
ENGROSSED SUBSTITUTE SENATE BILL 6339

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Sheldon, Amondson, Moore, Morton, Snyder, Gaspard, Skratek, Loveland, Quigley, Fraser, Drew, Hargrove, McAuliffe, Franklin, Haugen, Williams, Spanel, M. Rasmussen, Pelz, A. Smith, Wojahn, Winsley and Ludwig)

Read first time 02/04/94.

1 AN ACT Relating to facilitating growth management planning and
2 decisions, integration with related environmental laws, and improving
3 procedures for cleanup of hazardous waste sites; amending RCW
4 36.70A.270, 36.70A.290, 36.70A.300, 36.70A.030, 58.17.330, 35A.63.170,
5 35.63.130, 36.70.970, 70.105D.020, 70.105D.030, 70.105D.050,
6 70.105D.060, 34.12.020, and 34.05.514; adding new sections to chapter
7 36.70A RCW; adding a new section to chapter 70.105D RCW; adding a new
8 section to chapter 70.94 RCW; adding a new section to chapter 70.95
9 RCW; adding a new section to chapter 70.105 RCW; adding a new section
10 to chapter 75.20 RCW; adding a new section to chapter 90.48 RCW; adding
11 a new section to chapter 90.58 RCW; adding a new section to chapter
12 43.21C RCW; creating a new section; and providing an effective date.

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

14 **Sec. 1.** RCW 36.70A.270 and 1991 sp.s. c 32 s 7 are each amended to
15 read as follows:

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

18 (1) Any board member may be removed for inefficiency, malfeasance,
19 and misfeasance in office, under specific written charges filed by the

1 governor. The governor shall transmit such written charges to the
2 member accused and the chief justice of the supreme court. The chief
3 justice shall thereupon designate a tribunal composed of three judges
4 of the superior court to hear and adjudicate the charges. Removal of
5 any member of a board by the tribunal shall disqualify such member for
6 reappointment.

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

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

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

33 (5) The board may ~~((also))~~ appoint ~~((as its authorized agents))~~ one
34 or more hearing examiners to assist the board in ~~((the performance of))~~
35 its hearing function ~~((pursuant to the authority contained in the~~
36 ~~administrative procedure act, chapter 34.05 RCW))~~, to make conclusions
37 of law and findings of fact and, if requested by the board, to make
38 recommendations to the board for decisions in cases before the board.
39 Such hearing examiners must have demonstrated knowledge of land use

1 planning and law. The boards shall specify in their joint rules of
2 practice and procedure, as required by subsection (7) of this section,
3 the procedure and criteria to be employed for designating hearing
4 examiners as a presiding officer. Hearing examiners selected by a
5 board shall meet the requirements of subsection (3) of this section.
6 The findings and conclusions of the hearing examiner shall not become
7 final until they have been formally approved by the board. ((Such
8 hearing examiners must have demonstrated knowledge of land use planning
9 and law. The board shall perform all the powers and duties specified
10 in this chapter or as otherwise provided by law.

11 ~~((5))~~ This authorization to use hearing examiners does not waive
12 the requirement of RCW 36.70A.300 that final orders be issued within
13 one hundred eighty days of board receipt of a petition.

14 (6) Each board shall make findings of fact and prepare a written
15 decision in each case decided by it, and such findings and decision
16 shall be effective upon being signed by two or more members of the
17 board and upon being filed at the board's principal office, and shall
18 be open for public inspection at all reasonable times.

19 ~~((6))~~ (7) All proceedings before the board ((or)), any of its
20 members, or a hearing examiner appointed by the board shall be
21 conducted in accordance with such administrative rules of practice and
22 procedure as the boards jointly prescribe. All three boards shall
23 jointly meet to develop and adopt joint rules of practice and
24 procedure, including rules regarding expeditious and summary
25 disposition of appeals. The boards shall publish such rules and
26 arrange for the reasonable distribution of the rules. The
27 administrative procedure act, chapter 34.05 RCW, shall govern the
28 administrative rules of practice and procedure adopted by the boards.

29 ~~((7))~~ (8) A board member or hearing examiner is subject to
30 disqualification for bias, prejudice, interest, or any other cause for
31 which a judge is disqualified. The joint rules of practice of the
32 boards shall establish procedures by which a party to a hearing
33 conducted before the board may file with the board a motion to
34 disqualify, with supporting affidavit, against a board member or
35 hearing examiner assigned to preside at the hearing.

36 (9) The members of the boards shall meet jointly on at least an
37 annual basis with the objective of sharing information that promotes
38 the goals and purposes of this chapter.

1 **Sec. 2.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended
2 to read as follows:

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

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

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

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

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

31 **Sec. 3.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended
32 to read as follows:

33 (1) The board shall issue a final order within one hundred eighty
34 days of receipt of the petition for review, or, when multiple petitions
35 are filed, within one hundred eighty days of receipt of the last
36 petition that is consolidated. Such a final order shall be based
37 exclusively on whether or not a state agency, county, or city is in
38 compliance with the requirements of this chapter, or chapter 43.21C RCW

1 as it relates to plans, regulations, and amendments thereto, adopted
2 under RCW 36.70A.040. In the final order, the board shall either: (a)
3 Find that the state agency, county, or city is in compliance with the
4 requirements of this chapter; or (b) find that the state agency,
5 county, or city is not in compliance with the requirements of this
6 chapter, in which case the board shall remand the matter to the
7 affected state agency, county, or city and specify a reasonable time
8 not in excess of one hundred eighty days within which the state agency,
9 county, or city shall comply with the requirements of this chapter.

10 (2) Any party aggrieved by a final decision of the hearings board
11 may appeal the decision (~~(to Thurston county superior court)~~) within
12 thirty days of the final order of the board.

13 (3) If the appeal is from board review of city or county action,
14 appeal shall be to the division of the court of appeals to which appeal
15 would be proper under RCW 2.06.020 had the action been initiated in the
16 superior court for the county wherein the city or county whose
17 comprehensive land use plan, development regulation, amendment, or
18 other action is being appealed is located. Where appeal is from board
19 review of state agency action, appeal shall be to any division of the
20 courts of appeal to which appeal would be proper under RCW 2.06.020 had
21 the action been initiated under RCW 34.05.514.

22 NEW SECTION. Sec. 4. A new section is added to chapter 36.70A RCW
23 to read as follows:

24 (1) Development regulations adopted pursuant to RCW 36.70A.120
25 shall establish time periods for local government actions on specific
26 development permit applications and provide timely and predictable
27 procedures to determine whether a completed development permit
28 application meets the requirements of those development regulations.
29 Such development regulations shall specify the contents of a completed
30 development permit application necessary for the application of such
31 time periods and procedures.

32 NEW SECTION. Sec. 5. A new section is added to chapter 36.70A RCW
33 to read as follows:

34 Each city and county planning under this chapter shall, within
35 twenty working days of receiving a development permit application as
36 defined in RCW 36.70A.030(7), mail or provide in person a written
37 notice to the applicant, stating either: That the application is

1 complete; or that the application is incomplete and what is necessary
2 to make the application complete. To the extent known by the city or
3 county, the notice shall identify other agencies of local, state, or
4 federal governments that may have jurisdiction over some aspect of the
5 application.

6 **Sec. 6.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each
7 amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Adopt a comprehensive land use plan" means to enact a new
11 comprehensive land use plan or to update an existing comprehensive land
12 use plan.

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

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

20 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
21 means a generalized coordinated land use policy statement of the
22 governing body of a county or city that is adopted pursuant to this
23 chapter.

24 (5) "Critical areas" include the following areas and ecosystems:
25 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
26 used for potable water; (c) fish and wildlife habitat conservation
27 areas; (d) frequently flooded areas; and (e) geologically hazardous
28 areas.

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

31 (7) For purposes of sections 4 and 5 of this act, "development
32 permit application" means any application for a development proposal
33 for a use that could be permitted under a plan adopted pursuant to this
34 chapter and is consistent with the underlying land use and zoning,
35 including but not limited to building permits, subdivisions, binding
36 site plans, planned unit developments, conditional uses or other
37 applications pertaining to land uses, but shall not include rezones,

1 proposed amendments to comprehensive plans or the adoption or amendment
2 of development regulations.

3 (8) "Development regulations" means any controls placed on
4 development or land use activities by a county or city, including, but
5 not limited to, zoning ordinances, official controls, planned unit
6 development ordinances, subdivision ordinances, and binding site plan
7 ordinances.

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

13 ~~((+9))~~ (10) "Geologically hazardous areas" means areas that
14 because of their susceptibility to erosion, sliding, earthquake, or
15 other geological events, are not suited to the siting of commercial,
16 residential, or industrial development consistent with public health or
17 safety concerns.

18 ~~((+10))~~ (11) "Long-term commercial significance" includes the
19 growing capacity, productivity, and soil composition of the land for
20 long-term commercial production, in consideration with the land's
21 proximity to population areas, and the possibility of more intense uses
22 of the land.

23 ~~((+11))~~ (12) "Minerals" include gravel, sand, and valuable
24 metallic substances.

25 ~~((+12))~~ (13) "Public facilities" include streets, roads, highways,
26 sidewalks, street and road lighting systems, traffic signals, domestic
27 water systems, storm and sanitary sewer systems, parks and recreational
28 facilities, and schools.

29 ~~((+13))~~ (14) "Public services" include fire protection and
30 suppression, law enforcement, public health, education, recreation,
31 environmental protection, and other governmental services.

32 ~~((+14))~~ (15) "Urban growth" refers to growth that makes intensive
33 use of land for the location of buildings, structures, and impermeable
34 surfaces to such a degree as to be incompatible with the primary use of
35 such land for the production of food, other agricultural products, or
36 fiber, or the extraction of mineral resources. When allowed to spread
37 over wide areas, urban growth typically requires urban governmental
38 services. "Characterized by urban growth" refers to land having urban

1 growth located on it, or to land located in relationship to an area
2 with urban growth on it as to be appropriate for urban growth.

3 ~~((15))~~ (16) "Urban growth areas" means those areas designated by
4 a county pursuant to RCW 36.70A.110.

5 ~~((16))~~ (17) "Urban governmental services" include those
6 governmental services historically and typically delivered by cities,
7 and include storm and sanitary sewer systems, domestic water systems,
8 street cleaning services, fire and police protection services, public
9 transit services, and other public utilities associated with urban
10 areas and normally not associated with nonurban areas.

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

23 **Sec. 7.** RCW 58.17.330 and 1977 ex.s. c 213 s 4 are each amended to
24 read as follows:

25 (1) As an alternative to those provisions of this chapter requiring
26 a planning commission to hear and issue recommendations for plat
27 approval, the county or city legislative body may adopt a hearing
28 examiner system and shall specify by ordinance the legal effect of the
29 decisions made by the examiner. Except as provided in subsection (2)
30 of this section, the legal effect of such decisions shall include one
31 of the following:

32 ~~((1))~~ (a) The decision may be given the effect of a
33 recommendation to the legislative body;

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

37 The legislative authority shall prescribe procedures to be followed by
38 a hearing examiner.

1 (2) The legislative body shall specify the legal effect of a
2 hearing examiner's procedural determination under the state
3 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may
4 have the effect under subsection (1) (a) or (b) of this section, or may
5 be given the effect of a final decision of the legislative body.

6 (3) Each final decision of a hearing examiner shall be in writing
7 and shall include findings and conclusions, based on the record, to
8 support the decision. Each final decision of a hearing examiner,
9 unless a longer period is mutually agreed to by the applicant and the
10 hearing examiner, shall be rendered within ten working days following
11 conclusion of all testimony and hearings.

12 **Sec. 8.** RCW 35A.63.170 and 1977 ex.s. c 213 s 2 are each amended
13 to read as follows:

14 (1) As an alternative to those provisions of this chapter relating
15 to powers or duties of the planning commission to hear and report on
16 any proposal to amend a zoning ordinance, the legislative body of a
17 city may adopt a hearing examiner system under which a hearing examiner
18 or hearing examiners may hear and decide applications for amending the
19 zoning ordinance when the amendment which is applied for is not of
20 general applicability. In addition, the legislative body may vest in
21 a hearing examiner the power to hear and decide applications for
22 conditional uses, variances or any other class of applications for or
23 pertaining to land uses which the legislative body believes should be
24 reviewed and decided by a hearing examiner. The legislative body shall
25 prescribe procedures to be followed by a hearing examiner. If the
26 legislative authority vests in a hearing examiner the authority to hear
27 and decide variances, then the provisions of RCW 35A.63.110 shall not
28 apply to the city.

29 Each city legislative body electing to use a hearing examiner
30 pursuant to this section shall by ordinance specify the legal effect of
31 the decisions made by the examiner. Except as provided in subsection
32 (2) of this section, the legal effect of such decisions may vary for
33 the different classes of applications decided by the examiner but shall
34 include one of the following:

35 ~~((1))~~ (a) The decision may be given the effect of a
36 recommendation to the legislative body;

1 (~~(2)~~) (b) The decision may be given the effect of an
2 administrative decision appealable within a specified time limit to the
3 legislative body.

4 (2) The legislative body shall specify the legal effect of a
5 hearing examiner's procedural determination under the state
6 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may
7 have the effect under subsection (1) (a) or (b) of this section, or may
8 be given the effect of a final decision of the legislative body.

9 (3) Each final decision of a hearing examiner shall be in writing
10 and shall include findings and conclusions, based on the record, to
11 support the decision. Such findings and conclusions shall also set
12 forth the manner in which the decision would carry out and conform to
13 the city's comprehensive plan and the city's development regulations.
14 Each final decision of a hearing examiner, unless a longer period is
15 mutually agreed to in writing by the applicant and the hearing
16 examiner, shall be rendered within ten working days following
17 conclusion of all testimony and hearings.

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

20 (1) As an alternative to those provisions of this chapter relating
21 to powers or duties of the planning commission to hear and report on
22 any proposal to amend a zoning ordinance, the legislative body of a
23 city or county may adopt a hearing examiner system under which a
24 hearing examiner or hearing examiners may hear and decide applications
25 for amending the zoning ordinance when the amendment which is applied
26 for is not of general applicability. In addition, the legislative body
27 may vest in a hearing examiner the power to hear and decide
28 applications for conditional uses, variances, or any other class of
29 applications for or pertaining to land uses which the legislative body
30 believes should be reviewed and decided by a hearing examiner. The
31 legislative body shall prescribe procedures to be followed by the
32 hearing examiner.

33 Each city or county legislative body electing to use a hearing
34 examiner pursuant to this section shall by ordinance specify the legal
35 effect of the decisions made by the examiner. Except as provided in
36 subsection (2) of this section, the legal effect of such decisions may
37 vary for the different classes of applications decided by the examiner
38 but shall include one of the following:

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

3 (~~(2)~~) (b) The decision may be given the effect of an
4 administrative decision appealable within a specified time limit to the
5 legislative body.

6 (2) The legislative body may specify the legal effect of a hearing
7 examiner's procedural determination under the state environmental
8 policy act, as defined in RCW 43.21C.075(3)(a). It may have the effect
9 under subsection (1) (a) or (b) of this section, or may be given the
10 effect of a final decision of the legislative body.

11 (3) Each final decision of a hearing examiner shall be in writing
12 and shall include findings and conclusions, based on the record, to
13 support the decision. Such findings and conclusions shall also set
14 forth the manner in which the decision would carry out and conform to
15 the city's or county's comprehensive plan and the city's or county's
16 development regulations. Each final decision of a hearing examiner,
17 unless a longer period is mutually agreed to in writing by the
18 applicant and the hearing examiner, shall be rendered within ten
19 working days following conclusion of all testimony and hearings.

20 **Sec. 10.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended
21 to read as follows:

22 (1) As an alternative to those provisions of this chapter relating
23 to powers or duties of the planning commission to hear and issue
24 recommendations on applications for plat approval and applications for
25 amendments to the zoning ordinance, the county legislative authority
26 may adopt a hearing examiner system under which a hearing examiner or
27 hearing examiners may hear and issue decisions on proposals for plat
28 approval and for amendments to the zoning ordinance when the amendment
29 which is applied for is not of general applicability. In addition, the
30 legislative authority may vest in a hearing examiner the power to hear
31 and decide conditional use applications, variance applications,
32 applications for shoreline permits or any other class of applications
33 for or pertaining to land uses. The legislative authority shall
34 prescribe procedures to be followed by a hearing examiner.

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

1 Each county legislative authority electing to use a hearing
2 examiner pursuant to this section shall by ordinance specify the legal
3 effect of the decisions made by the examiner. Except as provided in
4 subsection (2) of this section , such legal effect may vary for the
5 different classes of applications decided by the examiner but shall
6 include one of the following:

7 ~~((1))~~ (a) The decision may be given the effect of a
8 recommendation to the legislative authority;

9 ~~((2))~~ (b) The decision may be given the effect of an
10 administrative decision appealable within a specified time limit to the
11 legislative authority.

12 (2) The legislative authority may specify the legal effect of a
13 hearing examiner's procedural determination under the state
14 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may
15 have the effect under subsection (1) (a) or (b) of this section, or may
16 be given the effect of a final decision of the legislative authority.

17 (3) Each final decision of a hearing examiner shall be in writing
18 and shall include findings and conclusions, based on the record, to
19 support the decision. Such findings and conclusions shall also set
20 forth the manner in which the decision would carry out and conform to
21 the county's comprehensive plan and the county's development
22 regulations. Each final decision of a hearing examiner, unless a
23 longer period is mutually agreed to in writing by the applicant and the
24 hearing examiner, shall be rendered within ten working days following
25 conclusion of all testimony and hearings.

26 **Sec. 11.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read
27 as follows:

28 (1) "Agreed order" means an order issued by the department under
29 this chapter with which the potentially liable person receiving the
30 order agrees to comply. An agreed order may be used to require or
31 approve any cleanup or other remedial actions but it is not a
32 settlement under RCW 70.105D.040(4) and shall not contain a covenant
33 not to sue, or provide protection from claims for contribution, or
34 provide eligibility for public funding of remedial actions under RCW
35 70.105D.070(2)(d)(xi).

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

37 ~~((2))~~ (3) "Director" means the director of ecology or the
38 director's designee.

1 (~~(3)~~) (4) "Facility" means (a) any building, structure,
2 installation, equipment, pipe or pipeline (including any pipe into a
3 sewer or publicly owned treatment works), well, pit, pond, lagoon,
4 impoundment, ditch, landfill, storage container, motor vehicle, rolling
5 stock, vessel, or aircraft, or (b) any site or area where a hazardous
6 substance, other than a consumer product in consumer use, has been
7 deposited, stored, disposed of, or placed, or otherwise come to be
8 located.

9 (~~(4)~~) (5) "Federal cleanup law" means the federal comprehensive
10 environmental response, compensation, and liability act of 1980, 42
11 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

12 (~~(5)~~) (6) "Hazardous substance" means:

13 (a) Any dangerous or extremely hazardous waste as defined in RCW
14 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
15 designated by rule pursuant to chapter 70.105 RCW;

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

18 (c) Any substance that, on March 1, 1989, is a hazardous substance
19 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
20 9601(14);

21 (d) Petroleum or petroleum products; and

22 (e) Any substance or category of substances, including solid waste
23 decomposition products, determined by the director by rule to present
24 a threat to human health or the environment if released into the
25 environment.

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

30 (~~(6)~~) (7) "Owner or operator" means:

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

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

36 The term does not include:

37 (i) An agency of the state or unit of local government which
38 acquired ownership or control involuntarily through bankruptcy, tax
39 delinquency, abandonment, or circumstances in which the government

1 involuntarily acquires title. This exclusion does not apply to an
2 agency of the state or unit of local government which has caused or
3 contributed to the release or threatened release of a hazardous
4 substance from the facility; or

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

8 (~~(7)~~) (8) "Person" means an individual, firm, corporation,
9 association, partnership, consortium, joint venture, commercial entity,
10 state government agency, unit of local government, federal government
11 agency, or Indian tribe.

12 (~~(8)~~) (9) "Potentially liable person" means any person whom the
13 department finds, based on credible evidence, to be liable under RCW
14 70.105D.040. The department shall give notice to any such person and
15 allow an opportunity for comment before making the finding, unless an
16 emergency requires otherwise.

17 (~~(9)~~) (10) "Public notice" means, at a minimum, adequate notice
18 mailed to all persons who have made timely request of the department
19 and to persons residing in the potentially affected vicinity of the
20 proposed action; mailed to appropriate news media; published in the
21 newspaper of largest circulation in the city or county of the proposed
22 action; and opportunity for interested persons to comment.

23 (~~(10)~~) (11) "Release" means any intentional or unintentional
24 entry of any hazardous substance into the environment, including but
25 not limited to the abandonment or disposal of containers of hazardous
26 substances.

27 (~~(11)~~) (12) "Remedy" or "remedial action" means any action or
28 expenditure consistent with the purposes of this chapter to identify,
29 eliminate, or minimize any threat or potential threat posed by
30 hazardous substances to human health or the environment including any
31 investigative and monitoring activities with respect to any release or
32 threatened release of a hazardous substance and any health assessments
33 or health effects studies conducted in order to determine the risk or
34 potential risk to human health.

35 **Sec. 12.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
36 as follows:

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

1 (a) Investigate, provide for investigating, or require potentially
2 liable persons to investigate any releases or threatened releases of
3 hazardous substances, including but not limited to inspecting,
4 sampling, or testing to determine the nature or extent of any release
5 or threatened release. If there is a reasonable basis to believe that
6 a release or threatened release of a hazardous substance may exist, the
7 department's authorized employees, agents, or contractors may enter
8 upon any property and conduct investigations. The department shall
9 give reasonable notice before entering property unless an emergency
10 prevents such notice. The department may by subpoena require the
11 attendance or testimony of witnesses and the production of documents or
12 other information that the department deems necessary;

13 (b) Conduct, provide for conducting, or require potentially liable
14 persons to conduct remedial actions (including investigations under (a)
15 of this subsection) to remedy releases or threatened releases of
16 hazardous substances. In carrying out such powers, the department's
17 authorized employees, agents, or contractors may enter upon property.
18 The department shall give reasonable notice before entering property
19 unless an emergency prevents such notice. In conducting, providing for,
20 or requiring remedial action, the department shall give preference to
21 permanent solutions to the maximum extent practicable and shall provide
22 for or require adequate monitoring to ensure the effectiveness of the
23 remedial action;

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

27 (d) Carry out all state programs authorized under the federal
28 cleanup law and the federal resource, conservation, and recovery act,
29 42 U.S.C. Sec. 6901 et seq., as amended;

30 (e) Classify substances as hazardous substances for purposes of RCW
31 70.105D.020(5) and classify substances and products as hazardous
32 substances for purposes of RCW 82.21.020(1); and

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

36 (2) The department shall immediately implement all provisions of
37 this chapter to the maximum extent practicable, including investigative
38 and remedial actions where appropriate. The department, within nine

1 months after March 1, 1989, shall adopt, and thereafter enforce, rules
2 under chapter 34.05 RCW to:

3 (a) Provide for public participation, including at least (i) the
4 establishment of regional citizen's advisory committees, (ii) public
5 notice of the development of investigative plans or remedial plans for
6 releases or threatened releases, and (iii) concurrent public notice of
7 all compliance orders, agreed orders, enforcement orders, or notices of
8 violation;

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

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

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

20 (3) Before November 1st of each even-numbered year, the department
21 shall develop, with public notice and hearing, and submit to the ways
22 and means and appropriate standing environmental committees of the
23 senate and house of representatives a ranked list of projects and
24 expenditures recommended for appropriation from both the state and
25 local toxics control accounts. The department shall also provide the
26 legislature and the public each year with an accounting of the
27 department's activities supported by appropriations from the state
28 toxics control account, including a list of known hazardous waste sites
29 and their hazard rankings, actions taken and planned at each site, how
30 the department is meeting its top two management priorities under RCW
31 70.105.150, and all funds expended under this chapter.

32 (4) The department shall establish a scientific advisory board to
33 render advice to the department with respect to the hazard ranking
34 system, cleanup standards, remedial actions, deadlines for remedial
35 actions, monitoring, the classification of substances as hazardous
36 substances for purposes of RCW 70.105D.020(5) and the classification of
37 substances or products as hazardous substances for purposes of RCW
38 82.21.020(1). The board shall consist of five independent members to
39 serve staggered three-year terms. No members may be employees of the

1 department. Members shall be reimbursed for travel expenses as
2 provided in RCW 43.03.050 and 43.03.060.

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

6 **Sec. 13.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
7 as follows:

8 (1) With respect to any release, or threatened release, for which
9 the department does not conduct or contract for conducting remedial
10 action and for which the department believes remedial action is in the
11 public interest, the director shall issue orders or agreed orders
12 requiring potentially liable persons to provide the remedial action.
13 Any liable person who refuses, without sufficient cause, to comply with
14 an order or agreed order of the director is liable in an action brought
15 by the attorney general for:

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

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

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

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

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

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

35 (5)(a) Any person may commence a civil action to compel the
36 department to perform any nondiscretionary duty under this chapter. At
37 least thirty days before commencing the action, the person must give
38 notice of intent to sue, unless a substantial endangerment exists. The

1 court may award attorneys' fees and other costs to the prevailing party
2 in the action.

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

6 **Sec. 14.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
7 as follows:

8 The department's investigative and remedial decisions under RCW
9 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
10 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
11 exclusively in superior court and only at the following times: (1) In
12 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
13 department to enforce an order or an agreed order, or seek a civil
14 penalty under this chapter; (3) in a suit for reimbursement under RCW
15 70.105D.050(2); (4) in a suit by the department to compel investigative
16 or remedial action; and (5) in a citizen's suit under RCW
17 70.105D.050(5). The court shall uphold the department's actions unless
18 they were arbitrary and capricious.

19 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.105D
20 RCW to read as follows:

21 (1) A person conducting a remedial action at a facility under a
22 consent decree, order, or agreed order, and the department when it
23 conducts a remedial action, are exempt from the procedural requirements
24 of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
25 procedural requirements of any laws requiring or authorizing local
26 government permits or approvals for the remedial action. The
27 department shall ensure compliance with the substantive provisions of
28 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
29 substantive provisions of any laws requiring or authorizing local
30 government permits of approvals. The department shall establish
31 procedures for ensuring that such remedial actions comply with the
32 substantive requirements adopted pursuant to such laws, and shall
33 consult with the state agencies and local governments charged with
34 implementing these laws. The procedures shall provide an opportunity
35 for comment by the public and by the state agencies and local
36 governments that would otherwise implement the laws referenced in this
37 section. Nothing in this section is intended to prohibit implementing

1 agencies from charging a fee to the person conducting the remedial
2 action to defray the costs of services rendered relating to the
3 substantive requirements for the remedial action.

4 (2) An exemption in this section or in sections 16, 17, 18, 19, 20,
5 and 21 of this act shall not apply if the department determines that
6 the exemption would result in loss of approval from a federal agency
7 necessary for the state to administer any federal law, including the
8 federal resource conservation and recovery act, the federal clean water
9 act, the federal clean air act, and the federal coastal zone management
10 act. Such a determination by the department shall not affect the
11 applicability of the exemptions to other statutes specified in this
12 section.

13 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.94 RCW
14 to read as follows:

15 The procedural requirements of this chapter shall not apply to any
16 person conducting a remedial action at a facility pursuant to a consent
17 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
18 or to the department of ecology when it conducts a remedial action
19 under chapter 70.105D RCW. The department of ecology shall ensure
20 compliance with the substantive requirements of this chapter through
21 the consent decree, order, or agreed order issued pursuant to chapter
22 70.105D RCW, or during the department-conducted remedial action,
23 through the procedures developed by the department pursuant to section
24 15 of this act.

25 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.95 RCW
26 to read as follows:

27 The procedural requirements of this chapter shall not apply to any
28 person conducting a remedial action at a facility pursuant to a consent
29 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
30 or to the department of ecology when it conducts a remedial action
31 under chapter 70.105D RCW. The department of ecology shall ensure
32 compliance with the substantive requirements of this chapter through
33 the consent decree, order, or agreed order issued pursuant to chapter
34 70.105D RCW, or during the department-conducted remedial action,
35 through the procedures developed by the department pursuant to section
36 15 of this act.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.105
2 RCW to read as follows:

3 The procedural requirements of this chapter shall not apply to any
4 person conducting a remedial action at a facility pursuant to a consent
5 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
6 or to the department of ecology when it conducts a remedial action
7 under chapter 70.105D RCW. The department of ecology shall ensure
8 compliance with the substantive requirements of this chapter through
9 the consent decree, order, or agreed order issued pursuant to chapter
10 70.105D RCW, or during the department-conducted remedial action,
11 through the procedures developed by the department pursuant to section
12 15 of this act.

13 NEW SECTION. **Sec. 19.** A new section is added to chapter 75.20 RCW
14 to read as follows:

15 The procedural requirements of this chapter shall not apply to any
16 person conducting a remedial action at a facility pursuant to a consent
17 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
18 or to the department of ecology when it conducts a remedial action
19 under chapter 70.105D RCW. The department of ecology shall ensure
20 compliance with the substantive requirements of this chapter through
21 the consent decree, order, or agreed order issued pursuant to chapter
22 70.105D RCW, or during the department-conducted remedial action,
23 through the procedures developed by the department pursuant to section
24 15 of this act.

25 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.48 RCW
26 to read as follows:

27 The procedural requirements of this chapter shall not apply to any
28 person conducting a remedial action at a facility pursuant to a consent
29 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
30 or to the department of ecology when it conducts a remedial action
31 under chapter 70.105D RCW. The department of ecology shall ensure
32 compliance with the substantive requirements of this chapter through
33 the consent decree, order, or agreed order issued pursuant to chapter
34 70.105D RCW, or during the department-conducted remedial action,
35 through the procedures developed by the department pursuant to section
36 15 of this act.

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.58 RCW
2 to read as follows:

3 The procedural requirements of this chapter shall not apply to any
4 person conducting a remedial action at a facility pursuant to a consent
5 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
6 or to the department of ecology when it conducts a remedial action
7 under chapter 70.105D RCW. The department of ecology shall ensure
8 compliance with the substantive requirements of this chapter through
9 the consent decree, order, or agreed order issued pursuant to chapter
10 70.105D RCW, or during the department-conducted remedial action,
11 through the procedures developed by the department pursuant to section
12 15 of this act.

13 NEW SECTION. **Sec. 22.** A new section is added to chapter 43.21C
14 RCW to read as follows:

15 In conducting a remedial action at a facility pursuant to a consent
16 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
17 or if conducted by the department of ecology, the department of ecology
18 to the maximum extent practicable shall integrate the procedural
19 requirements and documents of this chapter with the procedures and
20 documents under chapter 70.105D RCW. Such integration shall at a
21 minimum include the public participation procedures of chapter 70.105D
22 RCW and the public notice and review requirements of this chapter.

23 **Sec. 23.** RCW 34.12.020 and 1993 c 281 s 16 are each amended to
24 read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

27 (1) "Office" means the office of administrative hearings.

28 (2) "Administrative law judge" means any person appointed by the
29 chief administrative law judge to conduct or preside over hearings as
30 provided in this chapter.

31 (3) "Hearing" means an adjudicative proceeding within the meaning
32 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413
33 through 34.05.476.

34 (4) "State agency" means any state board, commission, department,
35 or officer authorized by law to make rules or to conduct adjudicative
36 proceedings, except those in the legislative or judicial branches, the
37 growth planning hearings boards, the pollution control hearings board,

1 the shorelines hearings board, the forest practices appeals board, the
2 environmental hearings office, the board of industrial insurance
3 appeals, the Washington personnel resources board, the public
4 employment relations commission, the personnel appeals board, and the
5 board of tax appeals.

6 **Sec. 24.** RCW 34.05.514 and 1988 c 288 s 502 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section and RCW
9 (~~34.05.538~~) 36.70A.300(3), proceedings for review under this chapter
10 shall be instituted by filing a petition in the superior court, at the
11 petitioner's option, for (a) Thurston county, (b) the county of the
12 petitioner's residence or principal place of business, or (c) in any
13 county where the property owned by the petitioner and affected by the
14 contested decision is located.

15 (2) For proceedings involving institutions of higher education, the
16 petition shall be filed either in the county in which the principal
17 office of the institution involved is located or in the county of a
18 branch campus if the action involves such branch.

19 NEW SECTION. **Sec. 25.** The governor's task force on regulatory
20 reform, created by executive order 93-06, shall investigate and develop
21 proposals for legislative action to:

22 (1) Ensure that clear, consistent, and expeditious time periods are
23 provided for environmental and land use permit application review and
24 decisions by local governments and state agencies;

25 (2) Provide simplified and uniform time periods for consolidated
26 appeals of governmental actions and compliance with the state
27 environmental policy act, chapter 43.21C RCW, with a goal of requiring
28 a single deadline for all appeals that are required to be taken to
29 superior court; and

30 (3) Establish a development permit coordination process governing
31 all permits required to be issued by local governments and state
32 agencies for the establishment of a land use. The elements of such a
33 process should include:

34 (a) A single point of contact at the local government level and at
35 the state government level for information regarding permits required
36 to be issued at that level;

1 (b) Identification of all permits that potentially could be
2 required, and the provision of necessary application forms and
3 information on the requirements for completing the applications;

4 (c) Development of applicable timelines for decisions on all permit
5 applications at that level and the interrelationship between permits;

6 (d) The creation of a coordination process at the state level that
7 ensures effective coordination among state agencies and with units of
8 local government with jurisdiction over some aspect of a project, that
9 will expedite governmental review, and that may be created by more
10 effective use of existing resources for permit review.

11 (4) The task force shall review the reports prepared by the Local
12 Governance Study Commission, created by chapter 388, Laws of 1985, in
13 conducting its investigation of the permit processing subjects required
14 by this section.

15 (5) The recommendations of the task force shall be provided to the
16 governor and the appropriate standing committees of the legislature no
17 later than December 1, 1994, and may be incorporated with any other
18 reports provided under executive order 93-06.

19 NEW SECTION. **Sec. 26.** Section 6 of this act shall take effect
20 July 1, 1994.

21 NEW SECTION. **Sec. 27.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

--- END ---