

Multiple Agency Fiscal Note Summary

Bill Number: 2039 S HB	Title: Env. & land use appeals
-------------------------------	---------------------------------------

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
Total \$	1.1	329,407	329,407	329,407	2.3	633,682	633,682	633,682	2.3	633,682	633,682	633,682

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
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

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

Prepared by: Lisa Borkowski, OFM	Phone: (360) 742-2239	Date Published: Final 1/30/2024
---	---------------------------------	---

Judicial Impact Fiscal Note

Bill Number: 2039 S HB	Title: Env. & land use appeals	Agency: 055-Administrative Office of the Courts
-------------------------------	---------------------------------------	--

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: 01/23/2024
Agency Preparation: Chris Conn	Phone: 360-704-5512	Date: 01/29/2024
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/29/2024
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/29/2024

192,437.00

Request # 142-1

Part II: Narrative Explanation

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

The substitute would not make any changes affecting the fiscal impact to the Administrative Office of the Courts or the courts.

II. B - Cash Receipts Impact

None

II. C - Expenditures

No or minimal fiscal impact to the Administrative Office of the Courts.

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

IV. C - Capital Budget Breakout

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

NONE

None

192,437.00

Form FN (Rev 1/00)

2

Request # 142-1

Bill # 2039 S HB

Individual State Agency Fiscal Note

Bill Number: 2039 S HB	Title: Env. & land use appeals	Agency: 461-Department of Ecology
-------------------------------	---------------------------------------	--

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: 01/23/2024
Agency Preparation: Jessica Moore	Phone: 360-529-7583	Date: 01/26/2024
Agency Approval: Erik Fairchild	Phone: 360-407-7005	Date: 01/26/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/30/2024

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.

The differences between HB 2039 and SHB 2039 are as follows:

- Section 1 would narrow the eligible types of projects to clean energy projects and allow motions to be made by all parties instead of just the project applicant.
- Section 2 from the previous version is removed.
- A new section 11 would be added to repeal RCW 70A.205.145 (Exemption from solid waste permit requirements – waste derived soil amendments) to exempt solid waste handling regulations for waste-derived soil amendments.

The changes that would narrow the focus to clean energy projects and clarify processes would result in no change to the fiscal impact for Ecology.

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 continue current processes for direct review that were enacted in 2021 for clean energy projects starting in 2026 and includes other streamlining and clarifying provisions.

Section 1 would amend RCW 34.05.518, the Administrative Procedures Act to allow the final decision of the PCHB or SHB to be directly reviewed by the Court of Appeals as defined in the Clean Energy Coordinated Permit Process Rule (RCW 43.158). The Superior Court would be permitted to certify cases for transfer if a motion is filed by any party to the appeal. 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 would amend add a new section to chapter 43.21B RCW, Environmental and Land Use Hearings Office (ELUHO), that would allow a presiding officer to consolidate appeals for hearing if all parties agree, appeals for the same project are filed within 60 days of each other, the applicant requests a stay, or consolidation will expedite the disposition of the appeals, avoid duplication of testimony, and not prejudice the rights of any parties. If appeals are consolidated between the PCHB and SHB, appeals would be heard by the SHB within 240 days, though it can be extended.

Section 3 would amend RCW 90.58.180, Shoreline Management Act, to allow 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 4 would amend and reenact RCW 43.21B.110, ELUHO, to give the PCHB jurisdiction over appeals related to civil penalties, orders, and other actions under a variety of environmental and public health-related statutes, including those by local health departments related to solid waste permits.

Section 5 would amend and reenact RCW 43.21B.300, ELUHO, to add new civil penalties that are covered under penalty processes by Ecology or local air authorities for the following laws: RCW 70A.230.080 (mercury); RCW 70A.430.070 (children’s safe products); RCW 70A.500.260 (electronic product recycling); RCW 70A.505.110 (mercury-containing lights); and RCW 86.16.081 (floodplain management). These new civil penalties would be covered under appeals process by the PCHB.

Section 6 would amend RCW 70A.230.080, Mercury Law, to require penalties for violating the law to be imposed pursuant

to RCW 43.21B.300, and would require appeals of penalties to go to the PCHB.

Section 7 would amend RCW 70A.300.120, Hazardous Waste Management, to add agency penalties as an action that may be appealed.

Section 8 would amend RCW 70A.430.070, Children’s Safe Products Act, to require penalties for violating the law imposed pursuant to RCW 43.21B.300, and requires appeals to go to the PCHB.

Section 9 would amend RCW 86.16.081, Flood Management Act, to require penalties to be imposed consistently with the procedures in RCW 43.21B.300.

Section 10 would establish July 1, 2026, as the effective date for Section 1 of the bill.

Section 11 would amend RCW 70A.205.145 (Exemption from solid waste permit requirements – waste derived soil amendments) to exempt solid waste handling regulations for waste-derived soil amendments.

The processes proposed in this bill are currently in practice in the review of administrative decisions, with some small changes. The bill would enact these processes for clean energy projects starting in 2026. 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

Bill Number: 2039 S HB	Title: Env. & land use appeals	Agency: 468-Environmental and Land Use Hearings Office
-------------------------------	---------------------------------------	---

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
Account					
General Fund-State 001-1	0	329,407	329,407	633,682	633,682
Total \$	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: 01/23/2024
Agency Preparation: Dominga Soliz	Phone: 3606649173	Date: 01/29/2024
Agency Approval: Dominga Soliz	Phone: 3606649173	Date: 01/29/2024
OFM Review: Lisa Borkowski	Phone: (360) 742-2239	Date: 01/30/2024

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.

No change to fiscal impacts from previous version.

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, 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; and, 4) removes the exemption from solid waste permit requirements for waste-derived soil amendments meeting certain standards.

Sections 2 and 3: Consolidation of Appeals

Sec. 2 - Adds a new section to chapter 43.21B (PCHB) to consolidate appeals. The amendments apply to all PCHB appeals of permits for the same underlying project.

It requires the presiding officer to consolidate appeals if one or more criteria are met: (a) the parties consent; (b) appeals for permits related to the same project are filed within 60 days of each other, or, if permits are not filed within 60 days of each other, when the environmental boards issue a stay, including a stay of the construction of the project pending appeal; or (c) upon making a determination that (i) consolidation will expedite disposition of the appeals, (ii) consolidation will avoid duplication of testimony, and (iii) consolidation will not prejudice the rights of the parties.

When appeals to the PCHB and to the Shorelines Hearings Board (SHB) are consolidated under the bill, the consolidated appeals must be heard by the SHB.

Sec. 3 – Incorporates consolidation as in Sec. 2 to the SHB.

The consolidation of PCHB and SHB appeals will increase the complexity of appeals heard by the SHB and workload will shift to the SHB. No resulting impact to PCHB members, however unpaid volunteer SHB members will experience more work.

NO FISCAL IMPACTS FROM SECTIONS 2 AND 3

Sections 4, 5, 6, 8: New Areas of Jurisdiction for PCHB

Sec. 4(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. 5(1) - Adds new PCHB jurisdiction regarding penalties consistent with amendments to 4ec. 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. 6 - 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. 8 - 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 4, 5, 6, 8: YES

Section 11: Removing Solid Waste Exemption

Sec. 11 will remove the exemption (RCW 70A.205.145) from solid waste permit requirements for waste-derived soil amendments meeting certain standards.

This will increase appeals to the PCHB of grants or denials of solid waste permits (RCW 43.21B.110(1)(d)) related to those facilities that were formerly exempt from compliance. However, it will reduce appeals to the PCHB of approvals and denials of a solid waste permit exemption (RCW 43.21B.110(1)(c)). Therefore, no net fiscal impacts are anticipated.

NO FISCAL IMPACTS FROM SECTION 11

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 additional office space needed: 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
Total \$			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-					
Total \$	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	117,840		1.5	0.8	1.5	1.5
Paralegal I	69,072		0.8	0.4	0.8	0.8
Total FTEs			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.

Additional rule making would be required by the PCHB and SHB regarding the consolidation process.