

# Multiple Agency Fiscal Note Summary

|                                 |                                       |
|---------------------------------|---------------------------------------|
| <b>Bill Number:</b> 2039 E S HB | <b>Title:</b> 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   | Fiscal note not available |       |           |       |           |       |
| 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        | Fiscal note not available |          |             |          |            |          |             |          |            |          |             |          |
| Department of Ecology                      | .0                        | 0        | 0           | 0        | .0         | 0        | 0           | 0        | .0         | 0        | 0           | 0        |
| Environmental and Land Use Hearings Office | .0                        | 0        | 0           | 0        | .0         | 0        | 0           | 0        | .0         | 0        | 0           | 0        |
| <b>Total \$</b>                            | <b>0.0</b>                | <b>0</b> | <b>0</b>    | <b>0</b> | <b>0.0</b> | <b>0</b> | <b>0</b>    | <b>0</b> | <b>0.0</b> | <b>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   | Fiscal note not available |          |       |         |          |       |         |          |       |
| 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        | Fiscal note not available |          |          |            |          |          |            |          |          |
| 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   | Fiscal note not available |          |       |         |          |       |         |          |       |
| Loc School dist-SPI |                           |          |       |         |          |       |         |          |       |
| Local Gov. Other    |                           |          |       |         |          |       |         |          |       |
| Local Gov. Total    |                           |          |       |         |          |       |         |          |       |

## Estimated Capital Budget Breakout

|   |                                 |   |
|---|---------------------------------|---|
| <b>Prepared by:</b> Lisa Borkowski, OFM | <b>Phone:</b><br>(360) 742-2239 | <b>Date Published:</b><br>Preliminary 2/22/2024 |
|---|---------------------------------|---|

# Individual State Agency Fiscal Note

|                                 |                                       |  |
|---------------------------------|---------------------------------------|--|
| <b>Bill Number:</b> 2039 E S HB | <b>Title:</b> Env. & land use appeals | <b>Agency:</b> 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: Adam Brunmeier | Phone: 360-786-7357   | Date: 02/15/2024 |
| Agency Preparation: Jessica Moore   | Phone: 360-529-7583   | Date: 02/20/2024 |
| Agency Approval: Erik Fairchild     | Phone: 360-407-7005   | Date: 02/20/2024 |
| OFM Review: Lisa Borkowski          | Phone: (360) 742-2239 | Date: 02/22/2024 |

## 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 SHB 2039 and ESHB 2039 are as follows:

- A new section 2, that is identical to section 1, which would expire July 1, 2026, is added that would take effect July 1, 2026. Sections are renumbered accordingly.
- Section 3 is updated for provisions directly related to ELUHO.
- Section 11 is changed to have section 1 expire July 1, 2026, instead of take effect July 1, 2026. This change would establish the bill's appeal pathway for clean energy projects when the bill is effective, rather than 2026.
- A new section 12 is added that would make section 2 take effect July 1, 2026.

These changes do not change 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 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. Per section 11, this section would expire July 1, 2026.

Section 2 mirrors section 1. Per section 12, this section would take effect July 1, 2026.

Section 3 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 4 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 5 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 6 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 7 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 8 would amend RCW 70A.300.120, Hazardous Waste Management, to add agency penalties as an action that may be appealed.

Section 9 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 10 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 11 would establish July 1, 2026, as the expiration date for Section 1 of the bill.

Section 12 would establish July 1, 2026, as the effective date for Section 2 of the bill.

Section 13 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. 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

|                                 |                                       |   |
|---------------------------------|---------------------------------------|---|
| <b>Bill Number:</b> 2039 E S HB | <b>Title:</b> Env. & land use appeals | <b>Agency:</b> 468-Environmental and Land Use Hearings Office |
|---------------------------------|---------------------------------------|---|

## 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: Adam Brunmeier | Phone: 360-786-7357   | Date: 02/15/2024 |
| Agency Preparation: Dominga Soliz   | Phone: 3606649173     | Date: 02/15/2024 |
| Agency Approval: Dominga Soliz      | Phone: 3606649173     | Date: 02/15/2024 |
| OFM Review: Lisa Borkowski          | Phone: (360) 742-2239 | Date: 02/22/2024 |

## 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 of clean energy projects 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 3 and 4: Consolidation of Appeals

Sec. 3 - Adds a new section to chapter 43.21B (PCHB) to consolidate appeals of clean energy project permits.

It requires the presiding officer to consolidate appeals if (a) 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 of the appeal and the stay of the appeal includes a stay of the construction of the project pending appeal; or (b) 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 of the same clean energy project are filed with the PCHB and with the Shorelines Hearings Board (SHB) are consolidated under the bill, the consolidated appeals must be heard by the PCHB.

The PCHB must issue its decision within 240 days of the date the last appeal was filed. The deadline may be extended up to 30 days and may be waived by all parties.

Sec. 4 – Incorporates consolidation as in Sec. 3 to the SHB.

No impact is anticipated as a result of these sections.

#### Sections 5, 6, 7, and 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 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. This bill gives 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.

NO FISCAL IMPACTS from Sections 5, 6, 7, and 9

Appeals under RCW 70A.230 (Mercury) and 70A.430.070 (Children's Safe Products) - These programs were implemented some time ago. Ecology reports no penalties issued under these programs to date and does not anticipate any in the future. Therefore, ELUHO anticipates no appeals in these areas.

Appeals under 70A.500.260 (Selling covered electronic products without participating in an approved plan prohibited) – Ecology reports that only four penalties have been issued under this program since 2007 and the trend of less one appeal annually is not expected to change. Therefore, ELUHO anticipates no appeals as a result of this program.

### Section 13: Removing Solid Waste Exemption

Sec. 13 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.

### 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.*

none

## 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

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.*

New rules would need to be created related to consolidating appeals.