

ESHB 2039 - S COMM AMD

By Committee on Environment, Energy & Technology

ADOPTED AS AMENDED 02/27/2024

1 Strike everything after the enacting clause and insert the
2 following:

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

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

14 ~~((Transfer of cases pursuant to this section does not require the~~
15 ~~filing of a motion for discretionary review with the court of~~
16 ~~appeals.))~~ (b) The superior court may certify cases for transfer to
17 the court of appeals upon finding that:

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

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

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

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

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

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

8 (4)(a) For the appeal of a permit related to a clean energy
9 project, as defined in RCW 43.158.010, that is the subject of a final
10 adjudicative decision of an environmental board, as identified in RCW
11 43.21B.005, upon a motion filed by any party to the appeal, the
12 superior court shall certify a case for transfer to the court of
13 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 the superior court.

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

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

34 (1) The final decision of an administrative agency in an
35 adjudicative proceeding under this chapter may be directly reviewed
36 by the court of appeals either (a) upon certification by the superior
37 court pursuant to subsection (2) of this section ((~~or~~)); (b) if the
38 final decision is from an environmental board as ((defined in))
39 identified in RCW 43.21B.005 and the final decision relates to a

1 clean energy project as defined in RCW 43.158.010, pursuant to
2 subsection (3) of this section~~((, upon acceptance by the court of~~
3 ~~appeals after a certificate of appealability has been filed by the~~
4 ~~environmental board that rendered the final decision)); or (c) if the~~
5 final decision is from an environmental board identified in RCW
6 43.21B.005 and the final decision does not relate to a clean energy
7 project as defined in RCW 43.158.010, pursuant to subsection (4) of
8 this section. Transfer of a case pursuant to subsections (3) or (4)
9 of this section does not require the filing of a motion for
10 discretionary review with the court of appeals.

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

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

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

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

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

27 (b) Procedures for certification shall be established by court
28 rule.

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

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

37 ~~(i) Fundamental and urgent statewide or regional issues are~~
38 ~~raised; or~~

39 ~~(ii) The proceeding is likely to have significant precedential~~
40 ~~value.~~

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

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

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

9 ~~(a) Within thirty days after filing the petition for review with~~
10 ~~the superior court, a party may file an application for direct review~~
11 ~~with the superior court and serve the appropriate environmental board~~
12 ~~and all parties of record. The application shall request the~~
13 ~~environmental board to file a certificate of appealability.~~

14 ~~(b) If an issue on review is the jurisdiction of the~~
15 ~~environmental board, the board may file an application for direct~~
16 ~~review on that issue.~~

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

21 ~~(d) If a certificate of appealability is issued, the parties~~
22 ~~shall have fifteen days from the date of service to file a notice of~~
23 ~~discretionary review in the superior court, and the notice shall~~
24 ~~include a copy of the certificate of appealability and a copy of the~~
25 ~~final decision.~~

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

29 ~~(f) If a certificate of appealability is denied, review shall be~~
30 ~~by the superior court. The superior court's decision may be appealed~~
31 ~~to the court of appeals.)~~)) appeal of a permit related to a clean
32 energy project, as defined in RCW 43.158.010, that is the subject of
33 a final adjudicative decision of an environmental board, as
34 identified in RCW 43.21B.005, upon a motion filed by any party to the
35 appeal, the superior court shall certify a case for transfer to the
36 court of appeals upon a finding that:

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

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

3 (b) If the superior court certifies a final decision of an
4 administrative agency in an adjudicative proceeding, the superior
5 court shall transfer the matter to the court of appeals as a direct
6 appeal.

7 (c) A party contesting a superior court decision granting or
8 denying certification for direct review may file a motion for
9 discretionary review with the court of appeals. Where a contesting
10 party demonstrates that substantial prejudice would result from
11 direct review by the court of appeals, the court of appeals may
12 remand to superior court.

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

19 (i) All parties have consented to the transfer to the court of
20 appeals and agreed that the judicial review can occur based upon the
21 agency record developed before the administrative body without
22 supplementing the record pursuant to RCW 34.05.562; or

23 (ii) One or more of the parties have not consented to the
24 transfer, but the superior court finds that transfer would serve the
25 interest of justice, would not cause substantial prejudice to any
26 party, including any unrepresented party, and further finds that:

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

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

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

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

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

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

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

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

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

13 (ii) If the permits are not filed within 60 days of each other
14 and the environmental board issues a stay of the appeal of the permit
15 following the applicant's request. Such a stay must include a stay of
16 the construction of the project pending appeal pursuant to RCW
17 43.21B.320, to allow other anticipated appeals of permits for the
18 same underlying project to be filed with the environmental boards to
19 accommodate consolidation pursuant to this section, but the
20 environmental board may set a deadline after which an appeal may
21 proceed in the absence of other permit appeals in order to ensure
22 efficient resolution of appeals; or

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

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

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

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

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

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

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

5 (c) The time period in (b) of this subsection may be extended on
6 motion from a party or by the pollution control hearings board upon a
7 showing that the consolidated appeal raises issues of unique
8 complexity and that delay is not against the public interest. In no
9 case may the time period in (b) of this subsection be extended for a
10 period greater than 30 days unless the time period is waived by all
11 parties.

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

14 (1) (a) Any person aggrieved by the granting, denying, or
15 rescinding of a permit on shorelines of the state pursuant to RCW
16 90.58.140 may seek review from the shorelines hearings board by
17 filing a petition for review within (~~(twenty-one)~~) 21 days of the
18 date of filing of the decision as defined in RCW 90.58.140(6).

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

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

38 (3) The review proceedings authorized in subsections (1) and (2)
39 of this section are subject to the provisions of chapter 34.05 RCW

1 pertaining to procedures in adjudicative proceedings. Judicial review
2 of such proceedings of the shorelines hearings board is governed by
3 chapter 34.05 RCW. The board shall issue its decision on the appeal
4 authorized under subsections (1) and (2) of this section within (~~one~~
5 ~~hundred-eighty~~) 180 days after the date the petition is filed with
6 the board or a petition to intervene is filed by the department or
7 the attorney general, whichever is later. The time period may be
8 extended by the board for a period of (~~thirty~~) 30 days upon a
9 showing of good cause or may be waived by the parties.

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

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

17 (a) Is clearly erroneous in light of the policy of this chapter;
18 or

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

21 (c) Is arbitrary and capricious; or

22 (d) Was developed without fully considering and evaluating all
23 material submitted to the department during public review and
24 comment; or

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

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

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

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

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

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

17 (a) Civil penalties imposed pursuant to chapter 70A.230 RCW and
18 RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.205.280,
19 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100, 70A.505.110,
20 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050,
21 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200,
22 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, 76.09.170,
23 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
24 90.56.310, 90.56.330, and 90.64.102.

25 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
26 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530,
27 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070,
28 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, 86.16.020,
29 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ~~((and))~~
30 90.48.240, 90.56.330, and 90.64.040.

31 (c) Except as provided in RCW 90.03.210(2), the issuance,
32 modification, or termination of any permit, certificate, or license
33 by the department or any air authority in the exercise of its
34 jurisdiction, including the issuance or termination of a waste
35 disposal permit, the denial of an application for a waste disposal
36 permit, the modification of the conditions or the terms of a waste
37 disposal permit, ~~((or))~~ a decision to approve or deny a solid waste
38 management plan under RCW 70A.205.055, approval or denial of an
39 application for a ~~((solid waste permit exemption))~~ beneficial use

1 determination under RCW 70A.205.260, an application for a change
2 under RCW 90.03.383, or a permit to distribute reclaimed water under
3 RCW 90.46.220.

4 (d) Decisions of local health departments regarding the ((grant))
5 granting or denial of solid waste permits pursuant to chapter 70A.205
6 RCW, including appeals by the department as provided in RCW
7 70A.205.130.

8 (e) Decisions of local health departments regarding the issuance
9 and enforcement of permits to use or dispose of biosolids under RCW
10 70A.226.090.

11 (f) Decisions of the department regarding waste-derived
12 fertilizer or micronutrient fertilizer under RCW 15.54.820 (~~, and~~
13 ~~decisions of the department regarding waste-derived soil amendments~~
14 ~~under RCW 70A.205.145~~)).

15 (g) Decisions of local conservation districts related to the
16 denial of approval or denial of certification of a dairy nutrient
17 management plan; conditions contained in a plan; application of any
18 dairy nutrient management practices, standards, methods, and
19 technologies to a particular dairy farm; and failure to adhere to the
20 plan review and approval timelines in RCW 90.64.026 as provided in
21 RCW 90.64.028.

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

25 (i) Decisions of the department of natural resources, the
26 department of fish and wildlife, and the department that are
27 reviewable under chapter 76.09 RCW, and the department of natural
28 resources' appeals of county, city, or town objections under RCW
29 76.09.050(7).

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

32 (k) Decisions of the department of fish and wildlife to issue,
33 deny, condition, or modify a hydraulic project approval permit under
34 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
35 comply, to issue a civil penalty, or to issue a notice of intent to
36 disapprove applications.

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

39 (m) Decisions of an authorized public entity under RCW 79.100.010
40 to take temporary possession or custody of a vessel or to contest the

1 amount of reimbursement owed that are reviewable by the hearings
2 board under RCW 79.100.120.

3 (n) Decisions of the department of ecology that are appealable
4 under RCW 70A.245.020 to set recycled minimum postconsumer content
5 for covered products or to temporarily exclude types of covered
6 products in plastic containers from minimum postconsumer recycled
7 content requirements.

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

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

11 (a) Hearings required by law to be conducted by the shorelines
12 hearings board pursuant to chapter 90.58 RCW, except where appeals to
13 the pollution control hearings board and appeals to the shorelines
14 hearings board have been consolidated pursuant to section 3 of this
15 act.

16 (b) Hearings conducted by the department pursuant to RCW
17 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
18 70A.15.3110, and 90.44.180.

19 (c) Appeals of decisions by the department under RCW 90.03.110
20 and 90.44.220.

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

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

26 **Sec. 6.** RCW 43.21B.300 and 2023 c 455 s 6, 2023 c 434 s 21, and
27 2023 c 135 s 7 are each reenacted and amended to read as follows:

28 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
29 70A.205.280, 70A.230.080, 70A.300.090, 70A.20.050, 70A.245.040,
30 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140,
31 70A.65.200, 70A.430.070, 70A.455.090, 70A.500.260, 70A.505.110,
32 70A.555.110, 70A.560.020, 86.16.081, 88.46.090, 90.03.600, 90.46.270,
33 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355
34 RCW shall be imposed by a notice in writing, either by certified mail
35 with return receipt requested or by personal service, to the person
36 incurring the penalty from the department or the local air authority,
37 describing the violation with reasonable particularity. For penalties
38 issued by local air authorities, within 30 days after the notice is
39 received, the person incurring the penalty may apply in writing to

1 the authority for the remission or mitigation of the penalty. Upon
2 receipt of the application, the authority may remit or mitigate the
3 penalty upon whatever terms the authority in its discretion deems
4 proper. The authority may ascertain the facts regarding all such
5 applications in such reasonable manner and under such rules as it may
6 deem proper and shall remit or mitigate the penalty only upon a
7 demonstration of extraordinary circumstances such as the presence of
8 information or factors not considered in setting the original
9 penalty.

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

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

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

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

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

24 (4) If the amount of any penalty is not paid to the department
25 within 30 days after it becomes due and payable, the attorney
26 general, upon request of the department, shall bring an action in the
27 name of the state of Washington in the superior court of Thurston
28 county, or of any county in which the violator does business, to
29 recover the penalty. If the amount of the penalty is not paid to the
30 authority within 30 days after it becomes due and payable, the
31 authority may bring an action to recover the penalty in the superior
32 court of the county of the authority's main office or of any county
33 in which the violator does business. In these actions, the procedures
34 and rules of evidence shall be the same as in an ordinary civil
35 action.

36 (5) All penalties recovered shall be paid into the state treasury
37 and credited to the general fund except (~~those penalties imposed~~
38 ~~pursuant to RCW 18.104.155, which shall be credited to the~~
39 ~~reclamation account as provided in RCW 18.104.155(7), RCW~~
40 ~~70A.15.3160, the disposition of which shall be governed by that~~

1 ~~provision, RCW 70A.245.040 and 70A.245.050, which shall be credited~~
2 ~~to the recycling enhancement account created in RCW 70A.245.100, RCW~~
3 ~~70A.300.090, 70A.555.110, and 70A.560.020, which shall be credited to~~
4 ~~the model toxics control operating account created in RCW~~
5 ~~70A.305.180, RCW 70A.65.200, which shall be credited to the climate~~
6 ~~investment account created in RCW 70A.65.250, RCW 90.56.330, which~~
7 ~~shall be credited to the coastal protection fund created by RCW~~
8 ~~90.48.390, and RCW 70A.355.070, which shall be credited to the~~
9 ~~underground storage tank account created by RCW 70A.355.090)) the~~
10 following:

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

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

15 (c) Penalties imposed pursuant to RCW 70A.230.080, 70A.300.090,
16 70A.430.070, 70A.555.110, and 70A.560.020 must be credited to the
17 model toxics control operating account created in RCW 70A.305.180;

18 (d) Penalties imposed pursuant to RCW 70A.245.040 and 70A.245.050
19 must be credited to the recycling enhancement account created in RCW
20 70A.245.100;

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

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

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

28 (h) Penalties imposed pursuant to RCW 70A.355.070 must be
29 credited to the underground storage tank account created in RCW
30 70A.355.090.

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

33 A violation of this chapter is punishable by a civil penalty not
34 to exceed (~~one thousand dollars~~) \$1,000 for each violation in the
35 case of a first violation. Repeat violators are liable for a civil
36 penalty not to exceed (~~five thousand dollars~~) \$5,000 for each
37 repeat violation. Penalties collected under this section must be
38 deposited in the model toxics control operating account created in
39 RCW 70A.305.180. The penalties provided in this section must be

1 imposed pursuant to RCW 43.21B.300 and may be appealed to the
2 pollution control hearings board.

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

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

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

18 (3) Any order or penalty may be appealed pursuant to RCW
19 (~~43.21B.310~~) 43.21B.300.

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

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

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

30 (3) A manufacturer of products in violation of this chapter is
31 subject to a civil penalty not to exceed (~~five thousand dollars~~)
32 \$5,000 for each violation in the case of a first offense.
33 Manufacturers who are repeat violators are subject to a civil penalty
34 not to exceed (~~ten thousand dollars~~) \$10,000 for each repeat
35 offense. Penalties collected under this section must be deposited in
36 the model toxics control operating account created in RCW
37 70A.305.180. The penalties provided in this section must be imposed

1 pursuant to RCW 43.21B.300 and may be appealed to the pollution
2 control hearings board.

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

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

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

11 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
12 43.05.150, the attorney general or the attorney for the local
13 government shall bring such injunctive, declaratory, or other actions
14 as are necessary to ensure compliance with this chapter.

15 (2) Any person who fails to comply with this chapter shall also
16 be subject to a civil penalty not to exceed (~~one thousand dollars~~)
17 \$1,000 for each violation. Each violation or each day of
18 noncompliance shall constitute a separate violation.

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

29 (4) Any penalty imposed pursuant to this section by the
30 department shall be subject to review by the pollution control
31 hearings board under chapter 43.21B RCW. Any penalty imposed pursuant
32 to this section by local government shall be subject to review by the
33 local government legislative authority. Any penalty jointly imposed
34 by the department and local government shall be appealed to the
35 pollution control hearings board under chapter 43.21B RCW.

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

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

11 (2) If the authority or any authorized party fails to implement
12 their approved plan, the department must assess a penalty of up to
13 (~~five thousand dollars~~) \$5,000 for the first violation along with
14 notification that the authority or authorized party must implement
15 its plan within (~~(thirty)~~) 30 days of the violation. After (~~(thirty)~~)
16 30 days, the authority or any authorized party failing to implement
17 their approved plan must be assessed a penalty of up to (~~ten~~
18 ~~thousand dollars~~) \$10,000 for the second and each subsequent
19 violation.

20 (3) Any person that does not comply with manufacturer
21 registration requirements under RCW 70A.500.040, education and
22 outreach requirements under RCW 70A.500.120, reporting requirements
23 under RCW 70A.500.140, labeling requirements under RCW 70A.500.160,
24 retailer responsibility requirements under RCW 70A.500.170, collector
25 or transporter registration requirements under RCW 70A.500.240, or
26 requirements under RCW 70A.500.250, must first receive a written
27 warning consistent with the procedures of RCW 43.21B.300, including a
28 copy of the requirements under this chapter and (~~(thirty)~~) 30 days to
29 correct the violation. After (~~(thirty)~~) 30 days, a person must be
30 assessed a penalty of up to (~~(one thousand dollars)~~) \$1,000 for the
31 first violation and up to (~~(two thousand dollars)~~) \$2,000 for the
32 second and each subsequent violation. The penalties provided in this
33 section must be imposed pursuant to RCW 43.21B.300 and may be
34 appealed to the pollution control hearings board.

35 (4) All penalties levied under this section must be deposited
36 into the electronic products recycling account created under RCW
37 70A.500.130.

38 (5) The department shall enforce this section.

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

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

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

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

12 (b) Each of the following persons if the person is not the
13 petitioner:

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

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

19 (c) If no person is identified in a written decision as provided
20 in (b) of this subsection, each person identified by name and address
21 as a taxpayer for the property at issue in the records of the county
22 assessor, based upon the description of the property in the
23 application; and

24 (d) Each person named in the written decision who filed an appeal
25 to a local jurisdiction quasi-judicial decision maker regarding the
26 land use decision at issue, unless the person has abandoned the
27 appeal or the person's claims were dismissed before the
28 quasi-judicial decision was rendered. Persons who later intervened or
29 joined in the appeal are not required to be made parties under this
30 subsection.

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

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

36 (a) Three days after a written decision is mailed by the local
37 jurisdiction or, if not mailed, the date on which the local
38 jurisdiction provides notice that a written decision is publicly
39 available;

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

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

6 (5) Service on the local jurisdiction must be by delivery of a
7 copy of the petition to the (~~persons~~) office of a person identified
8 by or pursuant to RCW 4.28.080 to receive service of process, or as
9 otherwise designated by the local jurisdiction. Service on the local
10 jurisdiction is effective upon delivery. Service on other parties
11 must be in accordance with the superior court civil rules or by
12 first-class mail to:

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

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

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

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

24 NEW SECTION. **Sec. 13.** Section 1 of this act expires July 1,
25 2026.

26 NEW SECTION. **Sec. 14.** Section 2 of this act takes effect July
27 1, 2026.

28 NEW SECTION. **Sec. 15.** RCW 70A.205.145 (Exemption from solid
29 waste permit requirements—Waste-derived soil amendments—Application
30 —Revocation of exemption—Appeal) and 2020 c 20 s 1175, 2016 c 119 s
31 7, & 1998 c 36 s 18 are each repealed."

ESHB 2039 - S COMM AMD

By Committee on Environment, Energy & Technology

ADOPTED AS AMENDED 02/27/2024

1 On page 1, line 2 of the title, after "matters;" strike the
2 remainder of the title and insert "amending RCW 34.05.518, 34.05.518,
3 90.58.180, 70A.230.080, 70A.300.120, 70A.430.070, 86.16.081,
4 70A.500.260, and 36.70C.040; reenacting and amending RCW 43.21B.110
5 and 43.21B.300; adding a new section to chapter 43.21B RCW; repealing
6 RCW 70A.205.145; providing an effective date; and providing an
7 expiration date."

EFFECT: (1) Amends the penalty provision of an electronic product recycling statute to clarify that appeals may be filed to the pollution control hearings board and include references to the relevant administrative procedures for imposition of penalties and the appeals process.

(2) Amends the service of process requirements for service of land use petitions upon local jurisdictions to allow service as otherwise designated by the local jurisdiction. Establishes that service on the local jurisdiction is effective upon delivery.

(3) Makes a technical change.

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