases energy directly  
13 from the investor-owned or consumer-owned utility;

14 (c) A wastewater treatment facility owned by a qualifying public  
15 agency; or

16 (d) Other facilities selected by the qualifying public agency.

17 (21) "State portfolio manager master account" means a portfolio  
18 manager account established to provide a single shared portfolio that  
19 includes reports for all the reporting public facilities.

20 (22) "Building characteristics" means the building size, age,  
21 primary function, address, and other information required to create a  
22 statement of energy performance.

23 (23) "Commerce portfolio manager account" means the portfolio  
24 manager master account created by the department pursuant to section  
25 3 of this act.

26 (24) "Department" means the department of commerce.

27 (25) "Proprietor" means the owner or operator of a building or an  
28 agent acting on behalf of the owner or operator of a building.

29 (26) "Reporting building" means:

30 (a) A building that exceeds twenty thousand square feet of  
31 conditioned space except for a building that:

32 (i) Is a factory group F building, a residential group R building  
33 other than a group R-2 building containing five or more dwelling  
34 units, or a miscellaneous and utility group U building, as defined in  
35 the 2012 Washington state building code; or

36 (ii) Does not receive gas or electric service from a utility that  
37 is not a qualifying utility.

38 (b) A campus of buildings that are served by a shared energy  
39 utility account and together exceed twenty thousand square feet of  
40 conditioned space, except for a campus of buildings that:

1 (i) Are comprised exclusively of any combination of factory group  
2 F buildings, residential group R buildings other than a group R-2  
3 building containing five or more dwelling units, or miscellaneous and  
4 utility group U buildings, as defined in the 2012 Washington state  
5 building code; or

6 (ii) Do not receive gas or electric service from a utility that  
7 is not a qualifying utility.

8 **Sec. 6.** RCW 19.27A.170 and 2009 c 423 s 6 are each amended to  
9 read as follows:

10 ~~((On and after January 1, 2010,))~~ Qualifying utilities shall  
11 maintain records of the energy consumption data of all  
12 ~~((nonresidential and qualifying public agency buildings))~~ customer  
13 accounts to which they provide service. This data must be maintained  
14 ~~((for at least the most recent twelve months))~~ in a format compatible  
15 for uploading to the United States environmental protection agency's  
16 energy star portfolio manager. In carrying out the requirements of  
17 this section, qualifying utilities shall disclose and update energy  
18 consumption and energy cost data each billing period. The data  
19 disclosed and updated by qualifying utilities must be continuous and  
20 date back to no later than January 1, 2016.

21 ~~((On and after January 1, 2010, upon the written~~  
22 ~~authorization or secure electronic authorization of a nonresidential~~  
23 ~~building owner or operator,))~~ A qualifying utility shall upload the  
24 energy consumption and energy cost data for the accounts specified by  
25 ~~((owner or operator))~~ proprietor for a building to the United  
26 States environmental protection agency's energy star portfolio  
27 manager in a form that does not disclose personally identifying  
28 information.

29 (3) Until January 1, 2017, in carrying out the requirements of  
30 this section, a qualifying utility shall use any method for providing  
31 the specified data in order to maximize efficiency and minimize  
32 overall program cost. Qualifying utilities are encouraged to consult  
33 with the United States environmental protection agency and their  
34 customers in developing reasonable reporting options. After January  
35 1, 2017, qualifying utilities shall upload the reporting building  
36 energy consumption and energy cost data by using energy star  
37 portfolio manager web services in order to automatically upload the  
38 specified data to the United States environmental protection agency's  
39 energy star portfolio manager.



1           ~~(4) ((Disclosure of nonpublic nonresidential benchmarking data~~  
2 ~~and ratings required under subsection (5) of this section will be~~  
3 ~~phased in as follows:~~

4           ~~(a) By January 1, 2011, for buildings greater than fifty thousand~~  
5 ~~square feet; and~~

6           ~~(b) By January 1, 2012, for buildings greater than ten thousand~~  
7 ~~square feet.~~

8           ~~(5) Based on the size guidelines in subsection (4) of this~~  
9 ~~section, a building owner or operator, or their agent, of a~~  
10 ~~nonresidential building shall disclose the United States~~  
11 ~~environmental protection agency's energy star portfolio manager~~  
12 ~~benchmarking data and ratings to a prospective buyer, lessee, or~~  
13 ~~lender for the most recent continuously occupied twelve-month period.~~  
14 ~~A building owner or operator, or their agent, who delivers United~~  
15 ~~States environmental protection agency's energy star portfolio~~  
16 ~~manager benchmarking data and ratings to a prospective buyer, lessee,~~  
17 ~~or lender is not required to provide additional information regarding~~  
18 ~~energy consumption, and the information is deemed to be adequate to~~  
19 ~~inform the prospective buyer, lessee, or lender regarding the United~~  
20 ~~States environmental protection agency's energy star portfolio~~  
21 ~~manager benchmarking data and ratings for the most recent twelve-~~  
22 ~~month period for the building that is being sold, leased, financed,~~  
23 ~~or refinanced.~~

24           ~~(6) Notwithstanding subsections (4) and (5) of this section,))~~  
25 ~~Nothing in this section ((increases or decreases the duties, if any,~~  
26 ~~of a building owner, operator, or their agent under this chapter)) or~~  
27 ~~section 2 of this act alters the duty of a seller, agent, or broker~~  
28 ~~to disclose the existence of a material fact affecting the real~~  
29 ~~property.~~

30           (5) Nothing in this section or section 3 of this act changes or  
31 limits the authority of a public entity to adopt building energy use  
32 disclosure requirements that are in addition to the requirements  
33 imposed by this section. The adoption of building energy use  
34 disclosure requirements that are in addition to the requirements of  
35 this chapter by a public entity does not affect the obligation of a  
36 utility or proprietor to comply with the requirements of this  
37 chapter.

38           (6) If any qualifying utility discloses information in good faith  
39 concerning energy consumption, energy cost, or other benchmarking  
40 data in accordance with this chapter, no cause of action shall arise

1 from the disclosure and the qualifying utility is not liable to its  
2 customer or others for the disclosure or its consequences. A  
3 qualifying utility is not required to obtain a customer's written or  
4 electronic permission to disclose energy consumption, energy cost, or  
5 other benchmarking data in accordance with this chapter.

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.27A  
7 RCW to read as follows:

8 (1)(a) If the department determines that a proprietor is not in  
9 compliance with the disclosure requirements of RCW 19.27A.170 or  
10 section 2 of this act, the department may issue a written notice of  
11 violation to the proprietor. The notice must state the requirement  
12 that was violated and any penalties imposed as a result of the  
13 violation.

14 (b) The department may impose the following penalties on a  
15 proprietor for the failure to disclose and transfer the building  
16 energy use benchmarking data as required by section 2 of this act:

17 (i) If the proprietor is not in compliance with the disclosure  
18 requirements of section 2 of this act within ninety days of receipt  
19 of the notice of violation, the department may impose a penalty of up  
20 to five hundred dollars;

21 (ii) If the proprietor is not in compliance with the disclosure  
22 requirements of section 2 of this act within one hundred eighty days  
23 of receipt of the notice of violation, the department may impose a  
24 total cumulative penalty of up to one thousand dollars;

25 (iii) If the proprietor is not in compliance with the disclosure  
26 requirements of section 2 of this act within two hundred seventy days  
27 of receipt of the notice of violation, the department may impose a  
28 total cumulative penalty of up to two thousand dollars; and

29 (iv) If the proprietor is not in compliance with the disclosure  
30 requirements of section 2 of this act within three hundred sixty days  
31 of receipt of the notice of violation, the department may impose a  
32 total cumulative penalty of up to four thousand dollars.

33 (2) In addition to the penalties authorized in subsection (1) of  
34 this section, the department may concurrently impose a separate and  
35 additional fine of up to five hundred dollars if the proprietor has  
36 previously been served with a notice of violation associated with the  
37 building under this chapter.

38 (3) If the department determines that the proprietor has complied  
39 with the disclosure requirements of section 2 of this act within

1 ninety days of receipt of the notice of violation and the proprietor  
2 has not previously been served with a notice of violation by the  
3 department, the department must waive the penalty for the violation.  
4 The department may consider any technical difficulties experienced by  
5 a proprietor with the portfolio manager system in determining whether  
6 to assess or waive a penalty under this section.

7 (4) The authority of the department to issue penalties pursuant  
8 to this section is phased in as follows:

9 (a) After October 1, 2017, for violations associated with  
10 buildings greater than seventy-five thousand square feet that took  
11 place in calendar year 2016 or later;

12 (b) After April 1, 2018, for violations associated with buildings  
13 greater than fifty thousand square feet that took place in calendar  
14 year 2017 or later; and

15 (c) After April 1, 2019, for violations associated with buildings  
16 greater than twenty thousand square feet that took place in calendar  
17 year 2018 or later.

18 (5) A proprietor may appeal any penalties imposed pursuant to  
19 this section to the pollution control hearings board pursuant to the  
20 procedures established by RCW 43.21B.300.

21 (6) All penalties recovered under this section shall be paid into  
22 the state treasury and credited to the general fund.

23 **Sec. 8.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to  
24 read as follows:

25 (1) The hearings board shall only have jurisdiction to hear and  
26 decide appeals from the following decisions of the department, the  
27 director, local conservation districts, the air pollution control  
28 boards or authorities as established pursuant to chapter 70.94 RCW,  
29 local health departments, the department of natural resources, the  
30 department of fish and wildlife, the parks and recreation commission,  
31 and authorized public entities described in chapter 79.100 RCW:

32 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
33 70.94.431, section 7 of this act, 70.105.080, 70.107.050, 76.09.170,  
34 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
35 90.56.310, 90.56.330, and 90.64.102.

36 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
37 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
38 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

3 (d) Except as provided in RCW 90.03.210(2), the issuance,  
4 modification, or termination of any permit, certificate, or license  
5 by the department or any air authority in the exercise of its  
6 jurisdiction, including the issuance or termination of a waste  
7 disposal permit, the denial of an application for a waste disposal  
8 permit, the modification of the conditions or the terms of a waste  
9 disposal permit, or a decision to approve or deny an application for  
10 a solid waste permit exemption under RCW 70.95.300.

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

13 (f) Decisions of local health departments regarding the issuance  
14 and enforcement of permits to use or dispose of biosolids under RCW  
15 70.95J.080.

16 (g) Decisions of the department regarding waste-derived  
17 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
18 decisions of the department regarding waste-derived soil amendments  
19 under RCW 70.95.205.

20 (h) Decisions of local conservation districts related to the  
21 denial of approval or denial of certification of a dairy nutrient  
22 management plan; conditions contained in a plan; application of any  
23 dairy nutrient management practices, standards, methods, and  
24 technologies to a particular dairy farm; and failure to adhere to the  
25 plan review and approval timelines in RCW 90.64.026.

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

29 (j) Decisions of the department of natural resources, the  
30 department of fish and wildlife, and the department that are  
31 reviewable under chapter 76.09 RCW, and the department of natural  
32 resources' appeals of county, city, or town objections under RCW  
33 76.09.050(7).

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

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

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

1 (n) Decisions of an authorized public entity under RCW 79.100.010  
2 to take temporary possession or custody of a vessel or to contest the  
3 amount of reimbursement owed that are reviewable by the hearings  
4 board under RCW 79.100.120.

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

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

9 (b) Hearings conducted by the department pursuant to RCW  
10 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
11 90.44.180.

12 (c) Appeals of decisions by the department under RCW 90.03.110  
13 and 90.44.220.

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

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

19 **Sec. 9.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
20 read as follows:

21 (1) The hearings board shall only have jurisdiction to hear and  
22 decide appeals from the following decisions of the department, the  
23 director, local conservation districts, the air pollution control  
24 boards or authorities as established pursuant to chapter 70.94 RCW,  
25 local health departments, the department of natural resources, the  
26 department of fish and wildlife, the parks and recreation commission,  
27 and authorized public entities described in chapter 79.100 RCW:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
29 70.94.431, section 7 of this act, 70.105.080, 70.107.050, 76.09.170,  
30 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
31 90.56.310, 90.56.330, and 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
33 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
34 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,  
36 modification, or termination of any permit, certificate, or license  
37 by the department or any air authority in the exercise of its  
38 jurisdiction, including the issuance or termination of a waste  
39 disposal permit, the denial of an application for a waste disposal

1 permit, the modification of the conditions or the terms of a waste  
2 disposal permit, or a decision to approve or deny an application for  
3 a solid waste permit exemption under RCW 70.95.300.

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

6 (e) Decisions of local health departments regarding the issuance  
7 and enforcement of permits to use or dispose of biosolids under RCW  
8 70.95J.080.

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

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

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

22 (i) Decisions of the department of natural resources, the  
23 department of fish and wildlife, and the department that are  
24 reviewable under chapter 76.09 RCW, and the department of natural  
25 resources' appeals of county, city, or town objections under RCW  
26 76.09.050(7).

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

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

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

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

38 (2) The following hearings shall not be conducted by the hearings  
39 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  
4 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
5 90.44.180.

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

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

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

13 NEW SECTION. **Sec. 10.** Section 8 of this act expires June 30,  
14 2019.

15 NEW SECTION. **Sec. 11.** Section 9 of this act takes effect June  
16 30, 2019.

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