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HOUSE BILL 2039

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By Representatives Fitzgibbon, Ramel, Reed, Ormsby, Fosse, and Duerr

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1 AN ACT Relating to modifying the appeals process for  
2 environmental and land use matters; amending RCW 34.05.518,  
3 36.70C.150, 90.58.180, 70A.230.080, 70A.300.120, 70A.430.070, and  
4 86.16.081, and 86.16.081; reenacting and amending RCW 43.21B.110 and  
5 43.21B.300; adding a new section to chapter 43.21B RCW; and providing  
6 an effective date.

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

8 **Sec. 1.** RCW 34.05.518 and 2021 c 305 s 5 are each amended to  
9 read as follows:

10 (1) The final decision of an administrative agency in an  
11 adjudicative proceeding under this chapter may be directly reviewed  
12 by the court of appeals either (a) upon certification by the superior  
13 court pursuant to this section or (b) if the final decision is from  
14 an environmental board as defined in subsection (3) of this section,  
15 upon acceptance by the court of appeals after a certificate of  
16 appealability has been filed by the environmental board that rendered  
17 the final decision.

18 (2) (a) For direct review upon certification by the superior  
19 court, an application for direct review must be filed with the  
20 superior court within thirty days of the filing of the petition for  
21 review in superior court. The superior court may certify a case for

1 direct review only if the judicial review is limited to the record of  
2 the agency proceeding and the court finds that:

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

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

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

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

13 (b) Procedures for certification shall be established by court  
14 rule.

15 (3) (a) For the purposes of direct review of final decisions of  
16 environmental boards, environmental boards include those boards  
17 identified in RCW 43.21B.005 and the growth management hearings board  
18 as identified in RCW 36.70A.250.

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

23 ~~(i) Fundamental and urgent statewide or regional issues are  
24 raised; or~~

25 ~~(ii) The proceeding is likely to have significant precedential  
26 value.~~

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

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

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

35 ~~(a) Within thirty days after filing the petition for review with  
36 the superior court, a party may file an application for direct review  
37 with the superior court and serve the appropriate environmental board  
38 and all parties of record. The application shall request the  
39 environmental board to file a certificate of appealability.~~

1 ~~(b) If an issue on review is the jurisdiction of the~~  
2 ~~environmental board, the board may file an application for direct~~  
3 ~~review on that issue.~~

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

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

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

16 ~~(f) If a certificate of appealability is denied, review shall be~~  
17 ~~by the superior court. The superior court's decision may be appealed~~  
18 ~~to the court of appeals.))~~ The final decision of an environmental  
19 board in an adjudicative proceeding under this chapter may be  
20 directly reviewed by the court of appeals upon certification by the  
21 superior court pursuant to this subsection. Transfer of cases  
22 pursuant to this section does not require the filing of a motion for  
23 discretionary review with the court of appeals.

24 (c) The superior court may certify cases for transfer to the  
25 court of appeals upon finding that transfer would serve the interest  
26 of justice, would not cause substantial prejudice to any party,  
27 including any unrepresented party, and further finds that:

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

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

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

38 (e) A party contesting a superior court decision granting or  
39 denying certification for direct review may file a motion for  
40 discretionary review with the court of appeals.

1       **Sec. 2.** RCW 36.70C.150 and 2021 c 305 s 1 are each amended to  
2 read as follows:

3       (1) The superior court may transfer the judicial review of a land  
4 use decision to the court of appeals upon finding that ~~((all parties~~  
5 ~~have consented to the transfer to the court of appeals and agreed))~~  
6 transfer would serve the interest of justice, that transfer would not  
7 cause substantial prejudice to any party, including any unrepresented  
8 party, and that the judicial review can occur based upon an existing  
9 record. Transfer of cases pursuant to this section does not require  
10 the filing of a motion for discretionary review with the court of  
11 appeals.

12       (2) Upon stipulation and consent to transfer, the parties waive  
13 the right to seek an award of attorneys' fees and costs under RCW  
14 4.84.370, except as may be awarded following an appeal to the supreme  
15 court.

16       (3) RCW 36.70C.090 does not apply to a matter transferred to the  
17 court of appeals pursuant to this section.

18       ~~((4) This section expires June 30, 2026.))~~

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

21       Where it appears that more than one appeal has arisen out of the  
22 same underlying project, the presiding officer shall consolidate such  
23 appeals for hearing upon making a determination that the following  
24 three criteria have been met:

- 25       (1) Consolidation will expedite disposition of the appeals;  
26       (2) Consolidation will avoid duplication of testimony; and  
27       (3) Consolidation will not prejudice the rights of the parties.

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

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

35       (b) Within seven days of the filing of any petition for review  
36 with the board as provided in this section pertaining to a final  
37 decision of a local government, the petitioner shall serve copies of  
38 the petition on the department, the office of the attorney general,

1 and the local government. The department and the attorney general may  
2 intervene to protect the public interest and ensure that the  
3 provisions of this chapter are complied with at any time within  
4 (~~fifteen~~) 15 days from the date of the receipt by the department or  
5 the attorney general of a copy of the petition for review filed  
6 pursuant to this section. The shorelines hearings board shall  
7 schedule review proceedings on the petition for review without regard  
8 as to whether the period for the department or the attorney general  
9 to intervene has or has not expired.

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

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

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

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

34 (a) Is clearly erroneous in light of the policy of this chapter;  
35 or

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

38 (c) Is arbitrary and capricious; or

1 (d) Was developed without fully considering and evaluating all  
2 material submitted to the department during public review and  
3 comment; or

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

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

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

19 (8) Where it appears that more than one appeal has arisen out of  
20 the same underlying project, the presiding officer shall consolidate  
21 such appeals for hearing upon making a determination that the  
22 following three criteria have been met:

23 (a) Consolidation will expedite disposition of the appeals;

24 (b) Consolidation will avoid duplication of testimony; and

25 (c) Consolidation will not prejudice the rights of the parties.

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

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

36 (a) Civil penalties imposed pursuant to chapter 70A.230 RCW and  
37 RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.205.280,  
38 70A.300.090, 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100,  
39 70A.505.110, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040,

1 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140,  
2 70A.65.200, 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020,  
3 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270,  
4 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

5 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
6 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530,  
7 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070,  
8 70A.245.020, 70A.65.200, 70A.555.110, 70A.560.020, 86.16.020,  
9 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, ((and))  
10 90.48.240, 90.56.330, and 90.64.040.

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

23 (d) Decisions of local health departments regarding the ((grant))  
24 granting or denial of solid waste permits pursuant to chapter 70A.205  
25 RCW, including appeals by the department as provided in RCW  
26 70A.205.130.

27 (e) Decisions of local health departments regarding the issuance  
28 and enforcement of permits to use or dispose of biosolids under RCW  
29 70A.226.090.

30 (f) Decisions of the department regarding waste-derived  
31 fertilizer or micronutrient fertilizer under RCW 15.54.820 ((~~and~~  
32 ~~decisions of the department regarding waste-derived soil amendments~~  
33 ~~under RCW 70A.205.145~~)).

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

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

4 (i) Decisions of the department of natural resources, the  
5 department of fish and wildlife, and the department that are  
6 reviewable under chapter 76.09 RCW, and the department of natural  
7 resources' appeals of county, city, or town objections under RCW  
8 76.09.050(7).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 11.** Section 1 of this act takes effect July  
16 1, 2026.

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