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HOUSE BILL 2439

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State of Washington

63rd Legislature

2014 Regular Session

By Representatives Takko, Fitzgibbon, Tharinger, Ryu, and Roberts; by request of Department of Ecology

Read first time 01/17/14. Referred to Committee on Environment.

1 AN ACT Relating to updating specified environmental statutes of the  
2 department of ecology to improve efficiency and provide for increased  
3 flexibility for local governments; amending RCW 43.21B.305, 43.21B.110,  
4 43.21B.110, 70.95.130, 70.95.140, 70.95.230, 70.95.240, 70.95.300,  
5 70.107.010, 70.107.030, 70.107.060, 90.56.060, and 90.58.190;  
6 reenacting and amending RCW 90.58.090; creating a new section;  
7 repealing RCW 43.21A.610, 43.21A.612, 43.21A.614, 43.21A.616,  
8 43.21A.618, 43.21A.620, 43.21A.622, 43.21A.624, 43.21A.626, 43.21A.628,  
9 43.21A.630, 43.21A.632, 43.21A.634, 43.21A.636, 43.21A.638, 43.21A.640,  
10 43.21A.642, 70.95.205, 70.95.700, 70.107.040, 70.107.050, and  
11 90.56.335; providing an effective date; and providing an expiration  
12 date.

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

14 **Sec. 1.** RCW 43.21B.305 and 2013 c 291 s 44 are each amended to  
15 read as follows:

16 ((+1)) In an appeal that involves a penalty of fifteen thousand  
17 dollars or less, or that involves a derelict or abandoned vessel under  
18 RCW 79.100.120, or an appeal of a corrective action order issued  
19 pursuant to RCW 70.94.211, the appeal may be heard by one member of the

1 board or by an administrative appeals judge employed by the board,  
2 whose decision shall be the final decision of the board. The board  
3 shall define by rule alternative procedures to expedite appeals  
4 involving penalties of fifteen thousand dollars or less ~~((or))~~,  
5 involving a derelict or abandoned vessel, or involving an appeal of a  
6 corrective action order issued pursuant to RCW 70.94.211. These  
7 alternatives may include: Mediation, upon agreement of all parties;  
8 submission of testimony by affidavit; or other forms that may lead to  
9 less formal and faster resolution of appeals.

10 ~~((2) For appeals that involve a derelict or abandoned vessel under~~  
11 ~~RCW 79.100.120 only, an administrative law judge employed by the board~~  
12 ~~may be substituted for a board member under this section.))~~

13 **Sec. 2.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to  
14 read as follows:

15 (1) The hearings board shall only have jurisdiction to hear and  
16 decide appeals from the following decisions of the department, the  
17 director, local conservation districts, the air pollution control  
18 boards or authorities as established pursuant to chapter 70.94 RCW,  
19 local health departments, the department of natural resources, the  
20 department of fish and wildlife, the parks and recreation commission,  
21 and authorized public entities described in chapter 79.100 RCW:

22 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
23 70.95.315, 70.95N.260, 70.105.080, 70.107.050, 70.240.050, 70.275.100,  
24 70.275.110, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600,  
25 90.46.270, 90.48.144, 90.56.310, 90.56.330, ((and)) 90.64.102, and  
26 90.76.080.

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
28 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.94.640, 70.94.715,  
29 70.95.315, 70.95C.230, 70.105.095, 86.16.020, 88.46.070, 90.03.665,  
30 90.14.130, 90.46.250, 90.48.120, ((and)) 90.48.240, 90.56.330, and  
31 90.64.040.

32 (c) A final decision by the department or director made under  
33 chapter 183, Laws of 2009.

34 (d) Except as provided in RCW 90.03.210(2), the issuance,  
35 modification, or termination of any permit, certificate, or license by  
36 the department or any air authority in the exercise of its  
37 jurisdiction, including the issuance or termination of a waste disposal

1 permit, the denial of an application for a waste disposal permit, the  
2 modification of the conditions or the terms of a waste disposal permit,  
3 (~~(or)~~) a decision to approve or deny a solid waste management plan  
4 under RCW 70.95.094, an application for a solid waste permit exemption  
5 under RCW 70.95.300, an application for a change under RCW 90.03.383,  
6 or a permit to distribute reclaimed water under RCW 90.46.220.

7 (e) Decisions of local health departments regarding the grant or  
8 denial of solid waste permits pursuant to chapter 70.95 RCW, including  
9 appeals by the department as provided in RCW 70.95.185.

10 (f) Decisions of local health departments regarding the issuance  
11 and enforcement of permits to use or dispose of biosolids under RCW  
12 70.95J.080.

13 (g) Decisions of the department regarding waste-derived fertilizer  
14 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
15 department regarding waste-derived soil amendments under RCW  
16 (~~(70.95.205)~~) 70.95.300.

17 (h) Decisions of local conservation districts related to the denial  
18 of approval or denial of certification of a dairy nutrient management  
19 plan; conditions contained in a plan; application of any dairy nutrient  
20 management practices, standards, methods, and technologies to a  
21 particular dairy farm; and failure to adhere to the plan review and  
22 approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

23 (i) Any other decision by the department or an air authority which  
24 pursuant to law must be decided as an adjudicative proceeding under  
25 chapter 34.05 RCW.

26 (j) Decisions of the department of natural resources, the  
27 department of fish and wildlife, and the department that are reviewable  
28 under chapter 76.09 RCW, and the department of natural resources'  
29 appeals of county, city, or town objections under RCW 76.09.050(7).

30 (k) Forest health hazard orders issued by the commissioner of  
31 public lands under RCW 76.06.180.

32 (l) Decisions of the department of fish and wildlife to issue,  
33 deny, condition, or modify a hydraulic project approval permit under  
34 chapter 77.55 RCW.

35 (m) Decisions of the department of natural resources that are  
36 reviewable under RCW 78.44.270.

37 (n) Decisions of an authorized public entity under RCW 79.100.010

1 to take temporary possession or custody of a vessel or to contest the  
2 amount of reimbursement owed that are reviewable by the hearings board  
3 under RCW 79.100.120.

4 (2) The following hearings shall not be conducted by the hearings  
5 board:

6 (a) Hearings required by law to be conducted by the shorelines  
7 hearings board pursuant to chapter 90.58 RCW.

8 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
9 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

10 (c) Appeals of decisions by the department under RCW 90.03.110 and  
11 90.44.220.

12 (d) Hearings conducted by the department to adopt, modify, or  
13 repeal rules.

14 (3) Review of rules and regulations adopted by the hearings board  
15 shall be subject to review in accordance with the provisions of the  
16 administrative procedure act, chapter 34.05 RCW.

17 **Sec. 3.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
18 read as follows:

19 (1) The hearings board shall only have jurisdiction to hear and  
20 decide appeals from the following decisions of the department, the  
21 director, local conservation districts, the air pollution control  
22 boards or authorities as established pursuant to chapter 70.94 RCW,  
23 local health departments, the department of natural resources, the  
24 department of fish and wildlife, the parks and recreation commission,  
25 and authorized public entities described in chapter 79.100 RCW:

26 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
27 70.95.315, 70.95N.260, 70.105.080, 70.107.050, 70.240.050, 70.275.100,  
28 70.275.110, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600,  
29 90.46.270, 90.48.144, 90.56.310, 90.56.330, (~~and~~) 90.64.102, and  
30 90.76.080.

31 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
32 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.95.315, 70.95C.230,  
33 70.105.095, 86.16.020, 88.46.070, 90.03.665, 90.14.130, 90.46.250,  
34 90.48.120, (~~and~~) 90.48.240, 90.56.330, and 90.64.040.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,  
36 modification, or termination of any permit, certificate, or license by  
37 the department or any air authority in the exercise of its

1 jurisdiction, including the issuance or termination of a waste disposal  
2 permit, the denial of an application for a waste disposal permit, the  
3 modification of the conditions or the terms of a waste disposal permit,  
4 ~~((or))~~ a decision to approve or deny a solid waste management plan  
5 under RCW 70.95.094, an application for a solid waste permit exemption  
6 under RCW 70.95.300, an application for a change under RCW 90.03.383,  
7 or a permit to distribute reclaimed water under RCW 90.46.220.

8 (d) Decisions of local health departments regarding the grant or  
9 denial of solid waste permits pursuant to chapter 70.95 RCW, including  
10 appeals by the department as provided in RCW 70.95.185.

11 (e) Decisions of local health departments regarding the issuance  
12 and enforcement of permits to use or dispose of biosolids under RCW  
13 70.95J.080.

14 (f) Decisions of the department regarding waste-derived fertilizer  
15 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
16 department regarding waste-derived soil amendments under RCW  
17 ~~((70.95.205))~~ 70.95.300.

18 (g) Decisions of local conservation districts related to the denial  
19 of approval or denial of certification of a dairy nutrient management  
20 plan; conditions contained in a plan; application of any dairy nutrient  
21 management practices, standards, methods, and technologies to a  
22 particular dairy farm; and failure to adhere to the plan review and  
23 approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

24 (h) Any other decision by the department or an air authority which  
25 pursuant to law must be decided as an adjudicative proceeding under  
26 chapter 34.05 RCW.

27 (i) Decisions of the department of natural resources, the  
28 department of fish and wildlife, and the department that are reviewable  
29 under chapter 76.09 RCW, and the department of natural resources'  
30 appeals of county, city, or town objections under RCW 76.09.050(7).

31 (j) Forest health hazard orders issued by the commissioner of  
32 public lands under RCW 76.06.180.

33 (k) Decisions of the department of fish and wildlife to issue,  
34 deny, condition, or modify a hydraulic project approval permit under  
35 chapter 77.55 RCW.

36 (l) Decisions of the department of natural resources that are  
37 reviewable under RCW 78.44.270.

1 (m) Decisions of an authorized public entity under RCW 79.100.010  
2 to take temporary possession or custody of a vessel or to contest the  
3 amount of reimbursement owed that are reviewable by the hearings board  
4 under RCW 79.100.120.

5 (2) The following hearings shall not be conducted by the hearings  
6 board:

7 (a) Hearings required by law to be conducted by the shorelines  
8 hearings board pursuant to chapter 90.58 RCW.

9 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
10 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

11 (c) Appeals of decisions by the department under RCW 90.03.110 and  
12 90.44.220.

13 (d) Hearings conducted by the department to adopt, modify, or  
14 repeal rules.

15 (3) Review of rules and regulations adopted by the hearings board  
16 shall be subject to review in accordance with the provisions of the  
17 administrative procedure act, chapter 34.05 RCW.

18 **Sec. 4.** RCW 70.95.130 and 1969 ex.s. c 134 s 13 are each amended  
19 to read as follows:

20 Any county may apply to the department on a form prescribed thereby  
21 for financial aid for the preparation and implementation of the  
22 comprehensive county plan for solid waste management required by RCW  
23 70.95.080. Any city electing to prepare an independent city plan, a  
24 joint city plan, or a joint county-city plan for solid waste management  
25 for inclusion in the county comprehensive plan may apply for financial  
26 aid for such purpose through the county. Every city application for  
27 financial aid for planning shall be filed with the county auditor and  
28 shall be included as a part of the county's application for financial  
29 aid. Any city preparing an independent plan shall provide for disposal  
30 sites wholly within its jurisdiction. For purposes of this section,  
31 "disposal sites" includes transfer stations.

32 The department shall allocate to the counties and cities applying  
33 for financial aid for planning, such funds as may be available pursuant  
34 to legislative appropriations or from any federal grants for such  
35 purpose.

36 The department shall determine priorities and allocate available  
37 funds among the counties and cities applying for aid according to

1 criteria established by regulations of the department considering  
2 population, urban development, environmental effects of waste disposal,  
3 existing waste handling practices, and the local justification of their  
4 proposed expenditures.

5 **Sec. 5.** RCW 70.95.140 and 1969 ex.s. c 134 s 14 are each amended  
6 to read as follows:

7 Counties and cities shall match their planning and implementation  
8 aid allocated by the director by an amount ((~~not less than~~)) to be  
9 determined by the director up to twenty-five percent of the estimated  
10 cost of such planning. Any federal planning aid made directly to a  
11 county or city shall not be considered either a state or local  
12 contribution in determining local matching requirements. Counties and  
13 cities may meet their share of planning costs by cash and contributed  
14 services.

15 **Sec. 6.** RCW 70.95.230 and 1969 ex.s. c 134 s 23 are each amended  
16 to read as follows:

17 The jurisdictional health department applying for state assistance  
18 for the enforcement of this chapter shall match such aid allocated by  
19 the department in an amount ((~~not less than~~)) to be determined by the  
20 department up to twenty-five percent of the total amount spent for such  
21 enforcement activity during the year. The local share of enforcement  
22 costs may be met by cash and contributed services.

23 **Sec. 7.** RCW 70.95.240 and 2011 c 279 s 1 are each amended to read  
24 as follows:

25 (1) Except as otherwise provided in this section or at a solid  
26 waste disposal site for which there is a valid permit, after the  
27 adoption of regulations or ordinances by any county, city, or  
28 jurisdictional board of health providing for the issuance of permits as  
29 provided in RCW 70.95.160, it is unlawful for any person to dump or  
30 deposit or permit the dumping or depositing of any solid waste onto or  
31 under the surface of the ground or into the waters of this state.

32 (2) This section does not:

33 (a) Prohibit a person from dumping or depositing solid waste  
34 resulting from his or her own activities onto or under the surface of

1 ground owned or leased by him or her when such action does not violate  
2 statutes or ordinances, or create a nuisance;

3 (b) Apply to a person using a waste-derived soil amendment that has  
4 been approved by the department under RCW ((70.95.205)) 70.95.300; or

5 (c) Apply to the application of commercial fertilizer that has been  
6 registered with the department of agriculture as provided in RCW  
7 15.54.325, and that is applied in accordance with the standards  
8 established in RCW 15.54.800(3).

9 (3)(a) It is a class 3 civil infraction as defined in RCW 7.80.120  
10 for a person to litter in an amount less than or equal to one cubic  
11 foot.

12 (b)(i) It is a misdemeanor for a person to litter in an amount  
13 greater than one cubic foot but less than one cubic yard.

14 (ii) A person found to have littered in an amount greater than one  
15 cubic foot, but less than one cubic yard, shall also pay a litter  
16 cleanup restitution payment. This payment must be the greater of twice  
17 the actual cost of removing and properly disposing of the litter, or  
18 fifty dollars per cubic foot of litter.

19 (iii) The court shall distribute one-half of the restitution  
20 payment to the landowner where the littering occurred and one-half of  
21 the restitution payment to the jurisdictional health department  
22 investigating the incident. If the landowner provided written  
23 permission authorizing the littering on his or her property or assisted  
24 a person with littering on the landowner's property, the landowner is  
25 not entitled to any restitution ordered by the court and the full  
26 litter cleanup restitution payment must be provided to the  
27 jurisdictional health department investigating the incident.

28 (iv) A jurisdictional health department receiving all or a portion  
29 of a litter cleanup restitution payment must use the payment as  
30 follows:

31 (A) One-half of the payment may be used by the jurisdictional  
32 health department in the fulfillment of its responsibilities under this  
33 chapter; and

34 (B) One-half of the payment must be used to assist property owners  
35 located within the jurisdiction of the health department with the  
36 removal and proper disposal of litter in instances when the person  
37 responsible for the illegal dumping of the solid waste cannot be  
38 determined.



1 (v) The court may, in addition to the litter cleanup restitution  
2 payment, order the person to remove and properly dispose of the litter  
3 from the property, with prior permission of the legal owner or, in the  
4 case of public property, of the agency managing the property. The  
5 court may suspend or modify the litter cleanup restitution payment for  
6 a first-time offender under this section if the person removes and  
7 properly disposes of the litter.

8 (c)(i) It is a gross misdemeanor for a person to litter in an  
9 amount of one cubic yard or more.

10 (ii) A person found to have littered in an amount greater than one  
11 cubic yard shall also pay a litter cleanup restitution payment. This  
12 payment must be the greater of twice the actual cost of removing and  
13 properly disposing of the litter, or one hundred dollars per cubic foot  
14 of litter.

15 (iii) The court shall distribute one-half of the restitution  
16 payment to the landowner where the littering occurred and one-half of  
17 the restitution payment to the jurisdictional health department  
18 investigating the incident. If the landowner provided written  
19 permission authorizing the littering on his or her property or assisted  
20 a person with littering on the landowner's property, the landowner is  
21 not entitled to any restitution ordered by the court and the full  
22 litter cleanup restitution payment must be provided to the  
23 jurisdictional health department investigating the incident.

24 (iv) A jurisdictional health department receiving all or a portion  
25 of a litter cleanup restitution payment must use the payment as  
26 follows:

27 (A) One-half of the payment may be used by the jurisdictional  
28 health department in the fulfillment of its responsibilities under this  
29 chapter; and

30 (B) One-half of the payment must be used to assist property owners  
31 located within the jurisdiction of the health department with the  
32 removal and proper disposal of litter in instances when the person  
33 responsible for the illegal dumping of the solid waste cannot be  
34 determined.

35 (v) The court may, in addition to the litter cleanup restitution  
36 payment, order the person to remove and properly dispose of the litter  
37 from the property, with prior permission of the legal owner or, in the  
38 case of public property, of the agency managing the property. The

1 court may suspend or modify the litter cleanup restitution payment for  
2 a first-time offender under this section if the person removes and  
3 properly disposes of the litter.

4 (4) If a junk vehicle is abandoned in violation of this chapter,  
5 RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and  
6 the penalties that may be imposed against the person who abandoned the  
7 vehicle.

8 (5) When enforcing this section, the enforcing authority must take  
9 reasonable action to determine and identify the person responsible for  
10 illegally dumping solid waste before requiring the owner or lessee of  
11 the property where illegal dumping of solid waste has occurred to  
12 remove and properly dispose of the litter on the site.

13 **Sec. 8.** RCW 70.95.300 and 1998 c 156 s 2 are each amended to read  
14 as follows:

15 (1) The department may by rule (~~(exempt)~~) establish administrative  
16 procedures governing the process to propose and approve exempting a  
17 solid waste from the permitting requirements of this chapter for one or  
18 more beneficial uses. In (~~(adopting such rules)~~) exempting such uses,  
19 the department shall specify both the solid waste that is exempted from  
20 the permitting requirements and the beneficial use or uses for which  
21 the solid waste is so exempted. The department shall consider: (a)  
22 Whether the (~~(material)~~) solid waste will be beneficially used or  
23 reused; and (b) whether the beneficial use or reuse of the (~~(material)~~)  
24 solid waste will present threats to human health or the environment.

25 (2) When the department proposes to exempt from the permitting  
26 requirements of this chapter one or more beneficial use or uses of a  
27 solid waste, the department shall forward a copy of the complete  
28 proposal to all jurisdictional health departments for review and  
29 comment. Within forty-five days, the jurisdictional health departments  
30 shall forward to the department their comments and any other  
31 information they deem relevant to the department's decision whether or  
32 not to adopt the proposal. If the proposal is adopted by the  
33 department, the solid waste is exempt from the permitting requirements  
34 of this chapter when used anywhere in the state in the manner approved  
35 by the department. If the composition, use, or reuse of the solid  
36 waste changes, or the management, storage, or end use constitutes a

1 threat to human health or the environment, the exemption may be  
2 terminated and use of the solid waste remains subject to the permitting  
3 requirements of this chapter.

4 (3) The department may also exempt a solid waste from the  
5 permitting requirements of this chapter for one or more beneficial uses  
6 by approving an application for such an exemption. The department  
7 shall establish by rule procedures under which a person may apply to  
8 the department for such an exemption. The rules shall establish  
9 criteria for providing such an exemption, which shall include, but not  
10 be limited to: (a) ~~The ((material))~~ solid waste will be beneficially  
11 used or reused; ~~((and))~~ (b) the beneficial use or reuse of the material  
12 will not present threats to human health or the environment; and (c)  
13 for solid waste to be applied to the land as a soil amendment,  
14 analytical data showing that the solid waste meets standards  
15 established under RCW 15.54.800(3). Rules adopted under this  
16 subsection shall identify the information that an application shall  
17 contain. Persons seeking such an exemption shall apply to the  
18 department under the procedures established by the rules adopted under  
19 this subsection.

20 ~~((+3))~~ (4) After receipt of an application filed under rules  
21 adopted under ~~((subsection (2) of))~~ this section, the department shall  
22 review the application to determine whether it is complete, and forward  
23 a copy of the completed application to all jurisdictional health  
24 departments for review and comment. Within forty-five days, the  
25 jurisdictional health departments shall forward to the department their  
26 comments and any other information they deem relevant to the  
27 department's decision to approve or disapprove the application. Every  
28 complete application shall be approved or disapproved by the department  
29 within ninety days of receipt. If the application is approved by the  
30 department, the solid waste is exempt from the permitting requirements  
31 of this chapter when used anywhere in the state in the manner approved  
32 by the department. If the composition, use, or reuse of the solid  
33 waste ~~((is not consistent with the terms and conditions of the~~  
34 ~~department's approval of the application,))~~ changes, or the management,  
35 storage, or end use constitutes a threat to human health or the  
36 environment, the exemption may be terminated and the use of the solid  
37 waste remains subject to the permitting requirements of this chapter.

1        ~~((4))~~ (5) The department shall establish procedures by rule for  
2 providing to the public and the solid waste industry notice of and an  
3 opportunity to comment on each application or proposal for an exemption  
4 under ~~((subsection (2) of))~~ this section.

5        ~~((5) Any jurisdictional health department or applicant))~~ (6) Any  
6 aggrieved party may appeal the decision of the department to approve or  
7 disapprove an application or adopt a proposal under ~~((subsection (3)~~  
8 ~~of))~~ this section. The appeal shall be made to the pollution control  
9 hearings board by filing with the hearings board a notice of appeal  
10 within thirty days of the decision of the department. The hearings  
11 board's review of the decision shall be made in accordance with chapter  
12 43.21B RCW and any subsequent appeal of a decision of the board shall  
13 be made in accordance with RCW 43.21B.180.

14        ~~((6))~~ (7) This section shall not be deemed to invalidate the  
15 exemptions or determinations of nonapplicability in the department's  
16 solid waste rules as they exist on June 11, 1998, which exemptions and  
17 determinations are recognized and confirmed subject to the department's  
18 continuing authority to modify or revoke those exemptions or  
19 determinations by rule.

20        **Sec. 9.** RCW 70.107.010 and 1974 ex.s. c 183 s 1 are each amended  
21 to read as follows:

22        The legislature finds that inadequately controlled noise adversely  
23 affects the health, safety and welfare of the people, the value of  
24 property, and the quality of the environment. ~~((Antinoise measures of~~  
25 ~~the past have not adequately protected against the invasion of these~~  
26 ~~interests by noise. There is a need, therefore, for an expansion of~~  
27 ~~efforts statewide directed toward the abatement and control of noise,~~  
28 ~~considering the social and economic impact upon the community and the~~  
29 ~~state.))~~ The purpose of this chapter is to provide authority for  
30 ~~((such an expansion of efforts, supplementing existing programs in the~~  
31 ~~field))~~ local governments to adopt and enforce regulations on noise.

32        **Sec. 10.** RCW 70.107.030 and 2011 c 171 s 107 are each amended to  
33 read as follows:

34        The department ~~((is empowered as follows:~~

35        ~~(1) The department, after consultation with state agencies~~  
36 ~~expressing an interest therein, shall adopt, by rule, maximum noise~~

1 ~~levels permissible)) shall adopt rules setting model standards for~~  
2 ~~noise control regulation by local governments in identified~~  
3 ~~environments in order to protect against adverse ((affects)) effects of~~  
4 ~~noise on the health, safety, and welfare of the people, the value of~~  
5 ~~property, and the quality of environment((:—PROVIDED, That in so~~  
6 ~~doing)). The department shall take ((also)) into account the economic~~  
7 ~~and practical benefits to be derived from the use of various products~~  
8 ~~in each such environment, whether the source of the noise or the use of~~  
9 ~~such products in each environment is permanent or temporary in nature,~~  
10 ~~and the state of technology relative to the control of noise generated~~  
11 ~~by all such sources of the noise or the products.~~

12 ~~((2) At any time after the adoption of maximum noise levels under~~  
13 ~~subsection (1) of this section the department shall, in consultation~~  
14 ~~with state agencies and local governments expressing an interest~~  
15 ~~therein, adopt rules, consistent with the Federal Noise Control Act of~~  
16 ~~1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431),~~  
17 ~~for noise abatement and control in the state designed to achieve~~  
18 ~~compliance with the noise level adopted in subsection (1) of this~~  
19 ~~section, including reasonable implementation schedules where~~  
20 ~~appropriate, to insure that the maximum noise levels are not exceeded~~  
21 ~~and that application of the best practicable noise control technology~~  
22 ~~and practice is provided. These rules may include, but shall not be~~  
23 ~~limited to:~~

24 ~~(a) Performance standards setting allowable noise limits for the~~  
25 ~~operation of products which produce noise;~~

26 ~~(b) Use standards regulating, as to time and place, the operation~~  
27 ~~of individual products which produce noise above specified levels~~  
28 ~~considering frequency spectrum and duration: PROVIDED, The rules shall~~  
29 ~~provide for temporarily exceeding those standards for stated purposes;~~  
30 ~~and~~

31 ~~(c) Public information requirements dealing with disclosure of~~  
32 ~~levels and characteristics of noise produced by products.~~

33 ~~(3) The department may, as desirable in the performance of its~~  
34 ~~duties under this chapter, conduct surveys, studies and public~~  
35 ~~education programs, and enter into contracts.~~

36 ~~(4) The department is authorized to apply for and accept moneys~~  
37 ~~from the federal government and other sources to assist in the~~  
38 ~~implementation of this chapter.~~

1       ~~(5) The legislature recognizes that the operation of motor vehicles~~  
2 ~~on public highways as defined in RCW 46.09.310 contributes~~  
3 ~~significantly to environmental noise levels and directs the department,~~  
4 ~~in exercising the rule making authority under the provisions of this~~  
5 ~~section, to give first priority to the adoption of motor vehicle noise~~  
6 ~~performance standards.~~

7       ~~(6) Noise levels and rules adopted by the department pursuant to~~  
8 ~~this chapter shall not be effective prior to March 31, 1975.)~~

9       **Sec. 11.** RCW 70.107.060 and 1987 c 103 s 1 are each amended to  
10 read as follows:

11       (1) Nothing in this chapter shall be construed to deny, abridge or  
12 alter alternative rights of action or remedies in equity or under  
13 common law or statutory law, criminal or civil.

14       (2) Nothing in this chapter shall deny, abridge or alter any  
15 powers, duties, and functions relating to noise abatement and control  
16 now or hereafter vested in any state agency, nor shall this chapter be  
17 construed as granting jurisdiction over the industrial safety and  
18 health of employees in workplaces of the state, as now or hereafter  
19 vested in the department of labor and industries.

20       ~~(3) ((Standards and other control measures adopted by the~~  
21 ~~department under this chapter shall be exclusive except as hereinafter~~  
22 ~~provided.)) A local government may impose limits or control sources~~  
23 ~~differing from those adopted ((or controlled)) by the department ((upon~~  
24 ~~a finding that such requirements are necessitated by special~~  
25 ~~conditions. Noise limiting requirements of local government which~~  
26 ~~differ from those adopted or controlled by the department shall be~~  
27 ~~invalid unless first approved by the department. If the department of~~  
28 ~~ecology fails to approve or disapprove standards submitted by local~~  
29 ~~governmental jurisdictions within ninety days of submittal, such~~  
30 ~~standards shall be deemed approved. If disapproved, the local~~  
31 ~~government may appeal the decision to the pollution control hearings~~  
32 ~~board which shall decide the appeal on the basis of the provisions of~~  
33 ~~this chapter, and the applicable regulations, together with such~~  
34 ~~briefs, testimony, and oral argument as the hearings board in its~~  
35 ~~discretion may require. The department determination of whether to~~  
36 ~~grant approval shall depend on the reasonableness and practicability of~~  
37 ~~compliance. Particular attention shall be given to stationary sources~~

1 ~~located near jurisdictional boundaries, and temporary noise producing~~  
2 ~~operations which may operate across one or more jurisdictional~~  
3 ~~boundaries)) pursuant to RCW 70.107.030.~~

4 (4) In carrying out the rule-making authority provided in this  
5 chapter, the department shall follow the procedures of the  
6 administrative procedure act, chapter 34.05 RCW, and shall take care  
7 that no rules adopted purport to exercise any powers preempted by the  
8 United States under federal law.

9 **Sec. 12.** RCW 90.56.060 and 2010 1st sp.s. c 7 s 73 are each  
10 amended to read as follows:

11 (1) The department shall prepare and annually update a statewide  
12 master oil and hazardous substance spill prevention and contingency  
13 plan. In preparing the plan, the department shall consult with an  
14 advisory committee representing diverse interests concerned with oil  
15 and hazardous substance spills, including the United States coast  
16 guard, the federal environmental protection agency, state agencies,  
17 local governments, port districts, private facilities, environmental  
18 organizations, oil companies, shipping companies, containment and  
19 cleanup contractors, tow companies, and hazardous substance  
20 manufacturers.

21 (2) The state master plan prepared under this section shall at a  
22 minimum:

23 (a) Take into consideration the elements of oil spill prevention  
24 and contingency plans approved or submitted for approval pursuant to  
25 this chapter and chapter 88.46 RCW and oil and hazardous substance  
26 spill contingency plans prepared pursuant to other state or federal law  
27 or prepared by federal agencies and regional entities;

28 (b) State the respective responsibilities as established by  
29 relevant statutes and rules of each of the following in the prevention  
30 of and the assessment, containment, and cleanup of a worst case spill  
31 of oil or hazardous substances into the environment of the state: (i)  
32 State agencies; (ii) local governments; (iii) appropriate federal  
33 agencies; (iv) facility operators; (v) property owners whose land or  
34 other property may be affected by the oil or hazardous substance spill;  
35 and (vi) other parties identified by the department as having an  
36 interest in or the resources to assist in the containment and cleanup  
37 of an oil or hazardous substance spill;

1 (c) State the respective responsibilities of the parties identified  
2 in (b) of this subsection in an emergency response;

3 (d) Identify actions necessary to reduce the likelihood of spills  
4 of oil and hazardous substances;

5 (e) Identify and obtain mapping of environmentally sensitive areas  
6 at particular risk to oil and hazardous substance spills;

7 (f) Establish an incident command system for responding to oil and  
8 hazardous substances spills; and

9 (g) Establish a process for immediately notifying affected tribes  
10 of any oil spill.

11 (3) In preparing and updating the state master plan, the department  
12 shall:

13 (a) Consult with federal, provincial, municipal, and community  
14 officials, other state agencies, the state of Oregon, and with  
15 representatives of affected regional organizations;

16 (b) Submit the draft plan to the public for review and comment; and

17 (c) ~~((Submit to the appropriate standing committees of the  
18 legislature for review, not later than November 1st of each year, the  
19 plan and any annual revision of the plan; and~~

20 ~~(d))~~ Require or schedule unannounced oil spill drills as required  
21 by RCW 90.56.260 to test the sufficiency of oil spill contingency plans  
22 approved under RCW 90.56.210.

23 ~~((4) The department shall evaluate the functions of advisory  
24 committees created by the department regarding oil spill prevention,  
25 preparedness, and response programs, and shall revise or eliminate  
26 those functions which are no longer necessary.))~~

27 **Sec. 13.** RCW 90.58.090 and 2011 c 353 s 14 and 2011 c 277 s 2 are  
28 each reenacted and amended to read as follows:

29 (1) A master program, segment of a master program, or an amendment  
30 to a master program shall become effective when approved by the  
31 department as provided in subsection (7) of this section. Within the  
32 time period provided in RCW 90.58.080, each local government shall have  
33 submitted a master program, either totally or by segments, for all  
34 shorelines of the state within its jurisdiction to the department for  
35 review and approval.

36 The department shall strive to achieve final action on a submitted



1 master program within one hundred eighty days of receipt and shall post  
2 an annual assessment related to this performance benchmark on the  
3 agency web site.

4 (2) Upon receipt of a proposed master program or amendment, the  
5 department shall:

6 (a) Provide notice to and opportunity for written comment by all  
7 interested parties of record as a part of the local government review  
8 process for the proposal and to all persons, groups, and agencies that  
9 have requested in writing notice of proposed master programs or  
10 amendments generally or for a specific area, subject matter, or issue.  
11 The comment period shall be at least thirty days, unless the department  
12 determines that the level of complexity or controversy involved  
13 supports a shorter period;

14 (b) In the department's discretion, conduct a public hearing during  
15 the thirty-day comment period in the jurisdiction proposing the master  
16 program or amendment;

17 (c) Within fifteen days after the close of public comment, request  
18 the local government to review the issues identified by the public,  
19 interested parties, groups, and agencies and provide a written response  
20 as to how the proposal addresses the identified issues;

21 (d) Within thirty days after receipt of the local government  
22 response pursuant to (c) of this subsection, make written findings and  
23 conclusions regarding the consistency of the proposal with the policy  
24 of RCW 90.58.020 and the applicable guidelines, provide a response to  
25 the issues identified in (c) of this subsection, and either approve the  
26 proposal as submitted, recommend specific changes necessary to make the  
27 proposal approvable, or deny approval of the proposal in those  
28 instances where no alteration of the proposal appears likely to be  
29 consistent with the policy of RCW 90.58.020 and the applicable  
30 guidelines. The written findings and conclusions shall be provided to  
31 the local government, and made available to all interested persons,  
32 parties, groups, and agencies of record on the proposal;

33 (e) If the department recommends changes to the proposed master  
34 program or amendment, within thirty days after the department mails the  
35 written findings and conclusions to the local government, the local  
36 government may:

37 (i) Agree to the proposed changes by written notice to the  
38 department; or

1 (ii) Submit an alternative proposal. If, in the opinion of the  
2 department, the alternative is consistent with the purpose and intent  
3 of the changes originally submitted by the department and with this  
4 chapter it shall approve the changes and provide notice to all  
5 recipients of the written findings and conclusions. If the department  
6 determines the proposal is not consistent with the purpose and intent  
7 of the changes proposed by the department, the department may resubmit  
8 the proposal for public and agency review pursuant to this section or  
9 reject the proposal.

10 (3) The department shall approve the segment of a master program  
11 relating to shorelines unless it determines that the submitted segments  
12 are not consistent with the policy of RCW 90.58.020 and the applicable  
13 guidelines.

14 (4) The department shall approve the segment of a master program  
15 relating to critical areas as defined by RCW 36.70A.030(5) provided the  
16 master program segment is consistent with RCW 90.58.020 and applicable  
17 shoreline guidelines, and if the segment provides a level of protection  
18 of critical areas (~~at least equal to that provided by the local~~  
19 ~~government's critical areas ordinances adopted and thereafter amended~~  
20 ~~pursuant to RCW 36.70A.060(2))~~ that ensures no net loss of shoreline  
21 ecological functions necessary to sustain shoreline natural resources  
22 as defined by department guidelines adopted pursuant to RCW 90.58.060.

23 (5) The department shall approve those segments of the master  
24 program relating to shorelines of statewide significance only after  
25 determining the program provides the optimum implementation of the  
26 policy of this chapter to satisfy the statewide interest. If the  
27 department does not approve a segment of a local government master  
28 program relating to a shoreline of statewide significance, the  
29 department may develop and by rule adopt an alternative to the local  
30 government's proposal.

31 (6) In the event a local government has not complied with the  
32 requirements of RCW 90.58.070 it may thereafter upon written notice to  
33 the department elect to adopt a master program for the shorelines  
34 within its jurisdiction, in which event it shall comply with the  
35 provisions established by this chapter for the adoption of a master  
36 program for such shorelines.

37 Upon approval of such master program by the department it shall

1 supersede such master program as may have been adopted by the  
2 department for such shorelines.

3 (7) A master program or amendment to a master program takes effect  
4 when and in such form as approved or adopted by the department. The  
5 effective date is fourteen days from the date of the department's  
6 written notice of final action to the local government stating the  
7 department has approved or rejected the proposal. For master programs  
8 adopted by rule, the effective date is governed by RCW 34.05.380. The  
9 department's written notice to the local government must conspicuously  
10 and plainly state that it is the department's final decision and that  
11 there will be no further modifications to the proposal.

12 (a) Shoreline master programs that were adopted by the department  
13 prior to July 22, 1995, in accordance with the provisions of this  
14 section then in effect, shall be deemed approved by the department in  
15 accordance with the provisions of this section that became effective on  
16 that date.

17 (b) The department shall maintain a record of each master program,  
18 the action taken on any proposal for adoption or amendment of the  
19 master program, and any appeal of the department's action. The  
20 department's approved document of record constitutes the official  
21 master program.

22 (8) Promptly after approval or disapproval of a local government's  
23 shoreline master program or amendment, the department shall publish a  
24 notice consistent with RCW 36.70A.290 that the shoreline master program  
25 or amendment has been approved or disapproved. This notice must be  
26 filed for all shoreline master programs or amendments. If the notice  
27 is for a local government that does not plan under RCW 36.70A.040, the  
28 department must, on the day the notice is published, notify the  
29 legislative authority of the applicable local government by telephone  
30 or electronic means, followed by written communication as necessary, to  
31 ensure that the local government has received the full written decision  
32 of the approval or disapproval.

33 **Sec. 14.** RCW 90.58.190 and 2012 c 172 s 1 are each amended to read  
34 as follows:

35 (1) The appeal of the department's decision to adopt a master  
36 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is  
37 governed by RCW 34.05.510 through 34.05.598.

1 (2)(a) The department's final decision to approve or reject a  
2 proposed master program or master program amendment by a local  
3 government planning under RCW 36.70A.040 shall be appealed to the  
4 growth management hearings board by filing a petition as provided in  
5 RCW 36.70A.290.

6 (b) If the appeal to the growth management hearings board concerns  
7 shorelines, the growth management hearings board shall review the  
8 proposed master program or amendment solely for compliance with the  
9 requirements of this chapter, the policy of RCW 90.58.020 and the  
10 applicable guidelines, the internal consistency provisions of RCW  
11 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter  
12 43.21C RCW as it relates to the adoption of master programs and  
13 amendments under chapter 90.58 RCW.

14 (c) If the appeal to the growth management hearings board concerns  
15 a shoreline of statewide significance, the board shall uphold the  
16 decision by the department unless the board, by clear and convincing  
17 evidence, determines that the decision of the department is  
18 noncompliant with the policy of RCW 90.58.020 or the applicable  
19 guidelines, or chapter 43.21C RCW as it relates to the adoption of  
20 master programs and amendments under this chapter.

21 (d) The appellant has the burden of proof in all appeals to the  
22 growth management hearings board under this subsection.

23 (e) Any party aggrieved by a final decision of the growth  
24 management hearings board under this subsection may appeal the decision  
25 to superior court as provided in RCW 36.70A.300.

26 (3)(a) The department's final decision to approve or reject a  
27 proposed master program or master program amendment by a local  
28 government not planning under RCW 36.70A.040 shall be appealed to the  
29 shorelines hearings board by filing a petition within thirty days of  
30 the date that the department publishes notice of its final decision  
31 under RCW 90.58.090(8).

32 (b) In an appeal relating to shorelines, the shorelines hearings  
33 board shall review the proposed master program or master program  
34 amendment and, after full consideration of the presentations of the  
35 parties, shall determine the validity of the local government's master  
36 program or amendment in light of the policy of RCW 90.58.020 and the  
37 applicable guidelines, and chapter 43.21C RCW as it relates to the  
38 adoption of master programs and amendments under this chapter.

1 (c) In an appeal relating to shorelines of statewide significance,  
2 the shorelines hearings board shall uphold the decision by the  
3 department unless the board determines, by clear and convincing  
4 evidence that the decision of the department is noncompliant with the  
5 policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C  
6 RCW as it relates to the adoption of master programs and amendments  
7 under this chapter.

8 (d) Review by the shorelines hearings board shall be considered an  
9 adjudicative proceeding under chapter 34.05 RCW, the administrative  
10 procedure act. The appellant shall have the burden of proof in all  
11 such reviews.

12 (e) Whenever possible, the review by the shorelines hearings board  
13 shall be heard within the county where the land subject to the proposed  
14 master program or master program amendment is primarily located. The  
15 department and any party aggrieved by a final decision of the hearings  
16 board may appeal the decision to superior court as provided in chapter  
17 34.05 RCW.

18 ~~((4) A master program amendment shall become effective after the  
19 approval of the department or after the decision of the growth  
20 management hearings board or shorelines hearings board to uphold the  
21 master program or master program amendment, provided that either the  
22 growth management hearings board or the shorelines hearings board may  
23 remand the master program or master program amendment to the local  
24 government or the department for modification prior to the final  
25 adoption of the master program or master program amendment.))~~

26 NEW SECTION. **Sec. 15.** Section 2 of this act expires June 30,  
27 2019.

28 NEW SECTION. **Sec. 16.** Section 3 of this act takes effect June 30,  
29 2019.

30 NEW SECTION. **Sec. 17.** On the effective date of this section, the  
31 state treasurer shall transfer any money remaining in the vessel  
32 response account to the coastal protection fund created in RCW  
33 90.48.390.

1        NEW SECTION.    **Sec. 18.**    The following acts or parts of acts are  
2 each repealed:

3        (1) RCW 43.21A.610 (Steam electric generating plant--Study--  
4 Construction) and 2009 c 549 s 5088, 1988 c 127 s 10, & 1965 c 8 s  
5 43.21.250;

6        (2) RCW 43.21A.612 (Steam electric generating plant--Statement of  
7 intention--Construction by public utility, operating agency, or the  
8 department, procedure--Powers of director of community, trade, and  
9 economic development) and 1995 c 399 s 68, 1988 c 127 s 11, 1985 c 466  
10 s 49, & 1965 c 8 s 43.21.260;

11        (3) RCW 43.21A.614 (Steam electric generating plant--Powers of  
12 director in constructing, operating and maintaining) and 1988 c 127 s  
13 12 & 1965 c 8 s 43.21.270;

14        (4) RCW 43.21A.616 (Steam electric generating plant--Eminent  
15 domain) and 1988 c 127 s 13 & 1965 c 8 s 43.21.280;

16        (5) RCW 43.21A.618 (Steam electric generating plant--State not  
17 financially obligated--Separation and expenditure of funds) and 1988 c  
18 127 s 14 & 1965 c 8 s 43.21.290;

19        (6) RCW 43.21A.620 (Steam electric generating plant--Revenue bonds  
20 and warrants) and 2009 c 549 s 5089, 1988 c 127 s 15, & 1965 c 8 s  
21 43.21.300;

22        (7) RCW 43.21A.622 (Steam electric generating plant--Special  
23 funds--Payment of bonds, interest) and 1988 c 127 s 16 & 1965 c 8 s  
24 43.21.310;

25        (8) RCW 43.21A.624 (Steam electric generating plant--Considerations  
26 in issuance of bonds, limitations) and 1988 c 127 s 17 & 1965 c 8 s  
27 43.21.320;

28        (9) RCW 43.21A.626 (Steam electric generating plant--Resolution  
29 authorizing issuance of bonds, contents, covenants) and 1988 c 127 s 18  
30 & 1965 c 8 s 43.21.330;

31        (10) RCW 43.21A.628 (Steam electric generating plant--Sale of  
32 bonds) and 1988 c 127 s 19, 1970 ex.s. c 56 s 61, 1969 ex.s. c 232 s  
33 32, & 1965 c 8 s 43.21.340;

34        (11) RCW 43.21A.630 (Steam electric generating plant--Examination,  
35 registration of bonds by state auditor--Defects, irregularities) and  
36 2009 c 549 s 5090 & 1965 c 8 s 43.21.350;

37        (12) RCW 43.21A.632 (Steam electric generating plant--Rates or  
38 charges) and 1988 c 127 s 20 & 1965 c 8 s 43.21.360;

1           (13) RCW 43.21A.634 (Steam electric generating plant--Refunding  
2 revenue bonds) and 1988 c 127 s 21 & 1965 c 8 s 43.21.370;  
3           (14) RCW 43.21A.636 (Steam electric generating plant--Signatures on  
4 bonds) and 1965 c 8 s 43.21.380;  
5           (15) RCW 43.21A.638 (Steam electric generating plant--Provisions of  
6 law, resolution, a contract with bondholder--Enforcement) and 1988 c  
7 127 s 22 & 1965 c 8 s 43.21.390;  
8           (16) RCW 43.21A.640 (Steam electric generating plant--Bonds are  
9 legal security, investment, negotiable) and 1965 c 8 s 43.21.400;  
10          (17) RCW 43.21A.642 (Steam electric generating plant--Director not  
11 authorized to acquire other facilities or engage in retail  
12 distribution) and 1988 c 127 s 23 & 1965 c 8 s 43.21.410;  
13          (18) RCW 70.95.205 (Exemption from solid waste permit  
14 requirements--Waste-derived soil amendments--Application--Revocation of  
15 exemption--Appeal) and 1998 c 36 s 18;  
16          (19) RCW 70.95.700 (Solid waste incineration or energy recovery  
17 facility--Environmental impact statement requirements) and 1989 c 431  
18 s 55;  
19          (20) RCW 70.107.040 (Technical advisory committee) and 1975-'76 2nd  
20 ex.s. c 34 s 164 & 1974 ex.s. c 183 s 4;  
21          (21) RCW 70.107.050 (Civil penalties) and 1987 c 103 s 2 & 1974  
22 ex.s. c 183 s 5; and  
23          (22) RCW 90.56.335 (Vessel response account--Dedicated rescue tug)  
24 and 2003 c 264 s 3.

--- END ---