

RCW 34.05.518 Direct review by court of appeals. (Effective until July 1, 2026.) (1)(a) The final decision of an administrative agency in an adjudicative proceeding under this chapter may be directly reviewed by the court of appeals either: (i) Upon certification by the superior court pursuant to this subsection and subsections (2) and (3) of this section; or (ii) if the final decision is from an environmental board as identified in RCW 43.21B.005 and the final decision relates to a clean energy project as defined in RCW 43.158.010, pursuant to subsection (4) of this section.

(b) The superior court may certify cases for transfer to the court of appeals upon finding that:

(i) All parties have consented to the transfer to the court of appeals and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

(ii) One or more of the parties have not consented to the transfer, but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:

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

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

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

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

(4)(a) For the appeal of a permit related to a clean energy project, as defined in RCW 43.158.010, that is the subject of a final adjudicative decision of an environmental board, as identified in RCW 43.21B.005, upon a motion filed by any party to the appeal, the superior court shall certify a case for transfer to the court of appeals upon a finding that:

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

(ii) The superior court has completed any necessary supplementation of the record pursuant to RCW 34.05.562.

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

(c) A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to the superior court.

(5) Transfer of cases pursuant to this section does not require the filing of a motion for discretionary review with the court of appeals. [2024 c 347 s 1; 2021 c 305 s 2; 2010 c 211 s 15; 2003 c 393

s 16; 1995 c 382 s 5; 1988 c 288 s 503; 1980 c 76 s 1. Formerly RCW 34.04.133.]

Expiration date—2024 c 347 s 1: "Section 1 of this act expires July 1, 2026." [2024 c 347 s 13.]

Expiration date—2021 c 305 ss 2 and 3: "Sections 2 and 3 of this act expire July 1, 2026." [2021 c 305 s 8.]

Effective date—2021 c 305: See note following RCW 36.70C.150.

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

RCW 34.05.518 Direct review by court of appeals. (Effective July 1, 2026.) (1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to subsection (2) of this section ; (b) if the final decision is from an environmental board as identified in RCW 43.21B.005 and the final decision relates to a clean energy project as defined in RCW 43.158.010, pursuant to subsection (3) of this section; or (c) if the final decision is from an environmental board identified in RCW 43.21B.005 and the final decision does not relate to a clean energy project as defined in RCW 43.158.010, pursuant to subsection (4) of this section. Transfer of a case pursuant to subsections (3) or (4) of this section does not require the filing of a motion for discretionary review with the court of appeals.

(2)(a) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

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

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

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

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

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

(3)(a) For the appeal of a permit related to a clean energy project, as defined in RCW 43.158.010, that is the subject of a final adjudicative decision of an environmental board, as identified in RCW 43.21B.005, upon a motion filed by any party to the appeal, the superior court shall certify a case for transfer to the court of appeals upon a finding that:

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

(ii) The superior court has completed any necessary supplementation of the record pursuant to RCW 34.05.562.

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

(c) A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to [the] superior court.

(4)(a) The final adjudicative decision of an environmental board, as identified in RCW 43.21B.005, that does not relate to a clean energy project as defined in RCW 43.158.010, may be directly reviewed by the court of appeals upon certification by the superior court pursuant to this subsection. The superior court shall certify cases for transfer to the court of appeals upon finding that:

(i) All parties have consented to the transfer to the court of appeals and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

(ii) One or more of the parties have not consented to the transfer, but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:

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

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

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

(c) A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to the superior court. [2024 c 347 s 2; 2021 c 305 s 5; 2010 c 211 s 15; 2003 c 393 s 16; 1995 c 382 s 5; 1988 c 288 s 503; 1980 c 76 s 1. Formerly RCW 34.04.133.]

Effective date—2024 c 347 s 2: "Section 2 of this act takes effect July 1, 2026." [2024 c 347 s 14.]

Effective date—2021 c 305 ss 5 and 6: "Sections 5 and 6 of this act take effect July 1, 2026." [2021 c 305 s 9.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.