

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 2039 HB	<b>Title:</b> Environmental and land use appeals process
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## Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	No fiscal impact					
Loc School dist-SPI						
Local Gov. Other						
Local Gov. Total						

## Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Ecology	.0	0	0	0	.0	0	0	0	.0	0	0	0
Environmental and Land Use Hearings Office	1.1	329,407	329,407	329,407	2.3	633,682	633,682	633,682	2.3	633,682	633,682	633,682
<b>Total \$</b>	<b>1.1</b>	<b>329,407</b>	<b>329,407</b>	<b>329,407</b>	<b>2.3</b>	<b>633,682</b>	<b>633,682</b>	<b>633,682</b>	<b>2.3</b>	<b>633,682</b>	<b>633,682</b>	<b>633,682</b>

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other									
Local Gov. Total									

## Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Department of Ecology	.0	0	0	.0	0	0	.0	0	0
Environmental and Land Use Hearings Office	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other									
Local Gov. Total									

## Estimated Capital Budget Breakout

<b>Prepared by:</b> Lisa Borkowski, OFM	<b>Phone:</b> (360) 742-2239	<b>Date Published:</b> Final 1/11/2024
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# Judicial Impact Fiscal Note

<b>Bill Number:</b> 2039 HB	<b>Title:</b> Environmental and land use appeals process	<b>Agency:</b> 055-Administrative Office of the Courts
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**Part I: Estimates**

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

*The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Robert Hatfield	Phone: 360-786-7117	Date: 01/02/2024
Agency Preparation: Chris Conn	Phone: 360-704-5512	Date: 01/08/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/08/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/09/2024

188,988.00

Request # 13-1

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

This bill amends the Administrative Procedure Act (APA) to permit final environmental Board adjudications to be reviewed directly by Court of Appeals (COA).

Section 1. Amends RCW 34.05.518 (Direct review by Court of Appeals) to allow a final decision of the environmental board in an adjudicative proceeding to be directly reviewed by the court of appeals upon certification by the superior court, rather than the environmental board. Transfer of cases does not require filing of a motion for discretionary review by the Court of Appeals.

Section 2. Amends RCW 36.70C.150 (Transferring Judicial Review to Court of Appeals) to change criteria to: serves the interest of justice, not cause substantial prejudice to any party, including unrepresented parties, and that judicial review can occur based on existing record. Agreement of the parties is not required. It also removes the section expiration date of June 30, 2026.

### II. B - Cash Receipts Impact

None.

### II. C - Expenditures

This bill is assumed to have no fiscal impact as courts can absorb the workload.

## Part III: Expenditure Detail

### III. A - Expenditure By Object or Purpose (State)

NONE

### III. B - Expenditure By Object or Purpose (County)

NONE

### III. C - Expenditure By Object or Purpose (City)

NONE

### III. D - FTE Detail

NONE

### III. E - Expenditures By Program (optional)

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

### IV. B1 - Expenditures by Object Or Purpose (State)

NONE

### IV. B2 - Expenditures by Object Or Purpose (County)

NONE

### IV. B3 - Expenditures by Object Or Purpose (City)

NONE

188,988.00

Form FN (Rev 1/00)

#### **IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

None.

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 2039 HB	<b>Title:</b> Environmental and land use appeals process	<b>Agency:</b> 461-Department of Ecology
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Operating Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Robert Hatfield	Phone: 360-786-7117	Date: 01/02/2024
Agency Preparation: Emma Diamond	Phone: 564-669-3916	Date: 01/05/2024
Agency Approval: Erik Fairchild	Phone: 360-407-7005	Date: 01/05/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/09/2024

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

Currently, the Department of Ecology operates under current laws passed in 2021 (SB 5225 – in effect until July 1, 2026) that streamlined the process for seeking direct review by the Washington Court of Appeals for judicial review of administrative decisions made by “environmental boards,” including the Pollution Control Hearings Board (PCHB) and Shoreline Hearings Board (SHB).

This bill would re-enact current processes for direct review that were enacted in 2021 and includes other streamlining and clarifying provisions.

Section 1 amends RCW 34.05.518 to allow the final decision of an "environmental board" to be directly reviewed by the Court of Appeals after certification by the Superior Court. The Superior Court can certify cases for transfer if it would serve the interest of justice and not cause prejudice to any party. Final decisions by administrative agencies may be certified by the Superior Court and transferred as a direct appeal to the Court of Appeals. Parties contesting Superior Court decisions related to certification of direct review may file a motion for discretionary review with the Court of Appeals.

Section 2 amends RCW 36.70C.150 to allow the Superior Court to transfer judicial reviews of land use decisions to the Court of Appeals if it would serve the interest of justice and not cause prejudice to any party.

Section 3 amends chapter 43.21B RCW to allow a presiding officer to consolidate appeals for hearing if consolidation will expedite the disposition of the appeals, avoid duplication of testimony, and not prejudice the rights of any parties.

Section 4 amends RCW 90.58.180 to incorporate changes for clarity and style. It would also require the presiding officer of the SHB to consolidate appeals for hearing if consolidation will expedite the disposition of the appeals, avoid duplication of testimony, and not prejudice the rights of any parties.

Section 5 amends and reenacts RCW 43.21B.110 to add some civil penalties, order, and decisions by local health departments related to solid waste permits to the jurisdiction of the PCHB.

Section 6 amends and reenacts RCW 43.21B.300 to add new civil penalties that are covered under penalty processes by Ecology or local air authorities. Additionally, these new civil penalties are covered under appeals process by the PCHB. Subsection 5 clarifies requirements for allocation, disposal, and crediting of penalties.

Section 7 amends RCW 70A.230.080 to incorporate changes for clarity and style. New language is added to require penalties to be imposed pursuant to RCW 43.21B.300, which may be appealed to the PCHB.

Section 8 amends RCW 70A.300.120 to incorporate changes for clarity and style. Subsection 3 adds agency penalties as an action that may be appealed.

Section 9 amends RCW 70A.430.070 to incorporate changes for clarity and style. New language is added to require penalties to be imposed pursuant to RCW 43.21B.300, which may be appealed to the PCHB.

Section 10 amends RCW 86.16.081 to require penalties to be imposed consistently with the procedures in RCW 43.21B.300. It also incorporates changes for clarity and style.

Section 11 establishes July 1, 2026, as the effective date for Section 1 of the bill.

The processes proposed in this bill are currently in practice in the review of administrative decisions, with some small changes. Despite the changes that differentiate it from the 2021 provision, these changes would not create new work for the agency, and therefore, there would be no fiscal impact to Ecology.

## **II. B - Cash receipts Impact**

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

## **II. C - Expenditures**

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

## **Part III: Expenditure Detail**

### **III. A - Operating Budget Expenditures**

NONE

### **III. B - Expenditures by Object Or Purpose**

NONE

**III. C - Operating FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

### **III. D - Expenditures By Program (optional)**

NONE

## **Part IV: Capital Budget Impact**

### **IV. A - Capital Budget Expenditures**

NONE

### **IV. B - Expenditures by Object Or Purpose**

NONE

### **IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

## **Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*



# Individual State Agency Fiscal Note

Revised

<b>Bill Number:</b> 2039 HB	<b>Title:</b> Environmental and land use appeals process	<b>Agency:</b> 468-Environmental and Land Use Hearings Office
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Operating Expenditures from:**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.0	2.3	1.1	2.3	2.3
<b>Account</b>					
General Fund-State 001-1	0	329,407	329,407	633,682	633,682
<b>Total \$</b>	0	329,407	329,407	633,682	633,682

**Estimated Capital Budget Impact:**

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Robert Hatfield	Phone: 360-786-7117	Date: 01/02/2024
Agency Preparation: Dominga Soliz	Phone: 3606649173	Date: 01/07/2024
Agency Approval: Dominga Soliz	Phone: 3606649173	Date: 01/07/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/09/2024

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

This bill 1) streamlines the process for parties to environmental and land use appeals to seek direct review by the Court of Appeals (COA), 2) requires consolidation of appeals by environmental hearings boards when certain criteria are met, and 3) gives authority to the Pollution Control Hearings Board (PCHB) over cases related to the regulation of electronic products with screens greater than 4 inches; lead, cadmium, or phthalates in children's products and fire retardants; and uses/sales of mercury.

The Pollution Control Hearings Board and Shorelines Hearings Board have not reviewed energy facility siting appeals in the past and this bill does not provide jurisdiction to do so. Therefore, there are no fiscal impacts related to energy facility siting appeals.

#### Sections 1 and 2: Direct Review to the Court of Appeals

The Legislature revised the Administrative Appeals Act (APA) RCW 34.05 in 2021 to allow for direct review of administrative decisions to the COA. The APA revision takes place in two stages – the first, which is in effect now until July 1, 2026, applies to all administrative agency decisions. The second stage goes into effect on July 1, 2026 and includes a separate process for the environmental boards.

HB 2039 seeks to amend the second stage of RCW 34.05.518 that goes into effect on July 1, 2026. Most notably, Section 1. provides that the final decision of an administrative agency may be directly reviewed either upon: a) certification by the superior court “pursuant to this section”; or (applicable to the environmental boards) b) “upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.” It strikes most of the language related to the “process” of filing a certificate of appealability and outlines a process for seeking superior court certification of direct review.

Sec. 2. - RCW 36.70C.150 – the bill removes language allowing the parties to consent to transfer land use decisions to the court of appeals

#### NO FISCAL IMPACTS FROM SECTIONS 1 AND 2

#### Sections 3 and 4: Consolidation of Appeals

Sec. 3 - Adds a new section to chapter 43.21B (PCHB) to consolidate appeals. The amendments apply to all PCHB appeals.

It requires the presiding officer to consolidate appeals “where it appears that more than one appeal has arisen out of the same underlying project” upon making a determination that 3 criteria are met: 1) consolidation will expedite disposition of the appeals; (2) consolidation will avoid duplication of testimony; and (3) consolidation will not prejudice the rights of the parties.

Sec. 4 – Adds the same consolidation language as in Sec. 3 to review of permits by the Shorelines Hearings Board.

#### NO FISCAL IMPACTS FROM SECTIONS 3 AND 4

#### Sections 5, 6, 7, 9: New Areas of Jurisdiction for PCHB

Sec. 5(1)(a) - Adds new PCHB jurisdiction over appeals under RCWs 70A.230 (Mercury), 70A.430.070 (Children's Safe

Products), 70A.500.260 (Selling covered electronic products without participating in an approved plan prohibited).

Sec. 6(1) - Adds new PCHB jurisdiction regarding penalties consistent with amendments to Sec. 5 (1)(a) (see above).

Chapter 70A.500 regards certain covered electronic products, which are screens or products that have screens greater than 4" (with exceptions). Manufacturers selling or offering to sell such products must meet requirements regarding: Ecology-approved plan; registration; education and outreach; reporting; labeling; retailers; collector or transporter registrations; and performance standards. The program began Jan. 2007 and Ecology administers and issues penalties. Sections 5 and 6 of this bill give the PCHB review authority of those penalties.

Sec. 7 - Chapter 70A.230 regards prohibited uses/sales of mercury. Ecology administers and issues penalties if violations discovered. Adds new PCHB jurisdiction regarding mercury appeals. Consistent with amendments above.

Sec. 9 - Chapter 70A.430 regards children's safe products, prohibiting the manufacture, sale, or distribution of: children's products containing more than the specified levels of lead, cadmium, phthalates and fire retardants; and furniture containing more than specified level of fire retardant. Law in effect since Jan. 1, 2009 (fire retardants portion began 2017). Ecology has been administering and issuing penalties. This bill gives PCHB review authority of those penalties. Consistent with amendments above.

FISCAL IMPACTS TO PCHB FROM SECTIONS 5, 6, 7, 9: YES

## II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

None

## II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

FISCAL IMPACT to the Pollution Control Hearings Board: YES

Appeals under RCW 70A.230 (Mercury):

This program was implemented nearly 20 years ago. ELUHO assumes a low number of appeals, up to 2 per year. Assess these as low complexity appeals. Low complexity appeals require 150 Administrative Appeals Judge (AAJ) hours per appeal (50 prehearing hours + 100 hearing and post hearing hours). 150 hours x 2 appeals per year = 300 AAJ hours per year.

ELUHO assumes it can absorb costs associated with these appeals.

Appeals under 70A.430.070 (Children's Safe Products):

ELUHO estimates 6 average complexity appeals per year resulting from this bill beginning in FY25, ongoing.

ELUHO estimates each appeal resulting from this part of the bill will require approximately 230 hours of Administrative Appeals Judge (AAJ) work to complete (110 pre-hearing hours + 120 hearing and post-hearing hours) x 6 appeals in FY25. This estimate is based on a current analysis of AAJ work.

230 hours/appeal x 6 appeals = 1380 AAJ hours in FY25, ongoing.

Appeals under 70A.500.260 (Selling covered electronic products without participating in an approved plan prohibited): ELUHO estimates 10 average complexity appeals per year resulting from this bill beginning in FY25, ongoing.

ELUHO estimates each appeal resulting from this part of the bill will require approximately 230 hours of Administrative Appeals Judge (AAJ) work to complete (110 pre-hearing hours + 120 hearing and post-hearing hours) x 10 appeals in FY25. This estimate is based on a current analysis of AAJ work.

230 hours/appeal x 10 appeals = 2300 AAJ hours in FY25, ongoing.

TOTAL AAJ HOURS = 1380 (Children’s Products) + 2300 (4” Screens) = 3680 AAJ hours in FY25, ongoing.

Assume New AAJ FTEs: The PCHB will need approximately 1.5 AAJ FTE in FY25, ongoing. The AAJ will have knowledge of environmental law to assist with these new cases. RCW 43.21B.005(2) authorizes the ELUHO director to appoint such AAJs to assist the PCHB. The 1.5 AAJ FTE will not serve as a member of the Boards, but will preside over cases, mediate cases, conduct legal research and writing, draft Board materials, and perform other legal duties to assist the Board.

Beginning in FY25 an AAJ will make \$117,840 per year, plus related benefits estimated at \$34,945 per year, at projected benefits rates. The agency needs 1.5 FTE AAJs in FY25, so the salary would be \$117,840 x 1.5 FTE = \$176,760, per FY, ongoing. Related benefits would total \$52,417, per FY, ongoing.

Assume additional Paralegal 1 (P1) FTE: Paralegals provide support for all three Boards, including managing all Board cases and court filings, providing support for Board members, AAJs, and Board meetings, and providing administrative support for ELUHO office functions. ELUHO assumes 0.5 P1 FTE for every 1.0 AAJ FTE. The bill will require approximately 0.75 P1 FTE to manage the additional cases and support the AAJ FTEs.

A P1 makes \$69,072 (assumed Range 51, Step L) per year, with related benefits estimated at \$26,567 per year. The agency needs a 0.75 P1 FTEs so salary would be \$69,072 x 0.75 FTE = \$51,804 per FY, ongoing. Related benefits would total \$19,925 per FY, ongoing.

Goods and services for the total 2.25 FTE are estimated at \$12,656 per year, in FY25, ongoing. Goods and services include communications, payroll processing, training, and other staff costs. Estimates include some travel at the low cost per diem rates totaling \$3,279 per year, ongoing. Also included is one time equipment costs for furniture and computers totaling \$12,566 in FY 25.

Assume capital budget impact: Currently, ELUHO leases space on the top floor of the State Parks building, Parsons Plaza, with lease expiring in FY26. We assume the ELUHO office will move to a state-owned facility and offices will be needed for the additional 1.5 AAJ FTEs. The 0.75 P1 FTEs would need additional cubicle space.

**Part III: Expenditure Detail**

**III. A - Operating Budget Expenditures**

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	0	329,407	329,407	633,682	633,682
<b>Total \$</b>			0	329,407	329,407	633,682	633,682

**III. B - Expenditures by Object Or Purpose**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years		2.3	1.1	2.3	2.3
A-Salaries and Wages		228,564	228,564	457,128	457,128
B-Employee Benefits		72,342	72,342	144,684	144,684
C-Professional Service Contracts					
E-Goods and Other Services		12,656	12,656	25,312	25,312
G-Travel		3,279	3,279	6,558	6,558
J-Capital Outlays		12,566	12,566		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total \$</b>	0	329,407	329,407	633,682	633,682

**III. C - Operating FTE Detail:** *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administrative Appeals Judge			1.5	0.8	1.5	1.5
Paralegal I			0.8	0.4	0.8	0.8
<b>Total FTEs</b>			2.3	1.1	2.3	2.3

**III. D - Expenditures By Program (optional)**

NONE

**Part IV: Capital Budget Impact**

**IV. A - Capital Budget Expenditures**

NONE

**IV. B - Expenditures by Object Or Purpose**

NONE

**IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

None

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*