
HOUSE BILL 2496

State of Washington

66th Legislature

2020 Regular Session

By Representatives Mead, Fitzgibbon, Peterson, Lekanoff, Shewmake, Doglio, Fey, Gregerson, Slatter, Walen, Thai, Kloba, and Robinson

1 AN ACT Relating to providing for responsible environmental
2 management of batteries; amending RCW 70.375.130 and 43.21B.300;
3 reenacting and amending RCW 42.56.270, 43.21B.110, and 43.21B.110;
4 adding a new chapter to Title 70 RCW; prescribing penalties;
5 providing an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that:

8 (1) It is in the public interest of the citizens of Washington to
9 encourage the recovery and reuse of materials, such as metals, that
10 replace the output of mining and other extractive industries.

11 (2) Without a dedicated battery stewardship program, consumer
12 confusion regarding proper disposal options for batteries will
13 continue to persist.

14 (3) Ensuring the proper handling, recycling, and end-of-life
15 management of used batteries prevents the release of toxic materials
16 into the environment and removes materials from the waste stream
17 that, if mishandled, may present safety concerns to workers, such as
18 by igniting fires at solid waste handling facilities. For this
19 reason, batteries should not be placed into commingled recycling
20 containers or disposed of via traditional garbage collection
21 containers.

1 (4) Many other states have successfully implemented battery
2 stewardship laws that have helped address the challenges posed by the
3 end-of-life management of batteries. Because it is difficult for
4 customers to differentiate between types and chemistries of
5 batteries, it is the best practice for battery stewardship programs
6 to collect all battery types and chemistries.

7 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
8 section apply throughout this chapter unless the context clearly
9 requires otherwise.

10 (1) "Battery containing product" means a product containing
11 primary or rechargeable batteries that are covered batteries.

12 (2) "Battery management hierarchy" means a management system of
13 covered batteries that is put into the marketplace, collected,
14 sorted, and reprocessed and prioritized in descending order as
15 follows:

16 (a) Prevention and waste reduction;

17 (b) Reuse, when reuse is appropriate;

18 (c) Recycling, as defined in RCW 70.95.030; and

19 (d) Other means of end-of-life management, which may only be
20 utilized no earlier than three hundred sixty-five days after the
21 collection of the battery by a battery stewardship organization.

22 (3) "Battery stewardship organization" means a producer that
23 directly implements a battery stewardship plan required under this
24 chapter or a nonprofit organization designated by a producer or group
25 of producers to implement a battery stewardship plan required under
26 this chapter.

27 (4) "Covered battery" means a primary battery that weighs twenty-
28 five pounds or less or a rechargeable battery or battery pack
29 weighing less than twenty-five pounds. "Covered battery" does not
30 include:

31 (a) A battery contained within a medical device, as specified in
32 Title 21 U.S.C. Sec. 360c as it existed as of the effective date of
33 this section if, when the device or battery is discarded, the device
34 or battery must be treated as infectious waste;

35 (b) A battery that contains an electrolyte as a free liquid; or

36 (c) An unsealed battery or battery pack that employs lead acid
37 technology.

38 (5) "Department" means the department of ecology.

1 (6) "Easily removable" means readily detachable by a consumer
2 with or without the use of common household tools.

3 (7) "Environmentally sound management practices" means practices
4 that: (a) Comply with all applicable laws and rules to protect
5 workers, public health, and the environment; (b) provide for adequate
6 recordkeeping, tracking, and documenting of the fate of materials
7 within the state and beyond; and (c) include environmental liability
8 coverage for the battery stewardship organization.

9 (8) "Final disposition" means the point beyond which no further
10 processing takes place and batteries have been transformed for direct
11 use as a feedstock in producing new products or are disposed of in
12 permitted facilities.

13 (9) "Hefty battery" means a primary or rechargeable covered
14 battery that weighs at least twelve pounds or has a capacity of at
15 least three hundred watt hours.

16 (10) "Primary battery" means a battery that is not capable of
17 being recharged.

18 (11)(a) "Producer" means with respect to a covered battery or
19 battery containing product that is sold, offered for sale, or
20 distributed for sale in the state:

21 (i) The person that manufactures the covered battery or battery
22 containing product and sells or offers for sale in the state that
23 battery or product under the person's own brand;

24 (ii) If there is no person to which (a)(i) of this subsection
25 applies, the owner or licensee of a brand under which the covered
26 battery or covered battery containing product is sold or distributed
27 in the state; or

28 (iii) If there is no person to which (a)(i) or (ii) of this
29 subsection applies, a person including, but not limited to, the first
30 person who sells a covered battery or covered battery containing
31 product in the state, including through a remote offering for sale,
32 such as a sales outlet or sales catalog or via an internet web site,
33 with the expectation that the purchaser will put the covered battery
34 or covered battery containing product to its intended use.

35 (b) A producer does not include any person who only manufactures,
36 sells, offers for sale, distributes, or imports into the country for
37 sale in the state a battery containing product if the only batteries
38 used by the battery containing product are supplied by a producer
39 participating in an approved stewardship plan.

1 (c) A retailer that sells covered batteries or battery containing
2 products under its own brand, or that otherwise meets the definition
3 of a producer in (a) and (b) of this subsection, is a producer for
4 purposes of this chapter.

5 (12) "Retailer" means a person who sells covered batteries or
6 battery containing products in or into this state or offers or
7 otherwise makes available covered batteries or battery containing
8 products to a customer, including other businesses, for use in this
9 state.

10 NEW SECTION. **Sec. 3.** REQUIREMENT THAT PRODUCERS IMPLEMENT A
11 STEWARDSHIP PLAN. (1) Beginning January 1, 2024, each producer
12 selling in or into the state of Washington shall participate in an
13 approved Washington state battery stewardship plan through
14 participation in and appropriate funding of a battery stewardship
15 organization.

16 (2) Except as provided in subsection (3) of this section, a
17 producer that does not participate in a battery stewardship
18 organization and battery stewardship plan may not sell covered
19 batteries or battery containing products covered by this chapter in
20 or into Washington.

21 (3) (a) A producer is a de minimis producer and is not subject to
22 battery stewardship organization and battery stewardship plan
23 participation requirements if the department determines that the
24 producer annually sells, offers for sale, distributes, or imports
25 into the country for sale in the state:

26 (i) A total of less than five thousand battery units, including
27 batteries contained within battery containing products; or

28 (ii) Batteries, including batteries contained within battery
29 containing products, with a total retail value of less than five
30 thousand dollars.

31 (b) A de minimis producer under this section must annually submit
32 documentation to the department demonstrating that the producer meets
33 the de minimis producer criteria under this section.

34 NEW SECTION. **Sec. 4.** RETAILER OBLIGATIONS. (1) Beginning
35 January 1, 2025, a retailer may not sell, offer for sale, or
36 otherwise make available for sale a covered battery or battery
37 containing product unless the producer of the covered battery or
38 battery containing product:

1 (a) Participates in a battery stewardship organization whose plan
2 has been approved by the department; or

3 (b) Is a de minimis producer under section 3(3) of this act.

4 (2) A retailer is in compliance with the requirements of
5 subsection (1) of this section and is not subject to penalties under
6 section 12 of this act as long as the web site made available by the
7 department under section 11 of this act lists, as of the date a
8 product is made available for retail sale, a producer or brand of
9 covered battery or battery containing product sold by the retailer as
10 being either a:

11 (a) Participant in an approved plan or the implementer of an
12 approved plan; or

13 (b) De minimis producer under section 3(3) of this act.

14 (3) Retailers of covered batteries or battery containing products
15 are not required to make retail locations available to serve as
16 collection locations for a stewardship plan operated by a battery
17 stewardship organization. However, a retailer that agrees to make a
18 retail location available to serve as a collection location for a
19 stewardship plan must comply with the requirements for collection
20 locations, consistent with section 8 of this act.

21 (4) A retailer may only sell, offer for sale, or otherwise make
22 available for sale covered batteries, including those contained in
23 battery containing products, that are labeled consistent with the
24 requirements of section 14 of this act.

25 (5) At the time of sale to a consumer, a retailer selling or
26 offering covered batteries or battery containing products for sale in
27 Washington must provide the consumer with information, provided to
28 the retailer by the battery stewardship organization, regarding
29 available end-of-life management options for covered batteries
30 collected by the battery stewardship organization.

31 (6) Retailers, producers, or stewardship organizations may not
32 charge a specific point-of-sale fee to consumers to recoup the costs
33 of the battery stewardship program.

34 NEW SECTION. **Sec. 5.** STEWARDSHIP PLAN COMPONENTS. (1) By June
35 1, 2023, or no less than six months before a plan begins to be
36 implemented, each battery stewardship organization must submit a plan
37 to the department for approval. The department must review and may
38 approve a plan on the basis of whether it contains and adequately
39 addresses the following components:

1 (a) Lists and provides contact information for each producer,
2 battery brand, and battery containing product brand covered in the
3 plan;

4 (b) Proposes performance goals, consistent with section 6 of this
5 act, including establishing performance goals for each of the next
6 three upcoming years of program implementation;

7 (c) Describes how the battery stewardship organization will make
8 retailers aware of their obligation to sell only covered batteries
9 and battery containing products of producers participating in an
10 approved plan;

11 (d) Includes a detailed and comprehensive list of promotion
12 activities to be undertaken as part of the educational and outreach
13 program required in section 9 of this act;

14 (e) Includes an operations manual or other safety information
15 related to covered battery collection activities at collection sites,
16 including appropriate protocols to reduce risks of spills or fires
17 and response protocols in the event of a spill or fire;

18 (f) Describes the financing methods used to implement the plan,
19 consistent with section 7 of this act;

20 (g) Describes how the program will collect all covered battery
21 chemistries and brands on a free, continuous, convenient, visible,
22 and accessible basis, and consistent with the requirements of section
23 8 of this act, including a description of how the statewide
24 convenience standard will be met;

25 (h) Describes the criteria to be used in the program to determine
26 whether an entity may serve as a collection location for discarded
27 batteries under the program;

28 (i) Describes how the program will offer additional supervised
29 collection opportunities at special locations where batteries are
30 often spent and replaced, such as parks with stores and campgrounds;

31 (j) Describes how the battery stewardship organization will
32 determine whether the stewardship plan is collecting batteries in an
33 amount roughly equivalent to the national market share of
34 participating producers consistent with the requirements of section 8
35 of this act, and how the battery stewardship organization will:

36 (i) Seek reimbursement from other battery stewardship
37 organizations that underperform on their battery collection
38 obligations under section 8 of this act; and

1 (ii) Reimburse other battery stewardship organizations if the
2 battery stewardship organization underperforms on its battery
3 collection obligations under section 8 of this act;

4 (k) Identifies proposed transporters, processors, and facilities
5 to be used by the program for the final disposition of batteries and
6 how collected batteries will be managed in an environmentally sound
7 manner and consistent with the battery management hierarchy,
8 including how each proposed facility used for the final disposition
9 of batteries will recycle or otherwise manage batteries;

10 (l) Details how the program will maximize the proportion of
11 batteries collected by the program that are recycled; and

12 (m) Proposes goals for increasing public awareness of the program
13 and describes how the public education and outreach components of the
14 program under section 9 of this act will be implemented.

15 (2) If required by the department, a battery stewardship
16 organization must submit a new plan to the department for approval:

17 (a) When there is a change to the method of financing plan
18 implementation under section 7 of this act;

19 (b) If there are significant changes to the methods of
20 collection, transport, or end-of-life management of covered batteries
21 under section 8 of this act that are not covered by the plan; and

22 (c) No less than every five years.

23 (3) If required by the department, a battery stewardship
24 organization must provide notice to the department for approval:

25 (a) No later than thirty days after a producer begins or ceases
26 to participate in a battery stewardship organization;

27 (b) When proposing changes to the performance goals under section
28 6 of this act; or

29 (c) Proposing updated performance goals based upon the to-date
30 experience of the program, which must be submitted at the time the
31 second annual report is submitted to the department by a battery
32 stewardship organization under section 10 of this act and every two
33 years thereafter.

34 (4) No earlier than five years after the initial approval of a
35 plan, the department may require a battery stewardship organization
36 to submit a revised plan, which may include improvements to the
37 collection site network or increased expenditures dedicated to
38 education and outreach, if the approved plan does not meet the
39 performance goals under section 6 of this act.

1 NEW SECTION. **Sec. 6.** STEWARDSHIP PROGRAM COMPONENTS—PERFORMANCE

2 GOALS. (1) Each plan must include performance goals that measure, on
3 an annual basis, the achievements of the plan. Performance goals must
4 take into consideration technical feasibility and economic
5 practicality in achieving continuous, meaningful progress in
6 improving the rate of battery recycling in Washington.

7 (2) The performance goals established in each plan must include,
8 but are not limited to:

9 (a) Target collection rates;

10 (b) For each battery recycling process, targets for the amount of
11 secondary material derived from the recycling processes as measured
12 by average weights; and

13 (c) Goals for convenience and accessibility that exceed the
14 minimum requirements established in section 8 of this act.

15 NEW SECTION. **Sec. 7.** STEWARDSHIP PROGRAM COMPONENTS—FUNDING.

16 (1) Each producer must ensure adequate funding is available to fully
17 implement approved stewardship plans, including the implementation of
18 aspects of the plan addressing:

19 (a) Battery collection and processing;

20 (b) Education and outreach;

21 (c) Program evaluation; and

22 (d) Payment of the administrative fees to the department under
23 section 11 of this act.

24 (2)(a) Each battery stewardship organization is responsible for
25 all costs of participating covered battery collection,
26 transportation, processing, education, administration, agency
27 reimbursement, recycling, and end-of-life management in accordance
28 with the battery management hierarchy and environmentally sound
29 management practices.

30 (b) Each battery stewardship organization must collect and
31 provide for the end-of-life management of batteries in an amount
32 roughly equivalent to the national market share of the batteries of
33 producers participating in the plan. A battery stewardship
34 organization may seek or provide reimbursement, consistent with the
35 provisions of the stewardship plan, from a different battery
36 stewardship organization that fails to collect and provide for the
37 end-of-life management of batteries in an amount roughly equivalent
38 to the national market share of the batteries of producers
39 participating in the plan.

1 (c) A battery stewardship organization is not authorized to
2 reduce or cease collection, education and outreach, or other
3 activities implemented under an approved plan on the basis of
4 achievement of program performance goals or upon collecting and
5 providing for the end-of-life management of more batteries than
6 required under (b) of this subsection.

7 (3) A battery stewardship organization must reimburse local
8 governments for reasonable and demonstrable costs incurred as a
9 result of a local government facility serving as a collection
10 location for a plan, including associated labor costs.

11 NEW SECTION. **Sec. 8.** STEWARDSHIP PROGRAM COMPONENTS—COLLECTION
12 AND MANAGEMENT REQUIREMENTS. (1) Battery stewardship organizations
13 implementing a stewardship plan must provide for the collection of
14 all covered batteries, including all chemistries and brands of
15 covered batteries, on a free, continuous, convenient, visible, and
16 accessible basis to any person, business, government agency, or
17 nonprofit organization. A fee may not be charged at the time unwanted
18 covered batteries are delivered or collected for management. Each
19 battery stewardship plan must allow any person, business, government
20 agency, or nonprofit organization to discard each chemistry and brand
21 of nonhefty covered battery at each collection site operated under
22 the plan.

23 (2) At each collection site utilized by the program, each battery
24 stewardship organization must provide suitable collection containers
25 for segregated discarded batteries or make mutually agreeable
26 alternative arrangements for the collection of batteries at the site.
27 The location of collection containers at each collection site used by
28 the plan must be within view of a responsible person. Each collection
29 site must adhere to the operations manual and other safety
30 information provided to the collection site by the battery
31 stewardship organization. Hefty batteries may only be collected at
32 locations operated by entities certified to handle and ship class
33 nine hazardous materials under federal regulations adopted by the
34 United States department of transportation pipeline and hazardous
35 materials safety administration.

36 (3) (a) Each battery stewardship organization implementing a plan
37 shall ensure statewide collection opportunities for all covered
38 batteries other than hefty batteries. Statewide collection
39 opportunities must be determined by geographic information modeling

1 and may rely, in part, on collection events to supplement service
2 required in (a) and (b) of this subsection. Statewide collection
3 opportunities must include, but are not limited to, the provision of:

4 (i) At least one permanent collection site within a fifteen mile
5 radius for at least ninety-five percent of Washington residents;

6 (ii) At least one permanent collection site in addition to those
7 required in (a)(i) of this subsection for every thirty thousand
8 residents of an urbanized area and for every urban cluster of at
9 least thirty thousand residents;

10 (iii) Collection opportunities and service to all counties and
11 tribal lands in Washington;

12 (iv) Collection opportunities at special locations where
13 batteries are often spent and replaced, such as supervised locations
14 at parks with stores and campgrounds; and

15 (v) Service to areas without a permanent collection site,
16 including service to island and geographically isolated communities.

17 (b) Each battery stewardship organization implementing a plan
18 shall ensure collection opportunities for hefty batteries that exceed
19 the following minimum convenience standards:

20 (i) At least twenty-five collection sites in Washington;

21 (ii) Reasonable geographic dispersion of collection sites
22 throughout the state; and

23 (iii) A collection location in each county of at least two
24 hundred thousand persons, as determined by the most recent population
25 estimate of the office of financial management.

26 (4)(a) Stewardship plans must use existing and public and private
27 waste collection services and facilities, including battery
28 collection locations that are established through other battery
29 collection services, transporters, consolidators, processors,
30 retailers, and curbside services, where cost-effective, mutually
31 agreeable, and otherwise practicable.

32 (b) Stewardship plans must use as a collection site any retailer,
33 wholesaler, municipality, solid waste management facility, or other
34 entity that meets the collection site criteria provided in this
35 section and the criteria for collection locations in the approved
36 plan, upon the submission of a request by the entity to the battery
37 stewardship organization to serve as a collection site.

38 (c) A stewardship organization may suspend or terminate a
39 collection site or service that does not adhere to the collection
40 site criteria in the approved plan.

1 (5) (a) Stewardship plans are not required to provide for the
2 collection of battery containing products.

3 (b) Stewardship plans are not required to provide for the
4 collection of batteries that:

5 (i) Are not intended or designed to be easily removable from the
6 product other than by the manufacturer; and

7 (ii) Remain contained in a battery containing product at the time
8 of delivery to a collection site.

9 (c) Stewardship plans are required to provide for the collection
10 of covered batteries that were once contained in battery containing
11 products but that are not contained in the battery containing product
12 at the time of delivery to a collection site.

13 (d) Each stewardship plan must arrange for the collection of
14 covered batteries from collection locations established under chapter
15 70.95N RCW.

16 (6) Batteries collected by the program must be managed consistent
17 with the battery management hierarchy. Lower priority end-of-life
18 battery management options on the battery management hierarchy may be
19 used by a program only when a battery stewardship organization
20 documents to the department that all higher priority battery
21 management options on the battery management hierarchy are not
22 technologically feasible or economically practical.

23 (7) Batteries collected by the program created under this chapter
24 may be managed as universal waste where required by state and federal
25 hazardous waste laws and regulations.

26 NEW SECTION. **Sec. 9.** STEWARDSHIP PROGRAM COMPONENTS—EDUCATION
27 AND OUTREACH REQUIREMENTS. (1) Each battery stewardship organization
28 must carry out promotional activities in support of plan
29 implementation including, but not limited to, the development:

30 (a) And maintenance of a web site;

31 (b) And distribution of periodic press releases and articles;

32 (c) And placement of graphic advertisements for use on social
33 media or other relevant media platforms;

34 (d) Of promotional materials about the program and the
35 restriction on the disposal of covered batteries in section 15 of
36 this act to be used by retailers, government agencies, and nonprofit
37 organizations;

1 (e) And distribution of a collection site procedural manual to
2 collection sites to help ensure proper management of covered
3 batteries at collection locations; and

4 (f) And implementation of outreach and education suitable for the
5 state's diverse ethnic populations, through translated and culturally
6 appropriate materials, including in-language and targeted outreach.

7 (2) Each battery stewardship organization must provide:

8 (a) Consumer-focused educational promotional materials to each
9 collection location used by the plan and at each retailer that sells
10 covered batteries or battery containing products; and

11 (b) Safety information related to covered battery collection
12 activities to the operator of each collection site, including
13 appropriate protocols to reduce risks of spills or fires and response
14 protocols in the event of a spill or fire.

15 (3) A producer that supplies batteries to a retailer must provide
16 the retailer with educational materials developed by the battery
17 stewardship organization describing collection opportunities for
18 batteries or must arrange for the stewardship program implementing
19 the plan in which the producer participates to provide such
20 materials.

21 (4) During the first year of program implementation and every
22 five years thereafter, each battery stewardship organization must
23 carry out a survey of public awareness regarding the requirements of
24 the program established under this chapter, including the provisions
25 of section 15 of this act. Each battery stewardship organization must
26 share the results of the public awareness surveys with the
27 department.

28 NEW SECTION. **Sec. 10.** REPORTING REQUIREMENTS. (1) By June 1,
29 2025, and each June 1st thereafter, each battery stewardship
30 organization must submit an annual report to the department covering
31 the preceding calendar year of stewardship plan implementation. The
32 report must include:

33 (a) An independent financial audit of a stewardship program
34 implemented by the battery stewardship organization, including a
35 breakdown of the program's expenses, such as collection, recycling,
36 education, and overhead, when required by the department;

37 (b) A summary financial statement documenting the financing of a
38 battery stewardship organization's plan and an analysis of program
39 costs and expenditures, including an analysis of the program's

1 expenses, such as collection, transportation, recycling, education,
2 and administrative overhead. The summary financial statement must be
3 sufficiently detailed so as to provide transparency that funds
4 collected from producers as a result of their activities in
5 Washington are spent on plan implementation in Washington. Battery
6 stewardship organizations implementing similar battery stewardship
7 plans in multiple states may submit a financial statement including
8 all covered states, as long as the statement breaks out financial
9 information pertinent to Washington;

10 (c) The weight, by chemistry, of covered batteries collected
11 under the plan;

12 (d) The weight of materials recycled from covered batteries
13 collected under the plan, in total, and by battery recycling process;

14 (e) For each facility used for the final disposition of
15 batteries, a description of how the facility recycled or otherwise
16 disposed of batteries and battery components;

17 (f) The weight and chemistry of batteries sent to each facility
18 used for the final disposition of batteries. The information in this
19 subsection (1)(f) may be approximated for plan operations in
20 Washington based on extrapolations of national or regional data for
21 programs in operation in multiple states;

22 (g) The collection rate achieved by battery chemistry under the
23 plan, including a description of how this collection rate was
24 calculated;

25 (h) The estimated total sales, by weight and chemistry, of
26 batteries and batteries contained in or with battery containing
27 products sold in Washington by participating producers for each of
28 the previous three calendar years;

29 (i) A description of the manner in which the collected batteries
30 were managed and recycled, including a discussion of best available
31 technologies and the amounts of secondary material derived from the
32 recycling processes as measured by average weights;

33 (j) A summary of the education and outreach supporting plan
34 implementation, including a description of how that education and
35 outreach met the requirements of section 9 of this act and any
36 changes made during the previous calendar year to education and
37 outreach activities;

38 (k) An up-to-date map indicating the location of all collection
39 sites used to implement the plan, with links to appropriate web
40 sites;

1 (1) A description of the manner in which the collected batteries
2 were sorted, consolidated, and processed;

3 (m) A summary on progress made towards the program performance
4 goals established under section 6 of this act, and an explanation of
5 why performance goals were not met, if applicable; and

6 (n) An evaluation of the effectiveness of education and outreach
7 activities.

8 (2) If a battery stewardship organization has disposed of covered
9 batteries through energy recovery, incineration, or landfilling during
10 the preceding calendar year of plan implementation, the annual report
11 must specify the steps that the battery stewardship organization will
12 take to make the recycling of covered batteries cost-effective, where
13 possible, or to otherwise increase battery recycling rates achieved
14 by the battery stewardship organization.

15 NEW SECTION. **Sec. 11.** FEE AND DEPARTMENT OF ECOLOGY ROLE. (1)

16 The department must adopt rules as necessary for the purpose of
17 implementing, administering, and enforcing this chapter. The
18 department must by rule establish fees, to be paid annually by a
19 battery stewardship organization, that are adequate to cover the
20 department's full costs of implementing, administering, and enforcing
21 this chapter. All fees must be based on costs related to
22 implementing, administering, and enforcing this chapter, not to
23 exceed expenses incurred by the department for these activities.

24 (2) The responsibilities of the department in implementing,
25 administering, and enforcing this chapter include, but are not
26 limited to:

27 (a) Reviewing submitted stewardship plans and plan amendments and
28 making determinations as to whether to approve the plan or plan
29 amendment;

30 (i) The department must provide a letter of approval for the plan
31 or plan amendment if it provides for the establishment of a
32 stewardship program that meets the requirements of sections 3 through
33 9 of this act;

34 (ii) If a plan or plan amendment is rejected, the department must
35 provide the reasons for rejecting the plan to the battery stewardship
36 organization. The battery stewardship organization must submit a new
37 plan within sixty days after receipt of the letter of disapproval;
38 and

1 (iii) When a plan or an amendment to an approved plan is
2 submitted under this section, the department shall make the proposed
3 plan or amendment available for public review and comment for at
4 least thirty days;

5 (b) Reviewing annual reports submitted under section 10 of this
6 act within ninety days of submission to ensure compliance with that
7 section;

8 (c)(i) Maintaining a web site that lists producers and their
9 brands that are participating in an approved plan, and that makes
10 available to the public each plan, plan amendment, and annual report
11 received by the department under this chapter;

12 (ii) Upon the date the first plan is approved, the department
13 must post on its web site a list of producers and their brands for
14 which the department has approved a plan. The department must update
15 the list of producers and brands participating under an approved
16 program plan on a monthly basis based on information provided to the
17 department from battery stewardship organizations; and

18 (d) Providing outreach and assistance to producers and retailers
19 related to the requirements of this chapter and issuing orders or
20 imposing civil penalties authorized under section 12 of this act
21 where such outreach and assistance efforts do not lead to compliance
22 by a producer or retailer.

23 NEW SECTION. **Sec. 12.** PENALTIES AND CIVIL ACTION PROVISIONS.

24 (1)(a) A battery stewardship organization implementing an approved
25 plan may bring a civil action or actions to recover costs, damages,
26 and fees, as specified in this section, from any producer who sells
27 or otherwise makes available in Washington covered batteries or
28 battery containing products not included in an approved plan. An
29 action under this section may be brought against one or more
30 defendants. An action may only be brought against a defendant
31 producer when the stewardship program incurs costs in Washington,
32 including reasonable incremental administrative and program
33 promotional costs, in excess of one thousand dollars to collect,
34 transport, and recycle or otherwise dispose of the covered batteries
35 or battery containing products of a nonparticipating producer.

36 (b) A battery stewardship organization may only bring a civil
37 action authorized under (a) of this subsection if the most recent
38 annual report filed with and approved by the department indicates
39 that the battery stewardship organization has achieved the collection

1 rate performance goal established consistent with section 6 of this
2 act.

3 (c) A battery stewardship organization implementing an approved
4 stewardship plan may bring a civil action against another battery
5 stewardship organization that underperforms on its battery collection
6 obligations under this chapter by failing to collect and provide for
7 the end-of-life management of batteries in an amount roughly
8 equivalent to the national market share of the batteries of producers
9 participating in the plan.

10 (d) The remedies provided in this subsection are in addition to
11 the enforcement authority of the department and do not limit and are
12 not limited by a decision by the department to impose a civil penalty
13 or issue an order under subsection (2) of this section. The
14 department is not required to audit, participate in, or provide
15 assistance to a battery stewardship organization pursuing a civil
16 action authorized under this subsection.

17 (2) (a) The department may administratively impose a civil penalty
18 on any person who violates this chapter in an amount of up to one
19 thousand dollars per violation per day.

20 (b) The department may administratively impose a civil penalty of
21 up to ten thousand dollars per violation per day on any person who
22 intentionally, knowingly, or negligently violates this chapter.

23 (c) Whenever on the basis on any information the department
24 determines that a person has violated or is in violation of this
25 chapter, the department may issue an order requiring compliance. A
26 person who fails to take corrective action as specified in a
27 compliance order is liable for a civil penalty as provided in (a) and
28 (b) in this subsection.

29 (d) Any person who is issued an order or incurs a penalty under
30 this section may appeal the order or penalty to the pollution control
31 hearings board established by chapter 43.21B RCW.

32 (e) Prior to imposing penalties under this section, the
33 department must provide a producer, retailer, or battery stewardship
34 organization with a written warning for the first violation by the
35 producer, retailer, or battery stewardship organization of the
36 requirements of this chapter. The written warning must inform a
37 producer, retailer, or battery stewardship organization that it must
38 participate in an approved plan or otherwise come into compliance
39 with the requirements of this chapter within thirty days of the
40 notice. A producer, retailer, or battery stewardship organization

1 that violates a provision of this chapter after the initial written
2 warning must be assessed a penalty as provided in this subsection.

3 (3) Penalties levied under subsection (2) of this section must be
4 deposited in the responsible battery management account created in
5 section 13 of this act.

6 NEW SECTION. **Sec. 13.** RESPONSIBLE BATTERY MANAGEMENT ACCOUNT.
7 The responsible battery management account is created in the custody
8 of the state treasurer. All receipts from activities undertaken
9 consistent with chapter 70.--- RCW (the new chapter created in
10 section 21 of this act) must be deposited in the account. Only the
11 director of the department or the director's designee may authorize
12 expenditures from the account. The account is subject to allotment
13 procedures under chapter 43.88 RCW, but an appropriation is not
14 required for expenditures. Moneys in the account may be used solely
15 by the department for administering, implementing, and enforcing the
16 requirements of this chapter. Funds in the account may not be
17 diverted for any purpose or activity other than those specified in
18 this section.

19 NEW SECTION. **Sec. 14.** LABELING REQUIREMENTS FOR BATTERIES.
20 Beginning January 1, 2024, a producer or retailer may only sell,
21 distribute, or offer for sale in or into Washington a covered battery
22 or battery containing product if the battery is:

23 (1) Labeled to identify the chemistry employed in storing energy
24 in the battery; and

25 (2) Marked with an identification of the producer of the battery,
26 unless the battery is less than one-half inch in diameter or does not
27 contain a surface whose length exceeds one-half inch.

28 NEW SECTION. **Sec. 15.** REQUIREMENT TO USE BATTERY COLLECTION
29 PROGRAMS. Effective January 1, 2024:

30 (1) All persons, residents, businesses, and government,
31 commercial, industrial, and retail facilities and office buildings
32 must dispose of unwanted covered batteries through the collection
33 locations established by the programs created by this chapter.

34 (2) Generators may not place covered batteries in waste
35 containers for disposal at incinerators, waste to energy facilities,
36 or landfills.

1 (3) Generators may not place covered batteries in or on a
2 container for mixed recyclables unless there is a separate location
3 or compartment for the covered battery that complies with local
4 government collection standards or guidelines.

5 (4) An owner or operator of a solid waste facility may not be
6 found in violation of this section if the facility has posted in a
7 conspicuous location a sign stating that covered batteries must be
8 recycled and are not accepted for disposal.

9 (5) A solid waste collector may not be found in violation of this
10 section for a covered battery placed in a disposal container by the
11 generator of the covered battery.

12 **Sec. 16.** RCW 70.375.130 and 2019 c 344 s 13 are each amended to
13 read as follows:

14 PUBLIC RECORDS, PART 1. (1) Except as provided in subsection (3)
15 of this section, records related to this chapter or chapter 70.---
16 RCW (the new chapter created in section 21 of this act), subject to
17 chapter 42.56 RCW, filed with the department from any person that
18 contain valuable commercial information, including trade secrets,
19 confidential marketing, cost, or financial information, or customer-
20 specific usage information, are not subject to inspection or copying
21 under chapter 42.56 RCW. When providing information to the
22 department, a person shall designate which records or portions of
23 records contain valuable commercial information.

24 (2) Upon receipt of a request to disclose valuable commercial
25 information submitted under this chapter or chapter 70.--- RCW (the
26 new chapter created in section 21 of this act), the department must
27 provide notice to the person or persons whose information is subject
28 to possible inspection or copying under chapter 42.56 RCW.

29 (3) Upon the notice provided under subsection (2) of this section
30 of the possible inspection or copying of valuable commercial
31 information pursuant to chapter 42.56 RCW, a person may petition the
32 superior court for an order protecting the records as confidential.
33 The superior court must determine that the records are confidential
34 and are not subject to inspection or copying if disclosure would
35 result in private loss, including an unfair competitive disadvantage.
36 If a person does not obtain an order protecting submitted records as
37 confidential within ten days of receiving a notice from the
38 department under subsection (2) of this section, the department may

1 make the records available for public inspection and copying pursuant
2 to chapter 42.56 RCW.

3 **Sec. 17.** RCW 42.56.270 and 2019 c 394 s 10, 2019 c 344 s 14, and
4 2019 c 212 s 12 are each reenacted and amended to read as follows:

5 PUBLIC RECORDS, PART 2. The following financial, commercial, and
6 proprietary information is exempt from disclosure under this chapter:

7 (1) Valuable formulae, designs, drawings, computer source code or
8 object code, and research data obtained by any agency within five
9 years of the request for disclosure when disclosure would produce
10 private gain and public loss;

11 (2) Financial information supplied by or on behalf of a person,
12 firm, or corporation for the purpose of qualifying to submit a bid or
13 proposal for (a) a ferry system construction or repair contract as
14 required by RCW 47.60.680 through 47.60.750; (b) highway construction
15 or improvement as required by RCW 47.28.070; or (c) alternative
16 public works contracting procedures as required by RCW 39.10.200
17 through 39.10.905;

18 (3) Financial and commercial information and records supplied by
19 private persons pertaining to export services provided under chapters
20 43.163 and 53.31 RCW, and by persons pertaining to export projects
21 under RCW 43.23.035;

22 (4) Financial and commercial information and records supplied by
23 businesses or individuals during application for loans or program
24 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
25 43.168 RCW, or during application for economic development loans or
26 program services provided by any local agency;

27 (5) Financial information, business plans, examination reports,
28 and any information produced or obtained in evaluating or examining a
29 business and industrial development corporation organized or seeking
30 certification under chapter 31.24 RCW;

31 (6) Financial and commercial information supplied to the state
32 investment board by any person when the information relates to the
33 investment of public trust or retirement funds and when disclosure
34 would result in loss to such funds or in private loss to the
35 providers of this information;

36 (7) Financial and valuable trade information under RCW 51.36.120;

37 (8) Financial, commercial, operations, and technical and research
38 information and data submitted to or obtained by the clean Washington

1 center in applications for, or delivery of, program services under
2 chapter 70.95H RCW;

3 (9) Financial and commercial information requested by the public
4 stadium authority from any person or organization that leases or uses
5 the stadium and exhibition center as defined in RCW 36.102.010;

6 (10)(a) Financial information, including but not limited to
7 account numbers and values, and other identification numbers supplied
8 by or on behalf of a person, firm, corporation, limited liability
9 company, partnership, or other entity related to an application for a
10 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
11 marijuana producer, processor, or retailer license, liquor license,
12 gambling license, or lottery retail license;

13 (b) Internal control documents, independent auditors' reports and
14 financial statements, and supporting documents: (i) Of house-banked
15 social card game licensees required by the gambling commission
16 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
17 by tribes with an approved tribal/state compact for class III gaming;

18 (c) Valuable formulae or financial or proprietary commercial
19 information records received during a consultative visit or while
20 providing consultative services to a licensed marijuana business in
21 accordance with RCW 69.50.561;

22 (11) Proprietary data, trade secrets, or other information that
23 relates to: (a) A vendor's unique methods of conducting business; (b)
24 data unique to the product or services of the vendor; or (c)
25 determining prices or rates to be charged for services, submitted by
26 any vendor to the department of social and health services or the
27 health care authority for purposes of the development, acquisition,
28 or implementation of state purchased health care as defined in RCW
29 41.05.011;

30 (12)(a) When supplied to and in the records of the department of
31 commerce:

32 (i) Financial and proprietary information collected from any
33 person and provided to the department of commerce pursuant to RCW
34 43.330.050(8); and

35 (ii) Financial or proprietary information collected from any
36 person and provided to the department of commerce or the office of
37 the governor in connection with the siting, recruitment, expansion,
38 retention, or relocation of that person's business and until a siting
39 decision is made, identifying information of any person supplying

1 information under this subsection and the locations being considered
2 for siting, relocation, or expansion of a business;

3 (b) When developed by the department of commerce based on
4 information as described in (a)(i) of this subsection, any work
5 product is not exempt from disclosure;

6 (c) For the purposes of this subsection, "siting decision" means
7 the decision to acquire or not to acquire a site;

8 (d) If there is no written contact for a period of sixty days to
9 the department of commerce from a person connected with siting,
10 recruitment, expansion, retention, or relocation of that person's
11 business, information described in (a)(ii) of this subsection will be
12 available to the public under this chapter;

13 (13) Financial and proprietary information submitted to or
14 obtained by the department of ecology or the authority created under
15 chapter 70.95N RCW to implement chapter 70.95N RCW;

16 (14) Financial, commercial, operations, and technical and
17 research information and data submitted to or obtained by the life
18 sciences discovery fund authority in applications for, or delivery
19 of, grants under chapter 43.350 RCW, to the extent that such
20 information, if revealed, would reasonably be expected to result in
21 private loss to the providers of this information;

22 (15) Financial and commercial information provided as evidence to
23 the department of licensing as required by RCW 19.112.110 or
24 19.112.120, except information disclosed in aggregate form that does
25 not permit the identification of information related to individual
26 fuel licensees;

27 (16) Any production records, mineral assessments, and trade
28 secrets submitted by a permit holder, mine operator, or landowner to
29 the department of natural resources under RCW 78.44.085;

30 (17)(a) Farm plans developed by conservation districts, unless
31 permission to release the farm plan is granted by the landowner or
32 operator who requested the plan, or the farm plan is used for the
33 application or issuance of a permit;

34 (b) Farm plans developed under chapter 90.48 RCW and not under
35 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
36 to RCW 42.56.610 and 90.64.190;

37 (18) Financial, commercial, operations, and technical and
38 research information and data submitted to or obtained by a health
39 sciences and services authority in applications for, or delivery of,
40 grants under RCW 35.104.010 through 35.104.060, to the extent that

1 such information, if revealed, would reasonably be expected to result
2 in private loss to providers of this information;

3 (19) Information gathered under chapter 19.85 RCW or RCW
4 34.05.328 that can be identified to a particular business;

5 (20) Financial and commercial information submitted to or
6 obtained by the University of Washington, other than information the
7 university is required to disclose under RCW 28B.20.150, when the
8 information relates to investments in private funds, to the extent
9 that such information, if revealed, would reasonably be expected to
10 result in loss to the University of Washington consolidated endowment
11 fund or to result in private loss to the providers of this
12 information;

13 (21) Market share data submitted by a manufacturer under RCW
14 70.95N.190(4);

15 (22) Financial information supplied to the department of
16 financial institutions, when filed by or on behalf of an issuer of
17 securities for the purpose of obtaining the exemption from state
18 securities registration for small securities offerings provided under
19 RCW 21.20.880 or when filed by or on behalf of an investor for the
20 purpose of purchasing such securities;

21 (23) Unaggregated or individual notices of a transfer of crude
22 oil that is financial, proprietary, or commercial information,
23 submitted to the department of ecology pursuant to RCW
24 90.56.565(1)(a), and that is in the possession of the department of
25 ecology or any entity with which the department of ecology has shared
26 the notice pursuant to RCW 90.56.565;

27 (24) Financial institution and retirement account information,
28 and building security plan information, supplied to the liquor and
29 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and
30 69.50.345, when filed by or on behalf of a licensee or prospective
31 licensee for the purpose of obtaining, maintaining, or renewing a
32 license to produce, process, transport, or sell marijuana as allowed
33 under chapter 69.50 RCW;

34 (25) Marijuana transport information, vehicle and driver
35 identification data, and account numbers or unique access identifiers
36 issued to private entities for traceability system access, submitted
37 by an individual or business to the liquor and cannabis board under
38 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and
39 69.50.345 for the purpose of marijuana product traceability.

1 Disclosure to local, state, and federal officials is not considered
2 public disclosure for purposes of this section;

3 (26) Financial and commercial information submitted to or
4 obtained by the retirement board of any city that is responsible for
5 the management of an employees' retirement system pursuant to the
6 authority of chapter 35.39 RCW, when the information relates to
7 investments in private funds, to the extent that such information, if
8 revealed, would reasonably be expected to result in loss to the
9 retirement fund or to result in private loss to the providers of this
10 information except that (a) the names and commitment amounts of the
11 private funds in which retirement funds are invested and (b) the
12 aggregate quarterly performance results for a retirement fund's
13 portfolio of investments in such funds are subject to disclosure;

14 (27) Proprietary financial, commercial, operations, and technical
15 and research information and data submitted to or obtained by the
16 liquor and cannabis board in applications for marijuana research
17 licenses under RCW 69.50.372, or in reports submitted by marijuana
18 research licensees in accordance with rules adopted by the liquor and
19 cannabis board under RCW 69.50.372;

20 (28) Trade secrets, technology, proprietary information, and
21 financial considerations contained in any agreements or contracts,
22 entered into by a licensed marijuana business under RCW 69.50.395,
23 which may be submitted to or obtained by the state liquor and
24 cannabis board;

25 (29) Financial, commercial, operations, and technical and
26 research information and data submitted to or obtained by the Andy
27 Hill cancer research endowment program in applications for, or
28 delivery of, grants under chapter 43.348 RCW, to the extent that such
29 information, if revealed, would reasonably be expected to result in
30 private loss to providers of this information;

31 (30) Proprietary information filed with the department of health
32 under chapter 69.48 RCW; and

33 (31) Records filed with the department of ecology under chapter
34 70.375 or 70.--- RCW (the new chapter created in section 21 of this
35 act) that a court has determined are confidential valuable commercial
36 information under RCW 70.375.130.

37 **Sec. 18.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
38 and 2019 c 290 s 12 are each reenacted and amended to read as
39 follows:

1 POLLUTION CONTROL HEARINGS BOARD. (1) The hearings board shall
2 only have jurisdiction to hear and decide appeals from the following
3 decisions of the department, the director, local conservation
4 districts, the air pollution control boards or authorities as
5 established pursuant to chapter 70.94 RCW, local health departments,
6 the department of natural resources, the department of fish and
7 wildlife, the parks and recreation commission, and authorized public
8 entities described in chapter 79.100 RCW:

9 (a) Civil penalties imposed pursuant to RCW 18.104.155,
10 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170,
11 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
12 90.56.310, 90.56.330, and 90.64.102 and chapter 70.--- RCW (the new
13 chapter created in section 21 of this act).

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
16 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330 and chapter
17 70.--- RCW (the new chapter created in section 21 of this act).

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

20 (d) Except as provided in RCW 90.03.210(2), the issuance,
21 modification, or termination of any permit, certificate, or license
22 by the department or any air authority in the exercise of its
23 jurisdiction, including the issuance or termination of a waste
24 disposal permit, the denial of an application for a waste disposal
25 permit, the modification of the conditions or the terms of a waste
26 disposal permit, or a decision to approve or deny an application for
27 a solid waste permit exemption under RCW 70.95.300.

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

30 (f) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70.95J.080.

33 (g) Decisions of the department regarding waste-derived
34 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
35 decisions of the department regarding waste-derived soil amendments
36 under RCW 70.95.205.

37 (h) Decisions of local conservation districts related to the
38 denial of approval or denial of certification of a dairy nutrient
39 management plan; conditions contained in a plan; application of any
40 dairy nutrient management practices, standards, methods, and

1 technologies to a particular dairy farm; and failure to adhere to the
2 plan review and approval timelines in RCW 90.64.026.

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

6 (j) Decisions of the department of natural resources, the
7 department of fish and wildlife, and the department that are
8 reviewable under chapter 76.09 RCW, and the department of natural
9 resources' appeals of county, city, or town objections under RCW
10 76.09.050(7).

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

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

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

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

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

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

28 (b) Hearings conducted by the department pursuant to RCW
29 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
30 90.44.180.

31 (c) Appeals of decisions by the department under RCW 90.03.110
32 and 90.44.220.

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

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

1 **Sec. 19.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10,
2 and 2019 c 290 s 12 are each reenacted and amended to read as
3 follows:

4 POLLUTION CONTROL HEARINGS BOARD. (1) The hearings board shall
5 only have jurisdiction to hear and decide appeals from the following
6 decisions of the department, the director, local conservation
7 districts, the air pollution control boards or authorities as
8 established pursuant to chapter 70.94 RCW, local health departments,
9 the department of natural resources, the department of fish and
10 wildlife, the parks and recreation commission, and authorized public
11 entities described in chapter 79.100 RCW:

12 (a) Civil penalties imposed pursuant to RCW 18.104.155,
13 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170,
14 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
15 90.56.310, 90.56.330, and 90.64.102 and chapter 70.--- RCW (the new
16 chapter created in section 21 of this act).

17 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
18 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
19 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330 and chapter
20 70.--- RCW (the new chapter created in section 21 of this act).

21 (c) Except as provided in RCW 90.03.210(2), the issuance,
22 modification, or termination of any permit, certificate, or license
23 by the department or any air authority in the exercise of its
24 jurisdiction, including the issuance or termination of a waste
25 disposal permit, the denial of an application for a waste disposal
26 permit, the modification of the conditions or the terms of a waste
27 disposal permit, or a decision to approve or deny an application for
28 a solid waste permit exemption under RCW 70.95.300.

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

31 (e) Decisions of local health departments regarding the issuance
32 and enforcement of permits to use or dispose of biosolids under RCW
33 70.95J.080.

34 (f) Decisions of the department regarding waste-derived
35 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
36 decisions of the department regarding waste-derived soil amendments
37 under RCW 70.95.205.

38 (g) Decisions of local conservation districts related to the
39 denial of approval or denial of certification of a dairy nutrient
40 management plan; conditions contained in a plan; application of any

1 dairy nutrient management practices, standards, methods, and
2 technologies to a particular dairy farm; and failure to adhere to the
3 plan review and approval timelines in RCW 90.64.026.

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

7 (i) Decisions of the department of natural resources, the
8 department of fish and wildlife, and the department that are
9 reviewable under chapter 76.09 RCW, and the department of natural
10 resources' appeals of county, city, or town objections under RCW
11 76.09.050(7).

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

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

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

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

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

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

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
31 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110
33 and 90.44.220.

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

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

1 **Sec. 20.** RCW 43.21B.300 and 2019 c 64 s 19 are each amended to
2 read as follows:

3 PENALTY PROCEDURES. (1) Any civil penalty provided in RCW
4 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090,
5 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102
6 and chapters 90.76 and 70.--- RCW (the new chapter created in section
7 21 of this act) shall be imposed by a notice in writing, either by
8 certified mail with return receipt requested or by personal service,
9 to the person incurring the penalty from the department or the local
10 air authority, describing the violation with reasonable
11 particularity. For penalties issued by local air authorities, within
12 thirty days after the notice is received, the person incurring the
13 penalty may apply in writing to the authority for the remission or
14 mitigation of the penalty. Upon receipt of the application, the
15 authority may remit or mitigate the penalty upon whatever terms the
16 authority in its discretion deems proper. The authority may ascertain
17 the facts regarding all such applications in such reasonable manner
18 and under such rules as it may deem proper and shall remit or
19 mitigate the penalty only upon a demonstration of extraordinary
20 circumstances such as the presence of information or factors not
21 considered in setting the original penalty.

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

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

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

31 (b) Thirty days after receipt of the notice of disposition by a
32 local air authority on application for relief from penalty, if such
33 an application is made; or

34 (c) Thirty days after receipt of the notice of decision of the
35 hearings board if the penalty is appealed.

36 (4) If the amount of any penalty is not paid to the department
37 within thirty days after it becomes due and payable, the attorney
38 general, upon request of the department, shall bring an action in the
39 name of the state of Washington in the superior court of Thurston
40 county, or of any county in which the violator does business, to

1 recover the penalty. If the amount of the penalty is not paid to the
2 authority within thirty days after it becomes due and payable, the
3 authority may bring an action to recover the penalty in the superior
4 court of the county of the authority's main office or of any county
5 in which the violator does business. In these actions, the procedures
6 and rules of evidence shall be the same as in an ordinary civil
7 action.

8 (5) All penalties recovered shall be paid into the state treasury
9 and credited to the general fund except those penalties imposed
10 pursuant to RCW 18.104.155, which shall be credited to the
11 reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431,
12 the disposition of which shall be governed by that provision, RCW
13 70.105.080, which shall be credited to the hazardous waste control
14 and elimination account created by RCW 70.105.180, RCW 90.56.330,
15 which shall be credited to the coastal protection fund created by RCW
16 90.48.390, and RCW 90.76.080, which shall be credited to the
17 underground storage tank account created by RCW 90.76.100.

18 NEW SECTION. **Sec. 21.** CODIFICATION. Sections 1 through 15 of
19 this act constitute a new chapter in Title 70 RCW.

20 NEW SECTION. **Sec. 22.** EXPIRATION DATE. Section 18 of this act
21 expires June 30, 2021.

22 NEW SECTION. **Sec. 23.** EFFECTIVE DATE. Section 19 of this act
23 takes effect June 30, 2021.

24 NEW SECTION. **Sec. 24.** SEVERABILITY. If any provision of this
25 act or its application to any person or circumstance is held invalid,
26 the remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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