
HOUSE BILL 1775

State of Washington

54th Legislature

1995 Regular Session

By Representatives Mulliken, Mastin, Schoesler, Chandler, McMorris, Robertson, Honeyford and Elliot

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1 AN ACT Relating to water transfers and changes; amending RCW
2 90.03.380, 90.44.100, 90.03.290, 90.44.445, 34.05.425, 34.05.461,
3 34.05.530, 34.05.534, 34.12.040, 43.21B.130, 43.21B.110, 43.21B.240,
4 43.21B.310, 34.05.419, 34.05.514, and 43.21B.320; adding a new section
5 to chapter 43.21B RCW; adding a new section to chapter 90.03 RCW; and
6 adding a new section to chapter 90.44 RCW.

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

8 **Sec. 1.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read
9 as follows:

10 (1) The right to the use of water which has been applied to a
11 beneficial use in the state shall be and remain appurtenant to the land
12 or place upon which the same is used: PROVIDED, HOWEVER, That ((said))
13 the right may be transferred to another or to others and become
14 appurtenant to any other land or place of use without loss of priority
15 of right theretofore established if such change can be made without
16 detriment or injury to existing rights. The point of diversion of
17 water for beneficial use or the purpose of use may be changed, if such
18 change can be made without detriment or injury to existing rights.
19 Before any transfer of such right to use water or change of the point

1 of diversion of water or change of purpose of use can be made, any
2 person having an interest in the transfer or change, shall file a
3 written application therefor with the department, and ~~((said))~~ the
4 application shall not be granted until notice of ~~((said))~~ the
5 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If
6 it shall appear that such transfer or such change may be made without
7 injury or detriment to existing rights, the department shall issue to
8 the applicant a certificate in duplicate granting the right for such
9 transfer or for such change of point of diversion or of use. The
10 certificate so issued shall be filed and be made a record with the
11 department and the duplicate certificate issued to the applicant may be
12 filed with the county auditor in like manner and with the same effect
13 as provided in the original certificate or permit to divert water.

14 (2) If an application for change proposes to transfer water rights
15 from one irrigation district to another, the department shall, before
16 publication of notice, receive concurrence from each of the irrigation
17 districts that such transfer or change will not adversely affect the
18 ability to deliver water to other landowners or impair the financial
19 integrity of either of the districts.

20 (3) A change in place of use by an individual water user or users
21 of water provided by an irrigation district need only receive approval
22 for the change from the board of directors of the district if the use
23 of water continues within the irrigation district.

24 (4) If a portion of the water governed by a water right is made
25 surplus to the beneficial uses exercised under the right through the
26 implementation of practices or technologies which are more water use
27 efficient than those under which the right was perfected or through a
28 change in the crops grown under the water right, the right to use the
29 surplus water may be changed to use on other lands or at other places
30 or may be transferred to another or others without loss of priority of
31 the right. Such a transfer or change can be made only if it can be
32 made without detriment or injury to existing rights. For the purposes
33 of this subsection, existing rights do not include rights of applicants
34 for water use permits. The provisions of subsections (1), (2), and (3)
35 of this section regarding transfers or changes of water rights apply to
36 transfers or changes concerning such surplus waters.

37 (5) This section shall not apply to trust water rights acquired by
38 the state through the funding of water conservation projects under
39 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

1 **Sec. 2.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
2 read as follows:

3 (1) After an application to, and upon the issuance by the
4 department of an amendment to the appropriate permit or certificate of
5 ground water right, the holder of a valid right to withdraw public
6 ground waters may, without losing his priority of right, construct
7 wells or other means of withdrawal at a new location in substitution
8 for or in addition to those at the original location, or he may change
9 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~
10 ~~such))~~). An amendment shall be issued only after publication of notice
11 of the application and findings as prescribed in the case of an
12 original application. Such amendment shall be issued by the department
13 only on the conditions that: ((+1)) (a) The additional or substitute
14 well or wells shall tap the same body of public ground water as the
15 original well or wells; ((+2)) (b) use of the original well or wells
16 shall be discontinued upon construction of the substitute well or
17 wells; ((+3)) (c) the construction of an additional well or wells
18 shall not enlarge the right conveyed by the original permit or
19 certificate; and ((+4)) (d) other existing rights shall not be
20 impaired. The department may specify an approved manner of
21 construction and shall require a showing of compliance with the terms
22 of the amendment, as provided in RCW 90.44.080 in the case of an
23 original permit.

24 (2) If a portion of the ground water governed by a water right is
25 made surplus to the beneficial uses exercised under the right through
26 the implementation of practices or technologies which are more water
27 use efficient than those under which the right was perfected or through
28 a change in the crops grown under the water right, the right to use the
29 surplus water may be changed to use on other lands or at other places
30 or may be transferred to another or others without loss of priority of
31 the right. Such a transfer or change can be made only if it can be
32 made without detriment or injury to existing rights. For the purposes
33 of this subsection, existing rights do not include rights of applicants
34 for water use permits. An application for the change or transfer shall
35 be made to the department of ecology and considered by the department
36 as provided for such a change or transfer of a right or portion of a
37 right to the use of surface water which is within the jurisdiction of
38 the department under RCW 90.03.380.

1 **Sec. 3.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
2 as follows:

3 When an application complying with the provisions of this chapter
4 and with the rules and regulations of the department has been filed,
5 the same shall be placed on record with the department, and it shall be
6 its duty to investigate the application, and determine what water, if
7 any, is available for appropriation, and find and determine to what
8 beneficial use or uses it can be applied. If it is proposed to
9 appropriate water for irrigation purposes, the department shall
10 investigate, determine and find what lands are capable of irrigation by
11 means of water found available for appropriation. If it is proposed to
12 appropriate water for the purpose of power development, the department
13 shall investigate, determine and find whether the proposed development
14 is likely to prove detrimental to the public interest, having in mind
15 the highest feasible use of the waters belonging to the public. If the
16 application does not contain, and the applicant does not promptly
17 furnish sufficient information on which to base such findings, the
18 department may issue a preliminary permit, for a period of not to
19 exceed three years, requiring the applicant to make such surveys,
20 investigations, studies, and progress reports, as in the opinion of the
21 department may be necessary. If the applicant fails to comply with the
22 conditions of the preliminary permit, it and the application or
23 applications on which it is based shall be automatically canceled and
24 the applicant so notified. If the holder of a preliminary permit
25 shall, before its expiration, file with the department a verified
26 report of expenditures made and work done under the preliminary permit,
27 which, in the opinion of the department, establishes the good faith,
28 intent and ability of the applicant to carry on the proposed
29 development, the preliminary permit may, with the approval of the
30 governor, be extended, but not to exceed a maximum period of five years
31 from the date of the issuance of the preliminary permit. The
32 department shall make and file as part of the record in the matter,
33 written findings of fact concerning all things investigated, and if it
34 shall find that there is water available for appropriation for a
35 beneficial use, and the appropriation thereof as proposed in the
36 application will not impair existing rights or be detrimental to the
37 public welfare, it shall issue a permit stating the amount of water to
38 which the applicant shall be entitled and the beneficial use or uses to
39 which it may be applied: PROVIDED, That where the water applied for is

1 to be used for irrigation purposes, it shall become appurtenant only to
2 such land as may be reclaimed thereby to the full extent of the soil
3 for agricultural purposes. But where there is no unappropriated water
4 in the proposed source of supply, or where the proposed use conflicts
5 with existing rights, or threatens to prove detrimental to the public
6 interest, having due regard to the highest feasible development of the
7 use of the waters belonging to the public, it shall be duty of the
8 department to reject such application and to refuse to issue the permit
9 asked for. If the permit is refused because of conflict with existing
10 rights and such applicant shall acquire same by purchase or
11 condemnation under RCW 90.03.040, the department may thereupon grant
12 such permit. Any application may be approved for a less amount of
13 water than that applied for, if there exists substantial reason
14 therefor, and in any event shall not be approved for more water than
15 can be applied to beneficial use for the purposes named in the
16 application. In determining whether or not a permit shall issue upon
17 any application, it shall be the duty of the department to investigate
18 all facts relevant and material to the application. After the
19 department approves said application in whole or in part and before any
20 permit shall be issued thereon to the applicant, such applicant shall
21 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
22 event a permit is issued by the department upon any application, it
23 shall be its duty to notify the director of fish and wildlife of such
24 issuance.

25 This section does not apply to applications for transfers or
26 changes made under RCW 90.03.380 or 90.44.100.

27 **Sec. 4.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read
28 as follows:

29 In any acreage expansion program adopted by the department as an
30 element of a ground water management program, the authorization for a
31 water right certificate holder to participate in the program shall be
32 on an annual basis for the first two years. After the two-year period,
33 the department may authorize participation for ten-year periods. The
34 department may authorize participation for ten-year periods for
35 certificate holders who have already participated in an acreage
36 expansion program for two years. The department may require annual
37 certification that the certificate holder has complied with all
38 requirements of the program. The department may terminate the

1 authority of a certificate holder to participate in the program for one
2 calendar year if the certificate holder fails to comply with the
3 requirements of the program.

4 This section applies only in an area with a ground water area or
5 subarea management. The provisions of RCW 90.44.100 apply to
6 amendments to permits or rights for the beneficial use of ground water
7 in any other area.

8 NEW SECTION. Sec. 5. A new section is added to chapter 43.21B RCW
9 to read as follows:

10 (1) The legislature finds that the principle of requiring parties
11 to exhaust the available administrative remedies has, with regard to
12 certain decisions of the department of ecology, imposed severe burdens
13 on members of the public. They are required to expend considerable
14 resources and to suffer intolerable delays. The purpose of this
15 section is to provide for the expedited review of the decisions of the
16 department of ecology made under RCW 90.03.380(3) and 90.44.100(2).

17 (2) A decision made by the department of ecology under RCW
18 90.03.380(3) or 90.44.100(2) regarding a change or transfer of a right
19 to use water may be appealed to an administrative law judge as an
20 adjudicative proceeding under chapter 34.05 RCW, the administrative
21 procedure act. The administrative law judge shall serve as the
22 presiding officer for the hearing in accordance with RCW 34.05.425(3).

23 **Sec. 6.** RCW 34.05.425 and 1989 c 175 s 14 are each amended to read
24 as follows:

25 (1) Except as provided in subsections (2) and (3) of this section,
26 in the discretion of the agency head, the presiding officer in an
27 administrative hearing shall be:

28 (a) The agency head or one or more members of the agency head;

29 (b) If the agency has statutory authority to do so, a person other
30 than the agency head or an administrative law judge designated by the
31 agency head to make the final decision and enter the final order; or

32 (c) One or more administrative law judges assigned by the office of
33 administrative hearings in accordance with chapter 34.12 RCW.

34 (2) An agency expressly exempted under RCW 34.12.020(4) or other
35 statute from the provisions of chapter 34.12 RCW or an institution of
36 higher education shall designate a presiding officer as provided by
37 rules adopted by the agency.

1 (3) The presiding officer in an administrative hearing for a
2 decision made by the department of ecology under RCW 90.03.380(3) or
3 90.44.100(2) shall be an administrative law judge assigned by the
4 office of administrative hearings in accordance with chapter 34.12 RCW.
5 The administrative law judge shall make the final decision and enter
6 the final order for these hearings.

7 (4) Any individual serving or designated to serve alone or with
8 others as presiding officer is subject to disqualification for bias,
9 prejudice, interest, or any other cause provided in this chapter or for
10 which a judge is disqualified.

11 ~~((4))~~ (5) Any party may petition for the disqualification of an
12 individual promptly after receipt of notice indicating that the
13 individual will preside or, if later, promptly upon discovering facts
14 establishing grounds for disqualification.

15 ~~((5))~~ (6) The individual whose disqualification is requested
16 shall determine whether to grant the petition, stating facts and
17 reasons for the determination.

18 ~~((6))~~ (7) When the presiding officer is an administrative law
19 judge, the provisions of this section regarding disqualification for
20 cause are in addition to the motion of prejudice available under RCW
21 34.12.050.

22 ~~((7))~~ (8) If a substitute is required for an individual who
23 becomes unavailable as a result of disqualification or any other
24 reason, the substitute must be appointed by the appropriate appointing
25 authority.

26 ~~((8))~~ (9) Any action taken by a duly appointed substitute for an
27 unavailable individual is as effective as if taken by the unavailable
28 individual.

29 **Sec. 7.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to read
30 as follows:

31 (1) Except as provided in subsection (2) of this section:

32 (a) If the presiding officer is the agency head or one or more
33 members of the agency head, the presiding officer may enter an initial
34 order if further review is available within the agency, or a final
35 order if further review is not available;

36 (b) If the presiding officer is a person designated by the agency
37 to make the final decision and enter the final order, or is an

1 administrative law judge acting pursuant to RCW 34.05.425(3), the
2 presiding officer shall enter a final order; and

3 (c) If the presiding officer is one or more administrative law
4 judges, the presiding officer shall enter an initial order.

5 (2) With respect to agencies exempt from chapter 34.12 RCW or an
6 institution of higher education, the presiding officer shall transmit
7 a full and complete record of the proceedings, including such comments
8 upon demeanor of witnesses as the presiding officer deems relevant, to
9 each agency official who is to enter a final or initial order after
10 considering the record and evidence so transmitted.

11 (3) Initial and final orders shall include a statement of findings
12 and conclusions, and the reasons and basis therefor, on all the
13 material issues of fact, law, or discretion presented on the record,
14 including the remedy or sanction and, if applicable, the action taken
15 on a petition for a stay of effectiveness. Any findings based
16 substantially on credibility of evidence or demeanor of witnesses shall
17 be so identified. Findings set forth in language that is essentially
18 a repetition or paraphrase of the relevant provision of law shall be
19 accompanied by a concise and explicit statement of the underlying
20 evidence of record to support the findings. The order shall also
21 include a statement of the available procedures and time limits for
22 seeking reconsideration or other administrative relief. An initial
23 order shall include a statement of any circumstances under which the
24 initial order, without further notice, may become a final order.

25 (4) Findings of fact shall be based exclusively on the evidence of
26 record in the adjudicative proceeding and on matters officially noticed
27 in that proceeding. Findings shall be based on the kind of evidence on
28 which reasonably prudent persons are accustomed to rely in the conduct
29 of their affairs. Findings may be based on such evidence even if it
30 would be inadmissible in a civil trial. However, the presiding officer
31 shall not base a finding exclusively on such inadmissible evidence
32 unless the presiding officer determines that doing so would not unduly
33 abridge the parties' opportunities to confront witnesses and rebut
34 evidence. The basis for this determination shall appear in the order.

35 (5) Where it bears on the issues presented, the agency's
36 experience, technical competency, and specialized knowledge may be used
37 in the evaluation of evidence.

38 (6) If a person serving or designated to serve as presiding officer
39 becomes unavailable for any reason before entry of the order, a

1 substitute presiding officer shall be appointed as provided in RCW
2 34.05.425. The substitute presiding officer shall use any existing
3 record and may conduct any further proceedings appropriate in the
4 interests of justice.

5 (7) The presiding officer may allow the parties a designated time
6 after conclusion of the hearing for the submission of memos, briefs, or
7 proposed findings.

8 (8) Initial or final orders shall be served in writing within
9 ninety days after conclusion of the hearing or after submission of
10 memos, briefs, or proposed findings in accordance with subsection (7)
11 of this section unless this period is waived or extended for good cause
12 shown.

13 (9) The presiding officer shall cause copies of the order to be
14 served on each party and the agency.

15 **Sec. 8.** RCW 34.05.530 and 1988 c 288 s 506 are each amended to
16 read as follows:

17 A person has standing to obtain judicial review of agency action if
18 that person is aggrieved or adversely affected by the agency action.
19 An agency has standing to obtain judicial review of a final order if
20 the final order is adverse to the agency and is issued by an
21 administrative law judge acting pursuant to RCW 34.05.425(3). A person
22 is aggrieved or adversely affected within the meaning of this section
23 only when all three of the following conditions are present:

24 (1) The agency action has prejudiced or is likely to prejudice that
25 person;

26 (2) That person's asserted interests are among those that the
27 agency was required to consider when it engaged in the agency action
28 challenged; and

29 (3) A judgment in favor of that person would substantially
30 eliminate or redress the prejudice to that person caused or likely to
31 be caused by the agency action.

32 **Sec. 9.** RCW 34.05.534 and 1988 c 288 s 507 are each amended to
33 read as follows:

34 A person may file a petition for judicial review under this chapter
35 only after exhausting all administrative remedies available within the
36 agency whose action is being challenged, or available within any other
37 agency authorized to exercise administrative review, except:

1 (1) A petitioner for judicial review of a rule need not have
2 participated in the rule-making proceeding upon which that rule is
3 based, or have petitioned for its amendment or repeal;

4 (2) A petitioner for judicial review need not exhaust
5 administrative remedies to the extent that this chapter or any other
6 statute states that exhaustion is not required; ((or))

7 (3) The court may relieve a petitioner of the requirement to
8 exhaust any or all administrative remedies upon a showing that:

9 (a) The remedies would be patently inadequate;

10 (b) The exhaustion of remedies would be futile; or

11 (c) The grave irreparable harm that would result from having to
12 exhaust administrative remedies would clearly outweigh the public
13 policy requiring exhaustion of administrative remedies; or

14 (4) A petitioner for judicial review of a final order issued by an
15 administrative law judge acting pursuant to RCW 34.05.425(3) need not
16 exhaust any other administrative remedy.

17 **Sec. 10.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
18 as follows:

19 Whenever a state agency conducts a hearing which is not presided
20 over by officials of the agency who are to render the final decision,
21 the hearing shall be conducted by an administrative law judge assigned
22 under this chapter. In any adjudicative proceeding commenced in
23 response to a decision by the department of ecology under RCW
24 90.03.380(3) or 90.44.100(2), the hearing shall be conducted by an
25 administrative law judge assigned under this chapter according to
26 procedural rules developed by the chief administrative law judge. In
27 assigning administrative law judges, the chief administrative law judge
28 shall wherever practical (1) use personnel having expertise in the
29 field or subject matter of the hearing, and (2) assign administrative
30 law judges primarily to the hearings of particular agencies on a long-
31 term basis.

32 **Sec. 11.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to read
33 as follows:

34 The administrative procedure act, chapter 34.05 RCW, shall apply to
35 the appeal of rules and regulations adopted by the board to the same
36 extent as it applied to the review of rules and regulations adopted by
37 the directors and/or boards or commissions of the various departments

1 whose powers, duties and functions were transferred by section 6,
2 chapter 62, Laws of 1970 ex. sess. to the department. Except with
3 regard to decisions made by the department under RCW 90.03.380(3) or
4 90.44.100(2) that are appealable to an administrative law judge
5 pursuant to RCW 34.05.425(3), all other decisions and orders of the
6 director and all decisions of air pollution control boards or
7 authorities established pursuant to chapter 70.94 RCW shall be subject
8 to review by the hearings board as provided in this chapter.

9 NEW SECTION. Sec. 12. A new section is added to chapter 90.03 RCW
10 to read as follows:

11 A decision made by the department of ecology under RCW 90.03.380(3)
12 regarding a change or transfer of a right to use water may be appealed
13 to an administrative law judge in accordance with RCW 34.05.425(3).

14 NEW SECTION. Sec. 13. A new section is added to chapter 90.44 RCW
15 to read as follows:

16 A decision made by the department of ecology under RCW 90.44.100(2)
17 regarding a change or transfer of a right to use water may be appealed
18 to an administrative law judge in accordance with RCW 34.05.425(3).

19 **Sec. 14.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
20 read as follows:

21 (1) The pollution control hearings board shall only have
22 jurisdiction to hear and decide appeals from the following decisions of
23 the department, the director, the administrator of the office of marine
24 safety, and the air pollution control boards or authorities as
25 established pursuant to chapter 70.94 RCW, or local health departments:

26 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
27 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
28 90.56.330.

29 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
30 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
31 90.14.130, and 90.48.120.

32 (c) The issuance, modification, or termination of any permit,
33 certificate, or license by the department or any air authority in the
34 exercise of its jurisdiction, including the issuance or termination of
35 a waste disposal permit, the denial of an application for a waste

1 disposal permit, or the modification of the conditions or the terms of
2 a waste disposal permit.

3 (d) Decisions of local health departments regarding the grant or
4 denial of solid waste permits pursuant to chapter 70.95 RCW.

5 (e) Decisions of local health departments regarding the issuance
6 and enforcement of permits to use or dispose of biosolids under RCW
7 70.95J.080.

8 (f) Any other decision by the department, the administrator of the
9 office of marine safety, or an air authority which pursuant to law must
10 be decided as an adjudicative proceeding under chapter 34.05 RCW.

11 (2) The jurisdiction of the pollution control hearings board is
12 further limited as follows:

13 (a) The hearings board shall have no jurisdiction whatsoever to
14 review decisions of the department of ecology under RCW 90.03.380(3) or
15 90.44.100(2) regarding a change or a transfer of a right to use water,
16 or to review proceedings concerning general adjudications of water
17 rights conducted pursuant to chapter 90.03 or 90.44 RCW.

18 (b) The following hearings shall not be conducted by the hearings
19 board:

20 ((~~a~~)) (i) Hearings required by law to be conducted by the
21 shorelines hearings board pursuant to chapter 90.58 RCW.

22 ((~~b~~)) (ii) Hearings conducted by the department pursuant to RCW
23 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
24 90.44.180.

25 ((~~c~~) ~~Proceedings by the department relating to general~~
26 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.~~

27 (~~d~~)) (iii) Hearings conducted by the department to adopt, modify,
28 or repeal rules.

29 (3) Review of rules and regulations adopted by the hearings board
30 shall be subject to review in accordance with the provisions of the
31 Administrative Procedure Act, chapter 34.05 RCW.

32 **Sec. 15.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to
33 read as follows:

34 The department and air authorities shall not have authority to hold
35 adjudicative proceedings pursuant to the Administrative Procedure Act,
36 chapter 34.05 RCW(~~(.—Such))~~, except with regard to decisions of the
37 department made under RCW 90.03.380(3) or 90.44.100(2). All other
38 hearings shall be held by the pollution control hearings board.

1 **Sec. 16.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (2) of this section, any order
4 issued by the department, the administrator of the office of marine
5 safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095,
6 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision
7 enacted after July 26, 1987, or any permit, certificate, or license
8 issued by the department may be appealed to the pollution control
9 hearings board if the appeal is filed with the board and served on the
10 department or authority within thirty days after receipt of the order.
11 Except as provided under chapter 70.105D RCW, (~~this is~~) these are the
12 exclusive means of appeal of such an order.

13 (~~(2)~~) (a) The department, the administrator, or the authority in
14 its discretion may stay the effectiveness of an order during the
15 pendency of such an appeal.

16 (~~(3)~~) (b) At any time during the pendency of an appeal of such an
17 order to the board or to an administrative law judge acting pursuant to
18 RCW 34.05.425(3), the appellant may apply pursuant to RCW 43.21B.320 to
19 the hearings board or administrative law judge for a stay of the order
20 or for the removal thereof.

21 (~~(4)~~) (c) Any appeal before the hearings board must contain the
22 following in accordance with the rules of the hearings board:

23 (~~(a)~~) (i) The appellant's name and address;

24 (~~(b)~~) (ii) The date and docket number of the order, permit, or
25 license appealed;

26 (~~(c)~~) (iii) A description of the substance of the order, permit,
27 or license that is the subject of the appeal;

28 (~~(d)~~) (iv) A clear, separate, and concise statement of every
29 error alleged to have been committed;

30 (~~(e)~~) (v) A clear and concise statement of facts upon which the
31 requester relies to sustain his or her statements of error; and

32 (~~(f)~~) (vi) A statement setting forth the relief sought.

33 (~~(5)~~) (d) Upon failure to comply with any final order of the
34 department or the administrator, the attorney general, on request of
35 the department or the administrator or the administrative law judge
36 acting pursuant to RCW 34.05.425(3), may bring an action in the
37 superior court of the county where the violation occurred or the
38 potential violation is about to occur to obtain such relief as
39 necessary, including injunctive relief, to insure compliance with the

1 order. The air authorities may bring similar actions to enforce their
2 orders.

3 ~~((+6))~~ (e) An appealable decision or order shall be identified as
4 such and shall contain a conspicuous notice to the recipient that it
5 may be appealed only by filing an appeal with the hearings board and
6 serving it on the department within thirty days of receipt.

7 (2) Decisions of the department of ecology made under RCW
8 90.03.380(3) or 90.44.100(2) may not be appealed to the hearings board;
9 they may be appealed to an administrative law judge in accordance with
10 RCW 34.05.425(3).

11 **Sec. 17.** RCW 34.05.419 and 1988 c 288 s 404 are each amended to
12 read as follows:

13 After receipt of an application for an adjudicative proceeding,
14 other than a declaratory order, an agency shall proceed as follows:

15 (1) Except in situations governed by subsection (2) ~~((or))~~, (3), or
16 (4) of this section, within ninety days after receipt of the
17 application or of the response to a timely request made by the agency
18 under subsection (2) of this section, the agency shall do one of the
19 following:

20 (a) Approve or deny the application, in whole or in part, on the
21 basis of brief or emergency adjudicative proceedings, if those
22 proceedings are available under this chapter for disposition of the
23 matter;

24 (b) Commence an adjudicative proceeding in accordance with this
25 chapter; or

26 (c) Dispose of the application in accordance with RCW 34.05.416;

27 (2) Within thirty days after receipt of the application, the agency
28 shall examine the application, notify the applicant of any obvious
29 errors or omissions, request any additional information the agency
30 wishes to obtain and is permitted by law to require, and notify the
31 applicant of the name, mailing address, and telephone number of an
32 office that may be contacted regarding the application;

33 (3) If the application seeks relief that is not available when the
34 application is filed but may be available in the future, the agency may
35 proceed to make a determination of eligibility within the time limits
36 provided in subsection (1) of this section. If the agency determines
37 that the applicant is eligible, the agency shall maintain the
38 application on the agency's list of eligible applicants as provided by

1 law and, upon request, shall notify the applicant of the status of the
2 application;

3 (4) After receipt of an application for an adjudicative proceeding
4 in response to a decision made by the department of ecology under RCW
5 90.03.380(3) or 90.44.100(2), the department of ecology shall within
6 thirty days of the receipt of the application commence an adjudicatory
7 proceeding in accordance with this chapter.

8 **Sec. 18.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to
9 read as follows:

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

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

21 (3) For proceedings involving water related to decisions made by
22 the department of ecology under RCW 90.03.380(3) or 90.44.100(2), the
23 petition shall be filed in the superior court in the county that will
24 be directly and immediately affected by the decision.

25 **Sec. 19.** RCW 43.21B.320 and 1987 c 109 s 7 are each amended to
26 read as follows:

27 (1) A person appealing to the hearings board or to an
28 administrative law judge acting pursuant to RCW 34.05.425(3), an order
29 of the department or an authority, not stayed by the issuing agency,
30 may obtain a stay of the effectiveness of that order only as set forth
31 in this section.

32 (2) An appealing party may request a stay by including such a
33 request in the appeal document, in a subsequent motion, or by such
34 other means as the rules of the hearings board or the procedural rules
35 developed by the chief administrative law judge for appeals made
36 pursuant to RCW 34.05.425(3) shall prescribe. The request must be
37 accompanied by a statement of grounds for the stay and evidence setting

1 forth the factual basis upon which request is based. The hearings
2 board or the administrative law judge shall hear the request for a stay
3 as soon as possible. The hearing on the request for stay may be
4 consolidated with the hearing on the merits.

5 (3) The applicant may make a prima facie case for stay if the
6 applicant demonstrates either a likelihood of success on the merits of
7 the appeal or irreparable harm. Upon such a showing, the hearings
8 board or administrative law judge shall grant the stay unless the
9 department or authority demonstrates either (a) a substantial
10 probability of success on the merits or (b) likelihood of success on
11 the merits and an overriding public interest which justifies denial of
12 the stay.

13 (4) Unless otherwise stipulated by the parties, the hearings board
14 or administrative law judge, after granting or denying an application
15 for a stay, shall expedite the hearing and decision on the merits.

16 (5) Any party or other person aggrieved by the grant or denial of
17 a stay by the hearings board may petition the superior court for
18 Thurston county for review of that decision pursuant to chapter 34.05
19 RCW pending the appeal on the merits before the board. Any party or
20 other person aggrieved by the grant or denial of a stay by an
21 administrative law judge acting pursuant to RCW 34.05.425(3) may
22 petition the superior court for the county that will be directly and
23 immediately affected by the stay. The superior court shall expedite
24 its review of the decision of the hearings board or administrative law
25 judge.

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