

SENATE BILL 6242

State of Washington

53rd Legislature

1994 Regular Session

By Senators Sheldon, Sellar, Moore, Anderson, Gaspard, Snyder, Quigley, Franklin, McAuliffe, Oke, Pelz, M. Rasmussen, Winsley, Drew and Ludwig; by request of Governor Lowry

Read first time 01/17/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to implementation of the recommendations of the
2 governor's task force on regulatory reform; amending RCW 34.05.370,
3 34.05.350, 34.05.330, 34.05.355, 19.85.020, 19.85.060, 19.85.010,
4 34.05.640, 34.05.660, 36.70A.270, 36.70A.290, 36.70A.300, 36.70A.030,
5 58.17.330, 35A.63.170, 43.21C.075, 35.63.130, 36.70.970, 70.105D.020,
6 70.105D.030, 70.105D.050, and 70.105D.060; reenacting and amending RCW
7 19.85.030 and 19.85.040; adding a new section to chapter 44.04 RCW;
8 adding new sections to chapter 34.05 RCW; adding a new section to
9 chapter 43.17 RCW; adding new sections to chapter 36.70A RCW; adding a
10 new section to chapter 70.105D RCW; adding a new section to chapter
11 70.94 RCW; adding a new section to chapter 70.95 RCW; adding a new
12 section to chapter 70.105 RCW; adding a new section to chapter 75.20
13 RCW; adding a new section to chapter 90.48 RCW; adding a new section to
14 chapter 90.58 RCW; adding a new section to chapter 43.21C RCW; adding
15 a new section to chapter 34.12 RCW; creating a new section; and
16 providing an effective date.

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

18 NEW SECTION. **Sec. 1.** A new section is added to chapter 44.04 RCW
19 to read as follows:

1 (1) The legislature recognizes that clear and comprehensive
2 statements of legislative intent and grants of rule-making authority
3 are necessary for efficient and effective regulatory programs and
4 accountability in governmental decision making. It is, therefore, the
5 legislature's purpose to establish policies and processes to ensure
6 that existing and future laws provide rational, cost-effective
7 regulation and clear legal authority for rule making.

8 (2) Appropriate standing committees of the senate and the house of
9 representatives shall conduct a review of all existing statutes that
10 contain legislative intent statements and grant rule-making authority
11 to state agencies. The review shall evaluate these statutes based on
12 the following criteria: (a) Continued need; (b) clear and
13 comprehensive legislative intent statements and grants of rule-making
14 authority; (c) specific, measurable outcomes; (d) allowance for
15 voluntary compliance; and (e) consistency with regulatory statutes of
16 other agencies.

17 In those instances where the review identifies statutes that do not
18 meet these criteria, corrective legislation shall be prepared that
19 modifies or repeals the statutes.

20 (3) The senate and the house of representatives shall ensure that
21 bills prepared for introduction that grant rule-making authority to
22 state agencies shall, to the extent practicable, contain clear,
23 comprehensive legislative intent statements and specific direction
24 regarding the authority granted to state agencies to adopt rules.

25 (4) Appropriate standing committees of the senate and house of
26 representatives shall prepare a regulatory note as part of the
27 committee bill report on each bill granting rule-making authority to
28 state agencies that is reported out by the committees. The senate and
29 the house of representatives shall jointly prepare a format for
30 regulatory notes to be used by all standing committees. The regulatory
31 note shall identify if rule making is required or authorized by the
32 bill, describe the nature of the rule making, identify agencies to
33 which rule making is delegated, and identify any other agencies that
34 may have related rule-making authority. In addition, the regulatory
35 note shall contain a checklist confirming that the committee addressed
36 the following criteria, where appropriate:

37 (a) Whether the bill responds to a specific, identifiable
38 regulatory need and whether government is the most appropriate
39 institution to address the need;

1 (b) Whether the bill contains a clear statement of legislative
2 intent and identification of the state agency or local government
3 charged with carrying out the intent;

4 (c) Whether the bill contains measurable outcomes and an evaluation
5 process that will be used to determine if the outcomes are achieved;

6 (d) Whether there has been adequate involvement of affected
7 interests in the development of the bill;

8 (e) Whether the costs of compliance and administration have been
9 estimated, whether the bill achieves its outcomes with the least cost
10 and burden to those affected by the regulation, and whether the cost of
11 not enacting the law has been considered;

12 (f) Whether the bill adequately allows for voluntary compliance;

13 (g) Whether the bill is written clearly and concisely, without
14 ambiguities;

15 (h) Whether the bill adequately resolves potential conflicts with
16 other laws.

17 **Sec. 2.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
18 read as follows:

19 (1) Each agency shall maintain an official rule-making file for
20 each rule that it (a) proposes by publication in the state register, or
21 (b) adopts. The file and materials incorporated by reference shall be
22 available for public inspection.

23 (2) The agency rule-making file shall contain all of the following:

24 (a) Copies of all publications in the state register with respect
25 to the rule or the proceeding upon which the rule is based;

26 (b) Copies of any portions of the agency's public rule-making
27 docket containing entries relating to the rule or the proceeding on
28 which the rule is based;

29 (c) All written petitions, requests, submissions, and comments
30 received by the agency and all other written material regarded by the
31 agency as important to adoption of the rule or the proceeding on which
32 the rule is based;

33 (d) Any official transcript of oral presentations made in the
34 proceeding on which the rule is based or, if not transcribed, any tape
35 recording or stenographic record of them, and any memorandum prepared
36 by a presiding official summarizing the contents of those
37 presentations;

38 (e) The concise explanatory statement required by RCW 34.05.355;

1 (f) All petitions for exceptions to, amendment of, or repeal or
2 suspension of, the rule; (~~and~~)

3 (g) Any other material placed in the file by the agency; and

4 (h) The written description of the agency's consideration of rule-
5 making criteria required by section 4 of this act.

6 (3) Internal agency documents are exempt from inclusion in the
7 rule-making file under subsection (2) of this section to the extent
8 they constitute preliminary drafts, notes, recommendations, and intra-
9 agency memoranda in which opinions are expressed or policies formulated
10 or recommended, except that a specific document is not exempt from
11 inclusion when it is publicly cited by an agency in connection with its
12 decision.

13 (4) Upon judicial review, the file required by this section
14 constitutes the official agency rule-making file with respect to that
15 rule. Unless otherwise required by another provision of law, the
16 official agency rule-making file need not be the exclusive basis for
17 agency action on that rule.

18 **Sec. 3.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read
19 as follows:

20 (1) If an agency for good cause finds:

21 (a) That immediate adoption, amendment, or repeal of a rule is
22 necessary for the preservation of the public health, safety, or general
23 welfare, and that observing the time requirements of notice and
24 opportunity to comment upon adoption of a permanent rule would be
25 contrary to the public interest; or

26 (b) That state or federal law or federal rule or a federal deadline
27 for state receipt of federal funds requires immediate adoption of a
28 rule,

29 the agency may dispense with those requirements and adopt, amend, or
30 repeal the rule on an emergency basis. The agency's finding and a
31 concise statement of the reasons for its finding shall be incorporated
32 in the order for adoption of the emergency rule or amendment filed with
33 the office of the code reviser under RCW 34.05.380 and with the rules
34 review committee.

35 (2) An emergency rule adopted under this section takes effect upon
36 filing with the code reviser, unless a later date is specified in the
37 order of adoption, and may not remain in effect for longer than one
38 hundred twenty days after filing. Identical or substantially similar

1 emergency rules may not be adopted in sequence unless conditions have
2 changed or the agency has filed notice of its intent to adopt the rule
3 as a permanent rule, and is actively undertaking the appropriate
4 procedures to adopt the rule as a permanent rule. This section does
5 not relieve any agency from compliance with any law requiring that its
6 permanent rules be approved by designated persons or bodies before they
7 become effective.

8 (3) The governor, in cooperation with the attorney general, shall
9 ensure compliance with emergency rule-making requirements of this
10 section.

11 NEW SECTION. Sec. 4. A new section is added to chapter 34.05 RCW
12 to read as follows:

13 (1) Before adopting a rule, the agency shall consider the following
14 criteria:

15 (a) The statutory authority for adoption of the rule;

16 (b) The need for the rule;

17 (c) The economic and environmental consequences of adopting the
18 rule or failing to adopt the rule, including the agency's compliance
19 with chapters 19.85, 43.21C, and 43.21H RCW;

20 (d) The consistency of the rule in relation to other statutes and
21 state agency rules;

22 (e) Alternative rule language or alternatives to adopting the rule,
23 including the no action alternative, that may achieve the same purpose
24 at less cost;

25 (f) The reasons for any differences between rules adopted by the
26 federal government on the same subject, and the costs and benefits that
27 may result from such differences;

28 (g) The reasons for any differences in the applicability of the
29 rule to public and private entities; and

30 (h) Whether the rule can be evaluated to determine if it achieves
31 the purpose for which it is intended.

32 (2) The agency shall prepare a written description of its
33 consideration of the criteria specified in subsection (1) of this
34 section. The description shall be part of the official rule-making
35 file for the rule. Failure to comply with the procedural requirements
36 of this section is subject to judicial review. However, the adequacy
37 or accuracy of the agency's consideration of the criteria, or written
38 description thereof, is not subject to judicial review.

1 **Sec. 5.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
2 read as follows:

3 (1) Any person may petition an agency requesting the adoption,
4 amendment, or repeal of any rule. Each agency may prescribe by rule
5 the form for such petitions and the procedure for their submission,
6 consideration, and disposition. Within sixty days after submission of
7 a petition, the agency shall (1) either deny the petition in writing,
8 stating its reasons for the denial, or (2) initiate rule-making
9 proceedings in accordance with this chapter.

10 (2) If an agency denies a petition to repeal or amend a rule under
11 this section, the petitioner may, within thirty days of the denial,
12 appeal to the governor. Within sixty days of receipt of the petition,
13 the governor shall either reject the appeal in writing, stating reasons
14 for the rejection, or order the agency to initiate rule-making
15 proceedings in accordance with this chapter.

16 **Sec. 6.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to
17 read as follows:

18 (1) At the time it files an adopted rule with the code reviser or
19 within thirty days thereafter, an agency shall place into the rule-
20 making file maintained under RCW 34.05.370 a concise explanatory
21 statement about the rule, identifying (a) the agency's reasons for
22 adopting the rule, ~~((and))~~ (b) a description of any difference between
23 the text of the proposed rule as published in the register and the text
24 of the rule as adopted, other than editing changes, stating the reasons
25 for change, and (c) a written summary of the agency's responses to
26 comments or categories of comments received on the proposed rule.

27 (2) Upon the request of any interested person within thirty days
28 after adoption of a rule, the agency shall ~~((issue a concise statement~~
29 ~~of the principal reasons for overruling the considerations urged~~
30 ~~against its adoption))~~ provide a copy of the concise explanatory
31 statement to any person who has requested a copy or who has commented
32 on the proposed rule.

33 **Sec. 7.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
34 each reenacted and amended to read as follows:

35 In the adoption of any rule pursuant to RCW 34.05.320 that will
36 have an economic impact on more than twenty percent of all industries,
37 or more than ten percent of any one industry, the adopting agency:

1 (1) Shall reduce the economic impact of the rule on small business
2 by doing one or more of the following when it is legal and feasible in
3 meeting the stated objective of the statutes which are the basis of the
4 proposed rule:

5 (a) Establish differing compliance or reporting requirements or
6 timetables for small businesses;

7 (b) Clarify, consolidate, or simplify the compliance and reporting
8 requirements under the rule for small businesses;

9 (c) Establish performance rather than design standards;

10 (d) Exempt small businesses from any or all requirements of the
11 rule; and

12 (e) Other mitigation techniques.

13 (2) Before filing notice of a proposed rule, shall prepare a small
14 business economic impact statement in accordance with RCW 19.85.040 and
15 file such statement with the code reviser along with the notice
16 required under RCW 34.05.320;

17 (3) May request assistance from the business assistance center in
18 the preparation of the small business economic impact statement.

19 **Sec. 8.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to read
20 as follows:

21 Unless the context clearly indicates otherwise, the definitions in
22 this section apply through this chapter.

23 (1) "Small business" means any business entity, including a sole
24 proprietorship, corporation, partnership, or other legal entity, that
25 is owned and operated independently from all other businesses, that has
26 the purpose of making a profit, and that has fifty or fewer employees.

27 (2) "Small business economic impact statement" means a statement
28 meeting the requirements of RCW 19.85.040 prepared by a state agency
29 pursuant to RCW 19.85.030.

30 (3) "Industry" means all of the businesses in this state in any one
31 ~~((three-digit))~~ four-digit standard industrial classification as
32 published by the United States department of commerce. However, if the
33 four-digit standard industrial classification would result in the
34 release of data that would violate state confidentiality provisions,
35 "industry" means all businesses in a three-digit standard industrial
36 classification.

1 **Sec. 9.** RCW 19.85.060 and 1989 c 374 s 5 are each amended to read
2 as follows:

3 An agency is not required to prepare a small business economic
4 impact statement if the agency files a statement that((+)

5 (1)) the rule is being adopted solely for the purpose of
6 conformity or compliance, or both, with federal law or regulations((+)
7 or

8 ~~(2) The rule will have a minor or negligible economic impact. The~~
9 ~~business assistance center shall develop guidelines for determining~~
10 ~~whether a proposed rule will have minor or negligible impacts. The~~
11 ~~business assistance center may review a proposed rule that indicates~~
12 ~~that there is only a minor or negligible economic impact to determine~~
13 ~~if the agency's finding is within the guidelines developed by the~~
14 ~~business assistance center. The business assistance center is~~
15 ~~authorized to advise the joint administrative rules review committee on~~
16 ~~disputes involving agency determinations under this section)).~~

17 **Sec. 10.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
18 each reenacted and amended to read as follows:

19 (1) A small business economic impact statement must include:

20 (a) A brief description of the reporting, recordkeeping, and other
21 compliance requirements of the rule, and the kinds of professional
22 services that a small business is likely to need in order to comply
23 with such requirements((. ~~A small business economic impact statement~~
24 shall analyze,));

25 (b) An analysis based on existing data and any new data gathered by
26 the agency, of the costs of compliance for businesses required to
27 comply with the provisions of a rule adopted pursuant to RCW 34.05.320,
28 including costs of equipment, supplies, labor, and increased
29 administrative costs, and compare to the greatest extent possible the
30 cost of compliance for small business with the cost of compliance for
31 the ten percent of firms which are the largest businesses required to
32 comply with the proposed new or amendatory rules;

33 (c) A summary of the mitigation options considered by the agency
34 and an explanation of each option not included in the rule.

35 (2) The small business economic impact statement shall use one or
36 more of the following as a basis for comparing costs:

37 ((+1)) (a) Cost per employee;

38 ((+2)) (b) Cost per hour of labor; and

1 (~~(3)~~) (c) Cost per one hundred dollars of sales(~~(+~~
2 ~~(4) Any combination of (1), (2), or (3))~~)).

3 (3) Agencies are encouraged to use committees pursuant to RCW
4 34.05.310 in analyzing the costs of compliance and identifying steps to
5 be taken to minimize the cost impact on small business.

6 **Sec. 11.** RCW 19.85.010 and 1982 c 6 s 1 are each amended to read
7 as follows:

8 The legislature finds that small businesses in the state of
9 Washington have in the past been subjected to rules adopted by
10 agencies, departments, and instrumentalities of the state government
11 which have placed a proportionately higher burden on the small business
12 community in Washington state. The legislature also finds that such
13 proportionately higher burdens placed on small businesses have reduced
14 competition, reduced employment, reduced new employment opportunities,
15 reduced innovation, and threatened the very existence of some small
16 businesses. Therefore, it is the intent of the legislature that rules
17 affecting the business community shall not place proportionately higher
18 burdens on small businesses. The legislature therefore enacts this
19 Regulatory Fairness Act to minimize such proportionately higher impacts
20 of rules on small businesses in the future and reduce the economic
21 impact of state rules on small business.

22 **Sec. 12.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
23 as follows:

24 (1) Within seven days of an agency hearing held after notification
25 of the agency by the rules review committee pursuant to RCW 34.05.620
26 or 34.05.630, the affected agency shall notify the committee of its
27 action on a proposed or existing rule to which the committee objected
28 or on a committee finding of the agency's failure to adopt rules. If
29 the rules review committee determines, by a majority vote of its
30 members, that the agency has failed to provide for the required
31 hearings or notice of its action to the committee, the committee may
32 file notice of its objections, together with a concise statement of the
33 reasons therefor, with the code reviser within thirty days of such
34 determination.

35 (2) If the rules review committee finds, by a majority vote of its
36 members: (a) That the proposed or existing rule in question has not
37 been modified, amended, withdrawn, or repealed by the agency so as to

1 conform with the intent of the legislature, or (b) that the agency is
2 using a policy statement, guideline, or issuance in place of a rule, or
3 that the policy statement, guideline, or issuance is outside of the
4 legislative intent, the rules review committee may, within thirty days
5 from notification by the agency of its action, file with the code
6 reviser notice of its objections together with a concise statement of
7 the reasons therefor. Such notice and statement shall also be provided
8 to the agency by the rules review committee.

9 (3) If the rules review committee makes an adverse finding under
10 subsection (2) of this section, the committee may, by a ~~((two-thirds))~~
11 majority vote of its members, recommend suspension of an existing rule.
12 Within seven days of such vote the committee shall transmit to the
13 governor, the code reviser, and the agency written notice of its
14 objection and recommended suspension and the concise reasons therefor.
15 Within thirty days of receipt of the notice, the governor shall
16 transmit to the committee, the code reviser, and the agency written
17 approval or disapproval of the recommended suspension. If the
18 suspension is approved by the governor, it is effective from the date
19 of that approval and continues until ninety days after the expiration
20 of the next regular legislative session.

21 (4) If the governor disapproves the recommendation by the rules
22 review committee to suspend the rule, the transmittal of such decision,
23 along with the findings of the rules review committee, shall be treated
24 by the agency as a petition by the rules review committee to repeal the
25 rule pursuant to RCW 34.05.330. Within sixty days the agency shall
26 either commence appropriate rule repeal or rule amendment proceedings
27 or state in writing why the rule was adopted within the scope of the
28 agency's statutory authority.

29 (5) The code reviser shall publish transmittals from the rules
30 review committee or the governor issued pursuant to subsection (1),
31 (2), or (3) of this section in the Washington state register and shall
32 publish in the next supplement and compilation of the Washington
33 Administrative Code a reference to the committee's objection or
34 recommended suspension and the governor's action on it and to the issue
35 of the Washington state register in which the full text thereof
36 appears.

37 ~~((+5))~~ (6) The reference shall be removed from a rule published in
38 the Washington Administrative Code if a subsequent adjudicatory
39 proceeding determines that the rule is within the intent of the

1 legislature or was adopted in accordance with all applicable laws,
2 whichever was the objection of the rules review committee.

3 NEW SECTION. **Sec. 13.** A new section is added to chapter 34.05 RCW
4 to read as follows:

5 A recommendation to the governor by the rules review committee to
6 suspend an existing rule shall establish a rebuttable presumption in
7 any proceeding challenging the validity of the rule that such rule was
8 adopted outside the scope of the authority of the agency adopting the
9 rule.

10 **Sec. 14.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
11 read as follows:

12 Except as provided in section 13 of this act, it is the express
13 policy of the legislature that establishment of procedures for review
14 of administrative rules by the legislature and the notice of objection
15 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to
16 establish a presumption as to the legality or constitutionality of a
17 rule in any subsequent judicial proceedings interpreting such rules.

18 NEW SECTION. **Sec. 15.** The department of community, trade, and
19 economic development shall develop a model standardized format for
20 reporting information that is commonly required from the public by
21 state and local government agencies for permits, licenses, approvals,
22 and services. In the development of the format, the department shall
23 work in conjunction with representatives from state and local
24 government agencies and representatives of the business community.

25 The department shall submit the standardized format together with
26 recommendations for implementation to the legislature by December 31,
27 1994.

28 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.17 RCW
29 to read as follows:

30 (1) The governor shall, where appropriate, require state agencies
31 with regulatory enforcement authority to designate one or more
32 technical assistance representatives to coordinate voluntary compliance
33 and provide technical assistance concerning compliance with the
34 agency's laws and rules.

1 (2) An employee designated by an agency as a technical assistance
2 representative or as a member of a technical assistance unit may not,
3 during the period of the designation, have authority to issue orders or
4 assess penalties on behalf of the agency. Such an employee who
5 provides on-site consultation at an industrial or commercial facility
6 and who observes violations of the law shall inform the owner or
7 operator of the facility of the violations and provide technical
8 assistance concerning compliance. On-site consultation visits by such
9 an employee may not be regarded as inspections or investigations and no
10 notices or citations may be issued or civil penalties assessed during
11 such a visit. However, violations of the law must be reported to the
12 appropriate officers within the agency. If the owner or operator of
13 the facility does not correct the observed violations within a
14 reasonable time, the agency may reinspect the facility and take
15 appropriate enforcement action. If a technical assistance
16 representative or member of a technical assistance unit observes a
17 violation of the law that places a person in danger of death or
18 substantial bodily harm, is causing or is likely to cause significant
19 environmental harm, or has caused or is likely to cause physical damage
20 to the property of others in an amount exceeding one thousand dollars,
21 the agency may initiate enforcement action immediately upon observing
22 the violation.

23 (3) The state, the agency, and officers or employees of the state
24 shall not be liable for damages to a person to the extent that
25 liability is asserted to arise from the performance by technical
26 assistance representatives of their duties, or if liability is asserted
27 to arise from the failure of the agency to supply technical assistance.

28 **Sec. 17.** RCW 36.70A.270 and 1991 sp.s. c 32 s 7 are each amended
29 to read as follows:

30 Each growth planning hearings board shall be governed by the
31 following rules on conduct and procedure:

32 (1) Any board member may be removed for inefficiency, malfeasance,
33 and misfeasance in office, under specific written charges filed by the
34 governor. The governor shall transmit such written charges to the
35 member accused and the chief justice of the supreme court. The chief
36 justice shall thereupon designate a tribunal composed of three judges
37 of the superior court to hear and adjudicate the charges. Removal of

1 any member of a board by the tribunal shall disqualify such member for
2 reappointment.

3 (2) Each board member shall receive reimbursement for travel
4 expenses incurred in the discharge of his or her duties in accordance
5 with RCW 43.03.050 and 43.03.060. If it is determined that the review
6 boards shall operate on a full-time basis, each member shall receive an
7 annual salary to be determined by the governor pursuant to RCW
8 43.03.040. If it is determined that a review board shall operate on a
9 part-time basis, each member shall receive compensation pursuant to RCW
10 43.03.250, provided such amount shall not exceed the amount that would
11 be set if they were a full-time board member. The principal office of
12 each board shall be located by the governor within the jurisdictional
13 boundaries of each board. The boards shall operate on either a part-
14 time or full-time basis, as determined by the governor.

15 (3) Each board member shall not: (a) Be a candidate for or hold
16 any other public office or trust; (b) engage in any occupation or
17 business interfering with or inconsistent with his or her duty as a
18 board member; and (c) for a period of one year after the termination of
19 his or her board membership, act in a representative capacity before
20 the board on any matter.

21 (4) A majority of each board shall constitute a quorum for making
22 orders or decisions, adopting rules necessary for the conduct of its
23 powers and duties, or transacting other official business, and may act
24 even though one position of the board is vacant. One or more members
25 may hold hearings and take testimony to be reported for action by the
26 board when authorized by rule or order of the board. The board shall
27 perform all the powers and duties specified in this chapter or as
28 otherwise provided by law.

29 (5) The board may ~~((also))~~ appoint ~~((as its authorized agents))~~ one
30 or more hearing examiners ~~((to assist the board in the performance of~~
31 its hearing function pursuant to the authority contained in)) pursuant
32 to the administrative procedure act, chapter 34.05 RCW, to make
33 conclusions of law and findings of fact and, if requested by the board,
34 issue written decisions in cases before the board. Such hearing
35 examiners must have demonstrated knowledge of land use planning and
36 law. In appointing hearing examiners, the board is exempt from the
37 requirements of chapter 34.12 RCW. The boards shall specify in their
38 joint rules of practice and procedure, as required by subsection (7) of
39 this section, the procedure and criteria to be employed in selecting

1 hearing examiners. Hearing examiners selected by a board shall meet
2 the requirements of subsection (3) of this section. If authorized by
3 the boards' joint rules of practice and procedure, and if the board so
4 provides in its appointment of a hearing examiner, the findings,
5 conclusions, and decision of the hearing examiner shall be deemed the
6 final order of the board and shall be effective upon receipt by the
7 board and filing at the board's principal office. Otherwise, the
8 conclusions, findings, and decision of the hearing examiner shall not
9 become final until they have been ((formally)) approved by the board
10 pursuant to a process developed by the boards in their joint rules of
11 practice and procedure and consistent with RCW 34.05.464. This
12 authorization to use hearing examiners does not waive the requirement
13 of RCW 36.70A.300 that final orders be issued within one hundred eighty
14 days of board receipt of a petition. ((Such hearing examiners must
15 have demonstrated knowledge of land use planning and law. The board
16 shall perform all the powers and duties specified in this chapter or as
17 otherwise provided by law.

18 ~~((5))~~ (6) Except as provided in subsection (5) of this section,
19 each board shall make findings of fact and prepare a written decision
20 in each case decided by it, and such findings and decision shall be
21 effective upon being signed by two or more members of the board and
22 upon being filed at the board's principal office, and shall be open for
23 public inspection at all reasonable times.

24 ~~((6))~~ (7) All proceedings before the board ((or)), any of its
25 members, or a hearing examiner appointed by the board shall be
26 conducted in accordance with such administrative rules of practice and
27 procedure as the boards jointly prescribe. All three boards shall
28 jointly meet to develop and adopt joint rules of practice and
29 procedure, including rules regarding expeditious and summary
30 disposition of appeals. The boards shall publish such rules and
31 arrange for the reasonable distribution of the rules. The
32 administrative procedure act, chapter 34.05 RCW, shall govern the
33 administrative rules of practice and procedure adopted by the boards.

34 ~~((7))~~ (8) The members of the boards shall meet jointly on at
35 least an annual basis with the objective of sharing information that
36 promotes the goals and purposes of this chapter.

37 **Sec. 18.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended
38 to read as follows:

1 (1) All requests for review to a growth planning hearings board
2 shall be initiated by filing a petition that includes a detailed
3 statement of issues presented for resolution by the board.

4 (2) All petitions relating to whether or not an adopted
5 comprehensive plan, development regulation, or permanent amendment
6 thereto, is in compliance with the goals and requirements of this
7 chapter or chapter 43.21C RCW must be filed within sixty days after
8 publication by the legislative bodies of the county or city. The date
9 of publication for a city shall be the date the city publishes the
10 ordinance, or summary of the ordinance, adopting the comprehensive plan
11 or development regulations, or amendment thereto, as is required to be
12 published. Promptly after adoption, a county shall publish a notice
13 that it has adopted the comprehensive plan or development regulations,
14 or amendment thereto. The date of publication for a county shall be
15 the date the county publishes the notice that it has adopted the
16 comprehensive plan or development regulations, or amendment thereto.

17 (3) Unless the board dismisses the petition as frivolous or finds
18 that the person filing the petition lacks standing, the board shall,
19 within ten days of receipt of the petition, set a time for hearing the
20 matter.

21 (4) The board shall base its decision on the record developed by
22 the city, county, or the state and supplemented with additional
23 evidence if the board determines that such additional evidence would be
24 necessary or of substantial assistance to the board in reaching its
25 decision.

26 (5) The board, shall consolidate, when appropriate, all petitions
27 involving the review of the same comprehensive plan or the same
28 development regulation or regulations.

29 **Sec. 19.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended
30 to read as follows:

31 (1) The board shall issue a final order within one hundred eighty
32 days of receipt of the petition for review, or, when multiple petitions
33 are filed, within one hundred eighty days of receipt of the last
34 petition that is consolidated. Such a final order shall be based
35 exclusively on whether or not a state agency, county, or city is in
36 compliance with the requirements of this chapter, or chapter 43.21C RCW
37 as it relates to plans, regulations, and amendments thereto, adopted
38 under RCW 36.70A.040. In the final order, the board shall either: (a)

1 Find that the state agency, county, or city is in compliance with the
2 requirements of this chapter; or (b) find that the state agency,
3 county, or city is not in compliance with the requirements of this
4 chapter, in which case the board shall remand the matter to the
5 affected state agency, county, or city and specify a reasonable time
6 not in excess of one hundred eighty days within which the state agency,
7 county, or city shall comply with the requirements of this chapter.

8 (2) Any party aggrieved by a final decision of the hearings board
9 may appeal the decision (~~(to Thurston county superior court)~~) within
10 thirty days of the final order of the board. If the appeal is from
11 board review of city or county action, appeal shall be to the division
12 of the court of appeals to which appeal would be proper under RCW
13 2.06.020 had the action been initiated in the superior court for the
14 county wherein the city or county whose plan, regulation, or amendment
15 is being appealed is located. Where appeal is from board review of
16 state agency action, appeal shall be to any division of the courts of
17 appeal to which appeal would be proper under RCW 2.06.020 had the
18 action been initiated under RCW 34.05.514.

19 NEW SECTION. Sec. 20. A new section is added to chapter 36.70A
20 RCW to read as follows:

21 Development regulations adopted pursuant to RCW 36.70A.120 shall
22 provide a timely and predictable process to determine whether a
23 completed development permit application meets the requirements of
24 those development regulations. Such development regulations shall
25 specify the contents of a completed development permit application for
26 purposes of satisfying the requirements of this section.

27 NEW SECTION. Sec. 21. A new section is added to chapter 36.70A
28 RCW to read as follows:

29 Each city and county planning under this chapter shall, within ten
30 days of receiving a development permit application as defined in RCW
31 36.70A.030(7), mail a written notice to the applicant, stating either:
32 That the application is complete; or that the application is incomplete
33 and what is necessary to make the application complete.

34 **Sec. 22.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each
35 amended to read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Adopt a comprehensive land use plan" means to enact a new
4 comprehensive land use plan or to update an existing comprehensive land
5 use plan.

6 (2) "Agricultural land" means land primarily devoted to the
7 commercial production of horticultural, viticultural, floricultural,
8 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
9 straw, turf, seed, Christmas trees not subject to the excise tax
10 imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has
11 long-term commercial significance for agricultural production.

12 (3) "City" means any city or town, including a code city.

13 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
14 means a generalized coordinated land use policy statement of the
15 governing body of a county or city that is adopted pursuant to this
16 chapter.

17 (5) "Critical areas" include the following areas and ecosystems:
18 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
19 used for potable water; (c) fish and wildlife habitat conservation
20 areas; (d) frequently flooded areas; and (e) geologically hazardous
21 areas.

22 (6) "Department" means the department of community, trade, and
23 economic development.

24 (7) "Development permit application" means any application that
25 must be submitted to a city or county for administrative approval
26 before the development or change in use of property within that city or
27 county, including, but not limited to, application for a conditional
28 use permit, application for subdivision approval, application for
29 binding site plan approval, application for a zoning permit,
30 application for planned unit development approval, and application for
31 a building permit, but does not include applications for quasi-judicial
32 or legislative acts such as rezones and alterations of the
33 comprehensive plan.

34 (8) "Development regulations" means any controls placed on
35 development or land use activities by a county or city, including, but
36 not limited to, zoning ordinances, official controls, planned unit
37 development ordinances, subdivision ordinances, and binding site plan
38 ordinances.

1 (~~(8)~~) (9) "Forest land" means land primarily useful for growing
2 trees, including Christmas trees subject to the excise tax imposed
3 under RCW 84.33.100 through 84.33.140, for commercial purposes, and
4 that has long-term commercial significance for growing trees
5 commercially.

6 (~~(9)~~) (10) "Geologically hazardous areas" means areas that
7 because of their susceptibility to erosion, sliding, earthquake, or
8 other geological events, are not suited to the siting of commercial,
9 residential, or industrial development consistent with public health or
10 safety concerns.

11 (~~(10)~~) (11) "Long-term commercial significance" includes the
12 growing capacity, productivity, and soil composition of the land for
13 long-term commercial production, in consideration with the land's
14 proximity to population areas, and the possibility of more intense uses
15 of the land.

16 (~~(11)~~) (12) "Minerals" include gravel, sand, and valuable
17 metallic substances.

18 (~~(12)~~) (13) "Public facilities" include streets, roads, highways,
19 sidewalks, street and road lighting systems, traffic signals, domestic
20 water systems, storm and sanitary sewer systems, parks and recreational
21 facilities, and schools.

22 (~~(13)~~) (14) "Public services" include fire protection and
23 suppression, law enforcement, public health, education, recreation,
24 environmental protection, and other governmental services.

25 (~~(14)~~) (15) "Urban growth" refers to growth that makes intensive
26 use of land for the location of buildings, structures, and impermeable
27 surfaces to such a degree as to be incompatible with the primary use of
28 such land for the production of food, other agricultural products, or
29 fiber, or the extraction of mineral resources. When allowed to spread
30 over wide areas, urban growth typically requires urban governmental
31 services. "Characterized by urban growth" refers to land having urban
32 growth located on it, or to land located in relationship to an area
33 with urban growth on it as to be appropriate for urban growth.

34 (~~(15)~~) (16) "Urban growth areas" means those areas designated by
35 a county pursuant to RCW 36.70A.110.

36 (~~(16)~~) (17) "Urban governmental services" include those
37 governmental services historically and typically delivered by cities,
38 and include storm and sanitary sewer systems, domestic water systems,
39 street cleaning services, fire and police protection services, public

1 transit services, and other public utilities associated with urban
2 areas and normally not associated with nonurban areas.

3 (~~(17)~~) (18) "Wetland" or "wetlands" means areas that are
4 inundated or saturated by surface water or ground water at a frequency
5 and duration sufficient to support, and that under normal circumstances
6 do support, a prevalence of vegetation typically adapted for life in
7 saturated soil conditions. Wetlands generally include swamps, marshes,
8 bogs, and similar areas. Wetlands do not include those artificial
9 wetlands intentionally created from nonwetland sites, including, but
10 not limited to, irrigation and drainage ditches, grass-lined swales,
11 canals, detention facilities, wastewater treatment facilities, farm
12 ponds, and landscape amenities. However, wetlands may include those
13 artificial wetlands intentionally created from nonwetland areas created
14 to mitigate conversion of wetlands, if permitted by the county or city.

15 **Sec. 23.** RCW 58.17.330 and 1977 ex.s. c 213 s 4 are each amended
16 to read as follows:

17 As an alternative to those provisions of this chapter requiring a
18 planning commission to hear and issue recommendations for plat
19 approval, the county or city legislative body may adopt a hearing
20 examiner system and shall specify by ordinance the legal effect of the
21 decisions made by the examiner. Except for appeals of procedural
22 determinations made under the state environmental policy act, which
23 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
24 such decisions shall include one of the following:

25 (1) The decision may be given the effect of a recommendation to the
26 legislative body;

27 (2) The decision may be given the effect of an administrative
28 decision appealable within a specified time limit to the legislative
29 body.

30 The legislative authority shall prescribe procedures to be followed by
31 a hearing examiner.

32 Each final decision of a hearing examiner shall be in writing and
33 shall include findings and conclusions, based on the record, to support
34 the decision. Each final decision of a hearing examiner, unless a
35 longer period is mutually agreed to by the applicant and the hearing
36 examiner, shall be rendered within ten working days following
37 conclusion of all testimony and hearings.

1 **Sec. 24.** RCW 35A.63.170 and 1977 ex.s. c 213 s 2 are each amended
2 to read as follows:

3 As an alternative to those provisions of this chapter relating to
4 powers or duties of the planning commission to hear and report on any
5 proposal to amend a zoning ordinance, the legislative body of a city
6 may adopt a hearing examiner system under which a hearing examiner or
7 hearing examiners may hear and decide applications for amending the
8 zoning ordinance when the amendment which is applied for is not of
9 general applicability. In addition, the legislative body may vest in
10 a hearing examiner the power to hear and decide applications for
11 conditional uses, variances or any other class of applications for or
12 pertaining to land uses which the legislative body believes should be
13 reviewed and decided by a hearing examiner. The legislative body shall
14 prescribe procedures to be followed by a hearing examiner. If the
15 legislative authority vests in a hearing examiner the authority to hear
16 and decide variances, then the provisions of RCW 35A.63.110 shall not
17 apply to the city.

18 Each city legislative body electing to use a hearing examiner
19 pursuant to this section shall by ordinance specify the legal effect of
20 the decisions made by the examiner. Except for appeals of procedural
21 determinations made under the state environmental policy act, which
22 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
23 such decisions may vary for the different classes of applications
24 decided by the examiner but shall include one of the following:

25 (1) The decision may be given the effect of a recommendation to the
26 legislative body;

27 (2) The decision may be given the effect of an administrative
28 decision appealable within a specified time limit to the legislative
29 body.

30 Each final decision of a hearing examiner shall be in writing and
31 shall include findings and conclusions, based on the record, to support
32 the decision. Such findings and conclusions shall also set forth the
33 manner in which the decision would carry out and conform to the city's
34 comprehensive plan and the city's development regulations. Each final
35 decision of a hearing examiner, unless a longer period is mutually
36 agreed to in writing by the applicant and the hearing examiner, shall
37 be rendered within ten working days following conclusion of all
38 testimony and hearings.

1 **Sec. 25.** RCW 43.21C.075 and 1983 c 117 s 4 are each amended to
2 read as follows:

3 (1) Because a major purpose of this chapter is to combine
4 environmental considerations with public decisions, any appeal brought
5 under this chapter shall be linked to a specific governmental action.
6 The state environmental policy act provides a basis for challenging
7 whether governmental action is in compliance with the substantive and
8 procedural provisions of this chapter. The state environmental policy
9 act is not intended to create a cause of action unrelated to a specific
10 governmental action.

11 (2) Unless otherwise provided by this section:

12 (a) Appeals under this chapter shall be of the governmental action
13 together with its accompanying environmental determinations.

14 (b) Appeals of environmental determinations made (or lacking) under
15 this chapter shall be commenced within the time required to appeal the
16 governmental action which is subject to environmental review.

17 (3) If an agency has a procedure for appeals of agency
18 environmental determinations made under this chapter, such procedure:

19 (a) Shall not allow more than one agency appeal proceeding on a
20 procedural determination (the adequacy of a determination of
21 significance/nonsignificance or of a final environmental impact
22 statement)((~~, consistent with any state statutory requirements for~~
23 ~~appeals to local legislative bodies~~)). If a public or municipal
24 corporation, political subdivision, or county of the state uses a
25 hearing examiner, any appeal of the hearing examiner's decision shall
26 be made to superior court. The appeal proceeding on a determination of
27 significance/nonsignificance may occur before the agency's final
28 decision on a proposed action. Such an appeal shall also be allowed
29 for a determination of significance/nonsignificance which may be issued
30 by the agency after supplemental review;

31 (b) Shall consolidate appeal of procedural issues and of
32 substantive determinations made under this chapter (such as a decision
33 to require particular mitigation measures or to deny a proposal) by
34 providing for simultaneous appeal of an agency decision on a proposal
35 and any environmental determinations made under this chapter, with the
36 exception of the threshold determination appeal as provided in (a) of
37 this subsection or an appeal to the local legislative authority under
38 RCW 43.21C.060 or other applicable state statutes;

1 (c) Shall provide for the preparation of a record for use in any
2 subsequent appeal proceedings, and shall provide for any subsequent
3 appeal proceedings to be conducted on the record, consistent with other
4 applicable law. An adequate record consists of findings and
5 conclusions, testimony under oath, and taped or written transcript. An
6 electronically recorded transcript will suffice for purposes of review
7 under this paragraph; and

8 (d) Shall provide that procedural determinations made by the
9 responsible official shall be entitled to substantial weight.

10 (4) If a person aggrieved by an agency action has the right to
11 judicial appeal and if an agency has an appeal procedure, such person
12 shall, prior to seeking any judicial review, use such procedure if any
13 such procedure is available, unless expressly provided otherwise by
14 state statute.

15 (5) RCW 43.21C.080 establishes an optional "notice of action"
16 procedure which, if used, imposes a time period for appealing decisions
17 under this chapter. Some statutes and ordinances contain time periods
18 for challenging governmental actions which are subject to review under
19 this chapter, such as various local land use approvals (the "underlying
20 governmental action"). This section does not modify any such time
21 periods. This section governs when a judicial appeal must be brought
22 under this chapter where a "notice of action" is used, and/or where
23 there is another time period which is required by statute or ordinance
24 for challenging the underlying governmental action. In this
25 subsection, the term "appeal" refers to a judicial appeal only.

26 (a) If there is a time period for appealing the underlying
27 governmental action, appeals under this chapter shall be commenced
28 within thirty days. The agency shall give official notice stating the
29 date and place for commencing an appeal. If there is an agency
30 proceeding under subsection (3) of this section, the appellant shall,
31 prior to commencing a judicial appeal, submit to the responsible
32 official a notice of intent to commence a judicial appeal. This notice
33 of intent shall be given within the time period for commencing a
34 judicial appeal on the underlying governmental action.

35 (b) A notice of action under RCW 43.21C.080 may be used. If a
36 notice of action is used, judicial appeals shall be commenced within
37 the time period specified by RCW 43.21C.080, unless there is a time
38 period for appealing the underlying governmental action in which case
39 (a) of this subsection shall apply.

1 (c) Notwithstanding RCW 43.21C.080(1), if there is a time period
2 for appealing the underlying governmental action, a notice of action
3 may be published within such time period.

4 (6)(a) Judicial review of an appeal decision made by an agency
5 under RCW 43.21C.075(5) shall be on the record, consistent with other
6 applicable law.

7 (b) A taped or written transcript may be used. If a taped
8 transcript is to be reviewed, a record shall identify the location on
9 the taped transcript of testimony and evidence to be reviewed. Parties
10 are encouraged to designate only those portions of the testimony
11 necessary to present the issues raised on review, but if a party
12 alleges that a finding of fact is not supported by evidence, the party
13 should include in the record all evidence relevant to the disputed
14 finding. Any other party may designate additional portions of the
15 taped transcript relating to issues raised on review. A party may
16 provide a written transcript of portions of the testimony at the
17 party's own expense or apply to that court for an order requiring the
18 party seeking review to pay for additional portions of the written
19 transcript.

20 (c) Judicial review under this chapter shall without exception be
21 of the governmental action together with its accompanying environmental
22 determinations.

23 (7) Jurisdiction over the review of determinations under this
24 chapter in an appeal before an agency or superior court shall upon
25 consent of the parties be transferred in whole or part to the
26 shorelines hearings board. The shorelines hearings board shall hear
27 the matter and sign the final order expeditiously. The superior court
28 shall certify the final order of the shorelines hearings board and said
29 certified final order may only be appealed to an appellate court.

30 (8) For purposes of this section and RCW 43.21C.080, the words
31 "action", "decision", and "determination" mean substantive agency
32 action including any accompanying procedural determinations under this
33 chapter (except where the word "action" means "appeal" in RCW
34 43.21C.080(2) and (3)). The word "action" in this section and RCW
35 43.21C.080 does not mean a procedural determination by itself made
36 under this chapter. The word "determination" includes any
37 environmental document required by this chapter and state or local
38 implementing rules. The word "agency" refers to any state or local

1 unit of government. The word "appeal" refers to administrative,
2 legislative, or judicial appeals.

3 (9) The court in its discretion may award reasonable attorney's
4 fees of up to one thousand dollars in the aggregate to the prevailing
5 party, including a governmental agency, on issues arising out of this
6 chapter if the court makes specific findings that the legal position of
7 a party is frivolous and without reasonable basis.

8 **Sec. 26.** RCW 35.63.130 and 1977 ex.s. c 213 s 1 are each amended
9 to read as follows:

10 As an alternative to those provisions of this chapter relating to
11 powers or duties of the planning commission to hear and report on any
12 proposal to amend a zoning ordinance, the legislative body of a city or
13 county may adopt a hearing examiner system under which a hearing
14 examiner or hearing examiners may hear and decide applications for
15 amending the zoning ordinance when the amendment which is applied for
16 is not of general applicability. In addition, the legislative body may
17 vest in a hearing examiner the power to hear and decide applications
18 for conditional uses, variances, or any other class of applications for
19 or pertaining to land uses which the legislative body believes should
20 be reviewed and decided by a hearing examiner. The legislative body
21 shall prescribe procedures to be followed by the hearing examiner.

22 Each city or county legislative body electing to use a hearing
23 examiner pursuant to this section shall by ordinance specify the legal
24 effect of the decisions made by the examiner. Except for appeals of
25 procedural determinations made under the state environmental policy
26 act, which shall be in accordance with RCW 43.21C.075(3)(a), the legal
27 effect of such decisions may vary for the different classes of
28 applications decided by the examiner but shall include one of the
29 following:

30 (1) The decision may be given the effect of a recommendation to the
31 legislative body;

32 (2) The decision may be given the effect of an administrative
33 decision appealable within a specified time limit to the legislative
34 body.

35 Each final decision of a hearing examiner shall be in writing and
36 shall include findings and conclusions, based on the record, to support
37 the decision. Such findings and conclusions shall also set forth the
38 manner in which the decision would carry out and conform to the city's

1 or county's comprehensive plan and the city's or county's development
2 regulations. Each final decision of a hearing examiner, unless a
3 longer period is mutually agreed to in writing by the applicant and the
4 hearing examiner, shall be rendered within ten working days following
5 conclusion of all testimony and hearings.

6 **Sec. 27.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended
7 to read as follows:

8 As an alternative to those provisions of this chapter relating to
9 powers or duties of the planning commission to hear and issue
10 recommendations on applications for plat approval and applications for
11 amendments to the zoning ordinance, the county legislative authority
12 may adopt a hearing examiner system under which a hearing examiner or
13 hearing examiners may hear and issue decisions on proposals for plat
14 approval and for amendments to the zoning ordinance when the amendment
15 which is applied for is not of general applicability. In addition, the
16 legislative authority may vest in a hearing examiner the power to hear
17 and decide conditional use applications, variance applications,
18 applications for shoreline permits or any other class of applications
19 for or pertaining to land uses. The legislative authority shall
20 prescribe procedures to be followed by a hearing examiner.

21 Any county which vests in a hearing examiner the authority to hear
22 and decide conditional uses and variances shall not be required to have
23 a zoning adjuster or board of adjustment.

24 Each county legislative authority electing to use a hearing
25 examiner pursuant to this section shall by ordinance specify the legal
26 effect of the decisions made by the examiner. Except for appeals of
27 procedural determinations made under the state environmental policy
28 act, which shall be in accordance with RCW 43.21C.075(3)(a), such legal
29 effect may vary for the different classes of applications decided by
30 the examiner but shall include one of the following:

31 (1) The decision may be given the effect of a recommendation to the
32 legislative authority;

33 (2) The decision may be given the effect of an administrative
34 decision appealable within a specified time limit to the legislative
35 authority.

36 Each final decision of a hearing examiner shall be in writing and
37 shall include findings and conclusions, based on the record, to support
38 the decision. Such findings and conclusions shall also set forth the

1 manner in which the decision would carry out and conform to the
2 county's comprehensive plan and the county's development regulations.
3 Each final decision of a hearing examiner, unless a longer period is
4 mutually agreed to in writing by the applicant and the hearing
5 examiner, shall be rendered within ten working days following
6 conclusion of all testimony and hearings.

7 **Sec. 28.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read
8 as follows:

9 (1) "Agreed order" means an order issued by the department under
10 this chapter with which the potentially liable person receiving the
11 order agrees to comply. An agreed order may be used to require any
12 remedial actions but it is not a settlement under RCW 70.105D.040(4)
13 and shall not contain a covenant not to sue, or provide protection from
14 claims for contribution, or provide eligibility for public funding of
15 remedial actions under RCW 70.105D.070(2)(d)(xi).

16 (2) "Department" means the department of ecology.

17 (~~(+2)~~) (3) "Director" means the director of ecology or the
18 director's designee.

19 (~~(+3)~~) (4) "Facility" means (a) any building, structure,
20 installation, equipment, pipe or pipeline (including any pipe into a
21 sewer or publicly owned treatment works), well, pit, pond, lagoon,
22 impoundment, ditch, landfill, storage container, motor vehicle, rolling
23 stock, vessel, or aircraft, or (b) any site or area where a hazardous
24 substance, other than a consumer product in consumer use, has been
25 deposited, stored, disposed of, or placed, or otherwise come to be
26 located.

27 (~~(+4)~~) (5) "Federal cleanup law" means the federal comprehensive
28 environmental response, compensation, and liability act of 1980, 42
29 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

30 (~~(+5)~~) (6) "Hazardous substance" means:

31 (a) Any dangerous or extremely hazardous waste as defined in RCW
32 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
33 designated by rule pursuant to chapter 70.105 RCW;

34 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
35 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

36 (c) Any substance that, on March 1, 1989, is a hazardous substance
37 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
38 9601(14);

1 (d) Petroleum or petroleum products; and

2 (e) Any substance or category of substances, including solid waste
3 decomposition products, determined by the director by rule to present
4 a threat to human health or the environment if released into the
5 environment.

6 The term hazardous substance does not include any of the following
7 when contained in an underground storage tank from which there is not
8 a release: Crude oil or any fraction thereof or petroleum, if the tank
9 is in compliance with all applicable federal, state, and local law.

10 ~~((+6))~~ (7) "Owner or operator" means:

11 (a) Any person with any ownership interest in the facility or who
12 exercises any control over the facility; or

13 (b) In the case of an abandoned facility, any person who had owned,
14 or operated, or exercised control over the facility any time before its
15 abandonment;

16 The term does not include:

17 (i) An agency of the state or unit of local government which
18 acquired ownership or control involuntarily through bankruptcy, tax
19 delinquency, abandonment, or circumstances in which the government
20 involuntarily acquires title. This exclusion does not apply to an
21 agency of the state or unit of local government which has caused or
22 contributed to the release or threatened release of a hazardous
23 substance from the facility; or

24 (ii) A person who, without participating in the management of a
25 facility, holds indicia of ownership primarily to protect the person's
26 security interest in the facility.

27 ~~((+7))~~ (8) "Person" means an individual, firm, corporation,
28 association, partnership, consortium, joint venture, commercial entity,
29 state government agency, unit of local government, federal government
30 agency, or Indian tribe.

31 ~~((+8))~~ (9) "Potentially liable person" means any person whom the
32 department finds, based on credible evidence, to be liable under RCW
33 70.105D.040. The department shall give notice to any such person and
34 allow an opportunity for comment before making the finding, unless an
35 emergency requires otherwise.

36 ~~((+9))~~ (10) "Public notice" means, at a minimum, adequate notice
37 mailed to all persons who have made timely request of the department
38 and to persons residing in the potentially affected vicinity of the
39 proposed action; mailed to appropriate news media; published in the

1 newspaper of largest circulation in the city or county of the proposed
2 action; and opportunity for interested persons to comment.

3 ~~((10))~~ (11) "Release" means any intentional or unintentional
4 entry of any hazardous substance into the environment, including but
5 not limited to the abandonment or disposal of containers of hazardous
6 substances.

7 ~~((11))~~ (12) "Remedy" or "remedial action" means any action or
8 expenditure consistent with the purposes of this chapter to identify,
9 eliminate, or minimize any threat or potential threat posed by
10 hazardous substances to human health or the environment including any
11 investigative and monitoring activities with respect to any release or
12 threatened release of a hazardous substance and any health assessments
13 or health effects studies conducted in order to determine the risk or
14 potential risk to human health.

15 **Sec. 29.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
16 as follows:

17 (1) The department may exercise the following powers in addition to
18 any other powers granted by law:

19 (a) Investigate, provide for investigating, or require potentially
20 liable persons to investigate any releases or threatened releases of
21 hazardous substances, including but not limited to inspecting,
22 sampling, or testing to determine the nature or extent of any release
23 or threatened release. If there is a reasonable basis to believe that
24 a release or threatened release of a hazardous substance may exist, the
25 department's authorized employees, agents, or contractors may enter
26 upon any property and conduct investigations. The department shall
27 give reasonable notice before entering property unless an emergency
28 prevents such notice. The department may by subpoena require the
29 attendance or testimony of witnesses and the production of documents or
30 other information that the department deems necessary;

31 (b) Conduct, provide for conducting, or require potentially liable
32 persons to conduct remedial actions (including investigations under (a)
33 of this subsection) to remedy releases or threatened releases of
34 hazardous substances. In carrying out such powers, the department's
35 authorized employees, agents, or contractors may enter upon property.
36 The department shall give reasonable notice before entering property
37 unless an emergency prevents such notice. In conducting, providing for,
38 or requiring remedial action, the department shall give preference to

1 permanent solutions to the maximum extent practicable and shall provide
2 for or require adequate monitoring to ensure the effectiveness of the
3 remedial action;

4 (c) Indemnify contractors retained by the department for carrying
5 out investigations and remedial actions, but not for any contractor's
6 reckless or wilful misconduct;

7 (d) Carry out all state programs authorized under the federal
8 cleanup law and the federal resource, conservation, and recovery act,
9 42 U.S.C. Sec. 6901 et seq., as amended;

10 (e) Classify substances as hazardous substances for purposes of RCW
11 70.105D.020(5) and classify substances and products as hazardous
12 substances for purposes of RCW 82.21.020(1); and

13 (f) Take any other actions necessary to carry out the provisions of
14 this chapter, including the power to adopt rules under chapter 34.05
15 RCW.

16 (2) The department shall immediately implement all provisions of
17 this chapter to the maximum extent practicable, including investigative
18 and remedial actions where appropriate. The department, within nine
19 months after March 1, 1989, shall adopt, and thereafter enforce, rules
20 under chapter 34.05 RCW to:

21 (a) Provide for public participation, including at least (i) the
22 establishment of regional citizen's advisory committees, (ii) public
23 notice of the development of investigative plans or remedial plans for
24 releases or threatened releases, and (iii) concurrent public notice of
25 all compliance orders, agreed orders, enforcement orders, or notices of
26 violation;

27 (b) Establish a hazard ranking system for hazardous waste sites;

28 (c) Establish reasonable deadlines not to exceed ninety days for
29 initiating an investigation of a hazardous waste site after the
30 department receives information that the site may pose a threat to
31 human health or the environment and other reasonable deadlines for
32 remedying releases or threatened releases at the site; and

33 (d) Publish and periodically update minimum cleanup standards for
34 remedial actions at least as stringent as the cleanup standards under
35 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
36 least as stringent as all applicable state and federal laws, including
37 health-based standards under state and federal law.

38 (3) Before November 1st of each even-numbered year, the department
39 shall develop, with public notice and hearing, and submit to the ways

1 and means and appropriate standing environmental committees of the
2 senate and house of representatives a ranked list of projects and
3 expenditures recommended for appropriation from both the state and
4 local toxics control accounts. The department shall also provide the
5 legislature and the public each year with an accounting of the
6 department's activities supported by appropriations from the state
7 toxics control account, including a list of known hazardous waste sites
8 and their hazard rankings, actions taken and planned at each site, how
9 the department is meeting its top two management priorities under RCW
10 70.105.150, and all funds expended under this chapter.

11 (4) The department shall establish a scientific advisory board to
12 render advice to the department with respect to the hazard ranking
13 system, cleanup standards, remedial actions, deadlines for remedial
14 actions, monitoring, the classification of substances as hazardous
15 substances for purposes of RCW 70.105D.020(5) and the classification of
16 substances or products as hazardous substances for purposes of RCW
17 82.21.020(1). The board shall consist of five independent members to
18 serve staggered three-year terms. No members may be employees of the
19 department. Members shall be reimbursed for travel expenses as
20 provided in RCW 43.03.050 and 43.03.060.

21 (5) The department shall establish a program to identify potential
22 hazardous waste sites and to encourage persons to provide information
23 about hazardous waste sites.

24 **Sec. 30.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
25 as follows:

26 (1) With respect to any release, or threatened release, for which
27 the department does not conduct or contract for conducting remedial
28 action and for which the department believes remedial action is in the
29 public interest, the director shall issue orders or agreed orders
30 requiring potentially liable persons to provide the remedial action.
31 Any liable person who refuses, without sufficient cause, to comply with
32 an order or agreed order of the director is liable in an action brought
33 by the attorney general for:

34 (a) Up to three times the amount of any costs incurred by the state
35 as a result of the party's refusal to comply; and

36 (b) A civil penalty of up to twenty-five thousand dollars for each
37 day the party refuses to comply.

1 The treble damages and civil penalty under this subsection apply to all
2 recovery actions filed on or after March 1, 1989.

3 (2) Any person who incurs costs complying with an order issued
4 under subsection (1) of this section may petition the department for
5 reimbursement of those costs. If the department refuses to grant
6 reimbursement, the person may within thirty days thereafter file suit
7 and recover costs by proving that he or she was not a liable person
8 under RCW 70.105D.040 and that the costs incurred were reasonable.

9 (3) The attorney general shall seek, by filing an action if
10 necessary, to recover the amounts spent by the department for
11 investigative and remedial actions and orders, and agreed orders,
12 including amounts spent prior to March 1, 1989.

13 (4) The attorney general may bring an action to secure such relief
14 as is necessary to protect human health and the environment under this
15 chapter.

16 (5)(a) Any person may commence a civil action to compel the
17 department to perform any nondiscretionary duty under this chapter. At
18 least thirty days before commencing the action, the person must give
19 notice of intent to sue, unless a substantial endangerment exists. The
20 court may award attorneys' fees and other costs to the prevailing party
21 in the action.

22 (b) Civil actions under this section and RCW 70.105D.060 may be
23 brought in the superior court of Thurston county or of the county in
24 which the release or threatened release exists.

25 **Sec. 31.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
26 as follows:

27 The department's investigative and remedial decisions under RCW
28 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
29 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
30 exclusively in superior court and only at the following times: (1) In
31 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
32 department to enforce an order or an agreed order, or seek a civil
33 penalty under this chapter; (3) in a suit for reimbursement under RCW
34 70.105D.050(2); (4) in a suit by the department to compel investigative
35 or remedial action; and (5) in a citizen's suit under RCW
36 70.105D.050(5). The court shall uphold the department's actions unless
37 they were arbitrary and capricious.

1 NEW SECTION. **Sec. 32.** A new section is added to chapter 70.105D
2 RCW to read as follows:

3 A person conducting a remedial action at a facility under a consent
4 decree, order, or agreed order, and the department when it conducts a
5 remedial action, are exempt from the procedural requirements of
6 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
7 procedural requirements of any laws requiring or authorizing local
8 government permits or approvals for the remedial action. The
9 department shall ensure compliance with the substantive provisions of
10 chapters 70.94, 70.105, 75.20, 90.48, and 90.58 RCW, and the
11 substantive provisions of any laws requiring or authorizing local
12 government permits of approvals. The department shall establish
13 procedures for ensuring that such remedial actions comply with the
14 substantive requirements adopted pursuant to such laws, and shall
15 consult with the state agencies and local governments charged with
16 implementing these laws. The procedures shall provide an opportunity
17 for comment by the public and by the state agencies and local
18 governments that would otherwise implement the laws referenced in this
19 section. Nothing in this section is intended to prohibit implementing
20 agencies from charging a fee to the person conducting the remedial
21 action to defray the costs of services rendered relating to the
22 substantive requirements for the remedial action.

23 NEW SECTION. **Sec. 33.** A new section is added to chapter 70.94 RCW
24 to read as follows:

25 The procedural requirements of this chapter shall not apply to any
26 person conducting a remedial action at a facility pursuant to a consent
27 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
28 or to the department of ecology when it conducts a remedial action
29 under chapter 70.105D RCW. The department of ecology shall ensure
30 compliance with the substantive requirements of this chapter through
31 the consent decree, order, or agreed order issued pursuant to chapter
32 70.105D RCW, or during the department-conducted remedial action,
33 through the procedures developed by the department pursuant to section
34 32 of this act.

35 NEW SECTION. **Sec. 34.** A new section is added to chapter 70.95 RCW
36 to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. The department of ecology shall ensure
6 compliance with the substantive requirements of this chapter through
7 the consent decree, order, or agreed order issued pursuant to chapter
8 70.105D RCW, or during the department-conducted remedial action,
9 through the procedures developed by the department pursuant to section
10 32 of this act.

11 NEW SECTION. **Sec. 35.** A new section is added to chapter 70.105
12 RCW to read as follows:

13 The procedural requirements of this chapter shall not apply to any
14 person conducting a remedial action at a facility pursuant to a consent
15 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
16 or to the department of ecology when it conducts a remedial action
17 under chapter 70.105D RCW. The department of ecology shall ensure
18 compliance with the substantive requirements of this chapter through
19 the consent decree, order, or agreed order issued pursuant to chapter
20 70.105D RCW, or during the department-conducted remedial action,
21 through the procedures developed by the department pursuant to section
22 32 of this act.

23 NEW SECTION. **Sec. 36.** A new section is added to chapter 75.20 RCW
24 to read as follows:

25 The procedural requirements of this chapter shall not apply to any
26 person conducting a remedial action at a facility pursuant to a consent
27 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
28 or to the department of ecology when it conducts a remedial action
29 under chapter 70.105D RCW. The department of ecology shall ensure
30 compliance with the substantive requirements of this chapter through
31 the consent decree, order, or agreed order issued pursuant to chapter
32 70.105D RCW, or during the department-conducted remedial action,
33 through the procedures developed by the department pursuant to section
34 32 of this act.

35 NEW SECTION. **Sec. 37.** A new section is added to chapter 90.48 RCW
36 to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. The department of ecology shall ensure
6 compliance with the substantive requirements of this chapter through
7 the consent decree, order, or agreed order issued pursuant to chapter
8 70.105D RCW, or during the department-conducted remedial action,
9 through the procedures developed by the department pursuant to section
10 32 of this act.

11 NEW SECTION. **Sec. 38.** A new section is added to chapter 90.58 RCW
12 to read as follows:

13 The procedural requirements of this chapter shall not apply to any
14 person conducting a remedial action at a facility pursuant to a consent
15 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
16 or to the department of ecology when it conducts a remedial action
17 under chapter 70.105D RCW. The department of ecology shall ensure
18 compliance with the substantive requirements of this chapter through
19 the consent decree, order, or agreed order issued pursuant to chapter
20 70.105D RCW, or during the department-conducted remedial action,
21 through the procedures developed by the department pursuant to section
22 32 of this act.

23 NEW SECTION. **Sec. 39.** A new section is added to chapter 43.21C
24 RCW to read as follows:

25 In conducting a remedial action at a facility pursuant to a consent
26 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
27 or if conducted by the department of ecology, the department of ecology
28 to the maximum extent practicable shall integrate the procedural
29 requirements of this chapter with the procedures under chapter 70.105D
30 RCW. Such integration shall include the public participation
31 procedures of chapter 70.105D RCW and the public notice and review
32 requirements of this chapter.

33 NEW SECTION. **Sec. 40.** A new section is added to chapter 34.12 RCW
34 to read as follows:

35 The appointment of hearing examiners under RCW 36.70A.270 is not
36 subject to this chapter.

1 NEW SECTION. **Sec. 41.** Sections 8 and 22 of this act shall take
2 effect July 1, 1994.

3 NEW SECTION. **Sec. 42.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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