
SECOND SUBSTITUTE HOUSE BILL 2510

State of Washington**53rd Legislature****1994 Regular Session**

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Reams, Brough, Dorn, Dunshee, Johanson, Pruitt, Shin, Zellinsky, Carlson, R. Johnson, J. Kohl, Karahalios, Basich, Jones, Bray, R. Fisher, Holm, Moak, Sheldon, Valle, Chappell, Eide, Wolfe, B. Thomas, Dyer, King, G. Fisher, L. Johnson, Dellwo, Ogden, Roland, Grant, Jacobsen, Quall, Rayburn, Morris, Romero, Rust, Kremen, Conway, Linville, Patterson, Forner, Long, Mielke, Springer, Cothorn, Kessler, H. Myers, Tate, Backlund, Cooke, Wood and Mastin; by request of Governor Lowry)

Read first time 02/08/94.

1 AN ACT Relating to implementation of the recommendations of the
2 governor's task force on regulatory reform; amending RCW 34.05.370,
3 34.05.350, 34.05.330, 34.05.355, 19.85.020, 19.85.010, 34.05.640,
4 34.05.660, 36.70A.270, 36.70A.290, 36.70A.300, 36.70A.030, 58.17.330,
5 35A.63.170, 43.21C.075, 35.63.130, 36.70.970, 70.105D.020, 70.105D.030,
6 70.105D.050, 70.105D.060, 34.12.020, 36.70A.110, 36.70A.210,
7 36.70A.250, 36.70A.260, 36.70A.280, 36.70A.310, and 36.70A.345;
8 reenacting and amending RCW 19.85.030 and 19.85.040; adding new
9 sections to chapter 34.05 RCW; adding a new section to chapter 43.17
10 RCW; adding new sections to chapter 36.70A RCW; adding a new section to
11 chapter 70.105D RCW; adding a new section to chapter 70.94 RCW; adding
12 a new section to chapter 70.95 RCW; adding a new section to chapter
13 70.105 RCW; adding a new section to chapter 75.20 RCW; adding a new
14 section to chapter 90.48 RCW; adding a new section to chapter 90.58
15 RCW; adding a new section to chapter 43.21C RCW; creating a new
16 section; and providing an effective date.

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

18 NEW SECTION. **Sec. 1.** The senate and the house of representatives
19 will adopt rules regarding:

1 (1) A joint committee to address the review of existing statutes
2 that grant rule-making authority and the review of conflicting,
3 duplicative regulations; and

4 (2) Legislative rules and procedures regarding bills that grant
5 rule-making authority and the process for identifying bills that grant
6 rule-making authority.

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

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

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

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

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

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

23 (d) Any official transcript of oral presentations made in the
24 proceeding on which the rule is based or, if not transcribed, any tape
25 recording or stenographic record of them, and any memorandum prepared
26 by a presiding official summarizing the contents of those
27 presentations;

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

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

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

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

34 (3) Internal agency documents are exempt from inclusion in the
35 rule-making file under subsection (2) of this section to the extent
36 they constitute preliminary drafts, notes, recommendations, and intra-
37 agency memoranda in which opinions are expressed or policies formulated
38 or recommended, except that a specific document is not exempt from

1 inclusion when it is publicly cited by an agency in connection with its
2 decision.

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

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

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

11 (a) That immediate adoption, amendment, or repeal of a rule is
12 necessary for the preservation of the public health, safety, or general
13 welfare, and that observing the time requirements of notice and
14 opportunity to comment upon adoption of a permanent rule would be
15 contrary to the public interest; or

16 (b) That state or federal law or federal rule or a federal deadline
17 for state receipt of federal funds requires immediate adoption of a
18 rule,

19 the agency may dispense with those requirements and adopt, amend, or
20 repeal the rule on an emergency basis. The agency's finding and a
21 concise statement of the reasons for its finding shall be incorporated
22 in the order for adoption of the emergency rule or amendment filed with
23 the office of the code reviser under RCW 34.05.380 and with the rules
24 review committee.

25 (2) An emergency rule adopted under this section takes effect upon
26 filing with the code reviser, unless a later date is specified in the
27 order of adoption, and may not remain in effect for longer than one
28 hundred twenty days after filing. Identical or substantially similar
29 emergency rules may not be adopted in sequence unless conditions have
30 changed or the agency has filed notice of its intent to adopt the rule
31 as a permanent rule, and is actively undertaking the appropriate
32 procedures to adopt the rule as a permanent rule. This section does
33 not relieve any agency from compliance with any law requiring that its
34 permanent rules be approved by designated persons or bodies before they
35 become effective.

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

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

3 (1) Before adopting a rule, the agency shall consider the following
4 criteria:

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

6 (b) The need for the rule and consistency of the rule with the
7 agency's mission, goals, and program objectives established under RCW
8 43.88.090;

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

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

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

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

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

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

24 (2) The agency shall prepare a written description of its
25 consideration of the criteria specified in subsection (1) of this
26 section, unless the rule deals only with seasons, catch or bag limits,
27 or geographical areas for fishing or shellfish removal. The
28 description shall be part of the official rule-making file for the
29 rule. Failure to comply with the procedural requirements of this
30 section is subject to judicial review. However, the adequacy or
31 accuracy of the agency's consideration of the criteria, or written
32 description thereof, is not subject to judicial review.

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

35 (1) Any person may petition an agency requesting the adoption,
36 amendment, or repeal of any rule. Each agency may prescribe by rule
37 the form for such petitions and the procedure for their submission,
38 consideration, and disposition. Within sixty days after submission of

1 a petition, the agency shall (1) either deny the petition in writing,
2 stating its reasons for the denial, or (2) initiate rule-making
3 proceedings in accordance with this chapter.

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

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

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

21 (2) Upon the request of any interested person within thirty days
22 after adoption of a rule, the agency shall ~~((issue a concise statement~~
23 ~~of the principal reasons for overruling the considerations urged~~
24 ~~against its adoption))~~ provide a copy of the concise explanatory
25 statement to any person who has requested a copy or who has commented
26 on the proposed rule.

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

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

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

36 (a) Establish differing compliance or reporting requirements or
37 timetables for small businesses;

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

3 (c) Establish performance rather than design standards;

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

6 (e) Other mitigation techniques.

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

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

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

15 Unless the context clearly indicates otherwise, the definitions in
16 this section apply through this chapter.

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

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

24 (3) "Industry" means all of the businesses in this state in any one
25 (~~three-digit~~) four-digit standard industrial classification as
26 published by the United States department of commerce. However, if the
27 four-digit standard industrial classification would result in the
28 release of data that would violate state confidentiality provisions,
29 "industry" means all businesses in a three-digit standard industrial
30 classification.

31 **Sec. 9.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
32 each reenacted and amended to read as follows:

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

34 (a) A brief description of the reporting, recordkeeping, and other
35 compliance requirements of the rule, and the kinds of professional
36 services that a small business is likely to need in order to comply

1 with such requirements(~~(. A small business economic impact statement~~
2 ~~shall analyze,))i~~

3 (b) An analysis based on existing data and any new data gathered by
4 the agency, of the costs of compliance for businesses required to
5 comply with the provisions of a rule adopted pursuant to RCW 34.05.320,
6 including costs of equipment, supplies, labor, and increased
7 administrative costs, and compare to the greatest extent possible the
8 cost of compliance for small business with the cost of compliance for
9 the ten percent of firms which are the largest businesses required to
10 comply with the proposed new or amendatory rules;

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

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

15 ~~((1))~~ (a) Cost per employee;

16 ~~((2))~~ (b) Cost per hour of labor; and

17 ~~((3))~~ (c) Cost per one hundred dollars of sales(~~(+~~

18 ~~(4) Any combination of (1), (2), or (3)).~~

19 (3) Agencies are encouraged to use committees pursuant to RCW
20 34.05.310 in analyzing the costs of compliance and identifying steps to
21 be taken to minimize the cost impact on small business.

22 **Sec. 10.** RCW 19.85.010 and 1982 c 6 s 1 are each amended to read
23 as follows:

24 The legislature finds that small businesses in the state of
25 Washington have in the past been subjected to rules adopted by
26 agencies, departments, and instrumentalities of the state government
27 which have placed a proportionately higher burden on the small business
28 community in Washington state. The legislature also finds that such
29 proportionately higher burdens placed on small businesses have reduced
30 competition, reduced employment, reduced new employment opportunities,
31 reduced innovation, and threatened the very existence of some small
32 businesses. Therefore, it is the intent of the legislature that rules
33 affecting the business community shall not place proportionately higher
34 burdens on small businesses. The legislature therefore enacts this
35 Regulatory Fairness Act to minimize such proportionately higher impacts
36 of rules on small businesses in the future and reduce the economic
37 impact of state rules on small business.

1 **Sec. 11.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
2 as follows:

3 (1) Within seven days of an agency hearing held after notification
4 of the agency by the rules review committee pursuant to RCW 34.05.620
5 or 34.05.630, the affected agency shall notify the committee of its
6 action on a proposed or existing rule to which the committee objected
7 or on a committee finding of the agency's failure to adopt rules. If
8 the rules review committee determines, by a majority vote of its
9 members, that the agency has failed to provide for the required
10 hearings or notice of its action to the committee, the committee may
11 file notice of its objections, together with a concise statement of the
12 reasons therefor, with the code reviser within thirty days of such
13 determination.

14 (2) If the rules review committee finds, by a majority vote of its
15 members: (a) That the proposed or existing rule in question has not
16 been modified, amended, withdrawn, or repealed by the agency so as to
17 conform with the intent of the legislature, or (b) that the agency is
18 using a policy statement, guideline, or issuance in place of a rule, or
19 that the policy statement, guideline, or issuance is outside of the
20 legislative intent, the rules review committee may, within thirty days
21 from notification by the agency of its action, file with the code
22 reviser notice of its objections together with a concise statement of
23 the reasons therefor. Such notice and statement shall also be provided
24 to the agency by the rules review committee.

25 (3) If the rules review committee makes an adverse finding under
26 subsection (2) of this section, the committee may, by a (~~two-thirds~~)
27 majority vote of its members, recommend suspension of an existing rule.
28 Within seven days of such vote the committee shall transmit to the
29 governor, the code reviser, and the agency written notice of its
30 objection and recommended suspension and the concise reasons therefor.
31 Within thirty days of receipt of the notice, the governor shall
32 transmit to the committee, the code reviser, and the agency written
33 approval or disapproval of the recommended suspension. If the
34 suspension is approved by the governor, it is effective from the date
35 of that approval and continues until ninety days after the expiration
36 of the next regular legislative session.

37 (4) If the governor disapproves the recommendation by the rules
38 review committee to suspend the rule, the transmittal of such decision,
39 along with the findings of the rules review committee, shall be treated

1 by the agency as a petition by the rules review committee to repeal the
2 rule pursuant to RCW 34.05.330. Within sixty days the agency shall
3 either commence appropriate rule repeal or rule amendment proceedings
4 or state in writing why the rule was adopted within the scope of the
5 agency's statutory authority.

6 (5) The code reviser shall publish transmittals from the rules
7 review committee or the governor issued pursuant to subsection (1),
8 (2), or (3) of this section in the Washington state register and shall
9 publish in the next supplement and compilation of the Washington
10 Administrative Code a reference to the committee's objection or
11 recommended suspension and the governor's action on it and to the issue
12 of the Washington state register in which the full text thereof
13 appears.

14 ~~((+5))~~ (6) The reference shall be removed from a rule published in
15 the Washington Administrative Code if a subsequent adjudicatory
16 proceeding determines that the rule is within the intent of the
17 legislature or was adopted in accordance with all applicable laws,
18 whichever was the objection of the rules review committee.

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

21 If the rules review committee by a vote of two-thirds of its
22 members recommends to the governor that an existing rule be suspended,
23 such recommendation shall establish a rebuttable presumption in any
24 proceeding challenging the validity of the rule that such rule was
25 adopted outside the scope of the authority of the agency adopting the
26 rule.

27 Sec. 13. RCW 34.05.660 and 1988 c 288 s 606 are each amended to
28 read as follows:

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

35 NEW SECTION. Sec. 14. The department of community, trade, and
36 economic development shall develop a model standardized format for

1 reporting information that is commonly required from the public by
2 state and local government agencies for permits, licenses, approvals,
3 and services. In the development of the format, the department shall
4 work in conjunction with representatives from state and local
5 government agencies and representatives of the business community.

6 The department shall submit the standardized format together with
7 recommendations for implementation to the legislature by December 31,
8 1994.

9 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.17 RCW
10 to read as follows:

11 (1) The governor shall, where appropriate, require state agencies
12 with regulatory enforcement authority to designate one or more
13 technical assistance representatives to coordinate voluntary compliance
14 and provide technical assistance concerning compliance with the
15 agency's laws and rules.

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

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

6 **Sec. 16.** RCW 36.70A.270 and 1991 sp.s. c 32 s 7 are each amended
7 to read as follows:

8 Each growth ((~~planning~~)) management hearings board shall be
9 governed by the following rules on conduct and procedure:

10 (1) Any board member may be removed for inefficiency, malfeasance,
11 and misfeasance in office, under specific written charges filed by the
12 governor. The governor shall transmit such written charges to the
13 member accused and the chief justice of the supreme court. The chief
14 justice shall thereupon designate a tribunal composed of three judges
15 of the superior court to hear and adjudicate the charges. Removal of
16 any member of a board by the tribunal shall disqualify such member for
17 reappointment.

18 (2) Each board member shall receive reimbursement for travel
19 expenses incurred in the discharge of his or her duties in accordance
20 with RCW 43.03.050 and 43.03.060. If it is determined that the review
21 boards shall operate on a full-time basis, each member shall receive an
22 annual salary to be determined by the governor pursuant to RCW
23 43.03.040. If it is determined that a review board shall operate on a
24 part-time basis, each member shall receive compensation pursuant to RCW
25 43.03.250, provided such amount shall not exceed the amount that would
26 be set if they were a full-time board member. The principal office of
27 each board shall be located by the governor within the jurisdictional
28 boundaries of each board. The boards shall operate on either a part-
29 time or full-time basis, as determined by the governor.

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

36 (4) A majority of each board shall constitute a quorum for making
37 orders or decisions, adopting rules necessary for the conduct of its
38 powers and duties, or transacting other official business, and may act

1 even though one position of the board is vacant. One or more members
2 may hold hearings and take testimony to be reported for action by the
3 board when authorized by rule or order of the board. The board shall
4 perform all the powers and duties specified in this chapter or as
5 otherwise provided by law.

6 ~~(5) The board may ((also)) appoint ((as its authorized agents)) one~~
7 ~~or more hearing examiners ((to assist the board in the performance of~~
8 ~~its hearing function pursuant to the authority contained in)) pursuant~~
9 ~~to the administrative procedure act, chapter 34.05 RCW, to make~~
10 ~~conclusions of law and findings of fact and, if requested by the board,~~
11 ~~issue written decisions in cases before the board. Such hearing~~
12 ~~examiners must have demonstrated knowledge of land use planning and~~
13 ~~law. In appointing hearing examiners, the board is exempt from the~~
14 ~~requirements of chapter 34.12 RCW. The boards shall specify in their~~
15 ~~joint rules of practice and procedure, as required by subsection (7) of~~
16 ~~this section, the procedure and criteria to be employed in selecting~~
17 ~~hearing examiners. Hearing examiners selected by a board shall meet~~
18 ~~the requirements of subsection (3) of this section. If authorized by~~
19 ~~the boards' joint rules of practice and procedure, and if the board so~~
20 ~~provides in its appointment of a hearing examiner, the findings,~~
21 ~~conclusions, and decision of the hearing examiner shall be deemed the~~
22 ~~final order of the board and shall be effective upon receipt by the~~
23 ~~board and filing at the board's principal office. Otherwise, the~~
24 ~~conclusions, findings, and decision of the hearing examiner shall not~~
25 ~~become final until they have been ((formally)) approved by the board~~
26 ~~pursuant to a process developed by the boards in their joint rules of~~
27 ~~practice and procedure and consistent with RCW 34.05.464. This~~
28 ~~authorization to use hearing examiners does not waive the requirement~~
29 ~~of RCW 36.70A.300 that final orders be issued within one hundred eighty~~
30 ~~days of board receipt of a petition. ((Such hearing examiners must~~
31 ~~have demonstrated knowledge of land use planning and law. The board~~
32 ~~shall perform all the powers and duties specified in this chapter or as~~
33 ~~otherwise provided by law.~~

34 ~~(5))~~ (6) Except as provided in subsection (5) of this section,
35 each board shall make findings of fact and prepare a written decision
36 in each case decided by it, and such findings and decision shall be
37 effective upon being signed by two or more members of the board and
38 upon being filed at the board's principal office, and shall be open for
39 public inspection at all reasonable times.

1 (~~(6)~~) (7) All proceedings before the board (~~(or)~~), any of its
2 members, or a hearing examiner appointed by the board shall be
3 conducted in accordance with such administrative rules of practice and
4 procedure as the boards jointly prescribe. All three boards shall
5 jointly meet to develop and adopt joint rules of practice and
6 procedure, including rules regarding expeditious and summary
7 disposition of appeals. The boards shall publish such rules and
8 arrange for the reasonable distribution of the rules. The
9 administrative procedure act, chapter 34.05 RCW, shall govern the
10 administrative rules of practice and procedure adopted by the boards.

11 (~~(7)~~) (8) The members of the boards shall meet jointly on at
12 least an annual basis with the objective of sharing information that
13 promotes the goals and purposes of this chapter.

14 **Sec. 17.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended
15 to read as follows:

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

19 (2) All petitions relating to whether or not an adopted
20 comprehensive plan, development regulation, or permanent amendment
21 thereto, is in compliance with the goals and requirements of this
22 chapter or chapter 43.21C RCW must be filed within sixty days after
23 publication by the legislative bodies of the county or city. The date
24 of publication for a city shall be the date the city publishes the
25 ordinance, or summary of the ordinance, adopting the comprehensive plan
26 or development regulations, or amendment thereto, as is required to be
27 published. Promptly after adoption, a county shall publish a notice
28 that it has adopted the comprehensive plan or development regulations,
29 or amendment thereto. The date of publication for a county shall be
30 the date the county publishes the notice that it has adopted the
31 comprehensive plan or development regulations, or amendment thereto.

32 (3) Unless the board dismisses the petition as frivolous or finds
33 that the person filing the petition lacks standing, the board shall,
34 within ten days of receipt of the petition, set a time for hearing the
35 matter.

36 (4) The board shall base its decision on the record developed by
37 the city, county, or the state and supplemented with additional
38 evidence if the board determines that such additional evidence would be

1 necessary or of substantial assistance to the board in reaching its
2 decision.

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

6 **Sec. 18.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended
7 to read as follows:

8 (1) The board shall issue a final order within one hundred eighty
9 days of receipt of the petition for review, or, when multiple petitions
10 are filed, within one hundred eighty days of receipt of the last
11 petition that is consolidated. Such a final order shall be based
12 exclusively on whether or not a state agency, county, or city is in
13 compliance with the requirements of this chapter, or chapter 43.21C RCW
14 as it relates to plans, regulations, and amendments thereto, adopted
15 under RCW 36.70A.040. In the final order, the board shall either: (a)
16 Find that the state agency, county, or city is in compliance with the
17 requirements of this chapter; or (b) find that the state agency,
18 county, or city is not in compliance with the requirements of this
19 chapter, in which case the board shall remand the matter to the
20 affected state agency, county, or city and specify a reasonable time
21 not in excess of one hundred eighty days within which the state agency,
22 county, or city shall comply with the requirements of this chapter.

23 (2) Any party aggrieved by a final decision of the hearings board
24 may appeal the decision (~~(to Thurston county superior court)~~) within
25 thirty days of the final order of the board. If the appeal is from
26 board review of city or county action, appeal shall be to the division
27 of the court of appeals to which appeal would be proper under RCW
28 2.06.020 had the action been initiated in the superior court for the
29 county wherein the city or county whose plan, regulation, or amendment
30 is being appealed is located. Where appeal is from board review of
31 state agency action, appeal shall be to any division of the courts of
32 appeal to which appeal would be proper under RCW 2.06.020 had the
33 action been initiated under RCW 34.05.514.

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

36 Development regulations adopted pursuant to RCW 36.70A.040 shall
37 provide a timely and predictable process to determine whether a

1 completed development permit application meets the requirements of
2 those development regulations. Such development regulations shall
3 specify the contents of a completed development permit application for
4 purposes of satisfying the requirements of this section.

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

7 Each city and county planning under RCW 36.70A.040 shall, within
8 thirty days of receiving a development permit application as defined in
9 RCW 36.70A.030, mail a written notice to the applicant, stating either:
10 That the application is complete; or that the application is incomplete
11 and what is necessary to make the application complete.

12 **Sec. 21.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each
13 amended to read as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Adopt a comprehensive land use plan" means to enact a new
17 comprehensive land use plan or to update an existing comprehensive land
18 use plan.

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

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

26 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
27 means a generalized coordinated land use policy statement of the
28 governing body of a county or city that is adopted pursuant to this
29 chapter.

30 (5) "Critical areas" include the following areas and ecosystems:
31 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
32 used for potable water; (c) fish and wildlife habitat conservation
33 areas; (d) frequently flooded areas; and (e) geologically hazardous
34 areas.

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

1 (7) "Development permit application" means any application that
2 must be submitted to a city or county for administrative approval
3 before the development or change in use of property within that city or
4 county, including, but not limited to, application for a conditional
5 use permit, application for subdivision approval, application for
6 binding site plan approval, application for a zoning permit,
7 application for planned unit development approval, and application for
8 a building permit, but does not include applications for quasi-judicial
9 or legislative acts such as rezones and alterations of the
10 comprehensive plan.

11 (8) "Development regulations" means any controls placed on
12 development or land use activities by a county or city, including, but
13 not limited to, zoning ordinances, official controls, planned unit
14 development ordinances, subdivision ordinances, and binding site plan
15 ordinances.

16 (~~(8)~~) (9) "Forest land" means land primarily useful for growing
17 trees, including Christmas trees subject to the excise tax imposed
18 under RCW 84.33.100 through 84.33.140, for commercial purposes, and
19 that has long-term commercial significance for growing trees
20 commercially.

21 (~~(9)~~) (10) "Geologically hazardous areas" means areas that
22 because of their susceptibility to erosion, sliding, earthquake, or
23 other geological events, are not suited to the siting of commercial,
24 residential, or industrial development consistent with public health or
25 safety concerns.

26 (~~(10)~~) (11) "Long-term commercial significance" includes the
27 growing capacity, productivity, and soil composition of the land for
28 long-term commercial production, in consideration with the land's
29 proximity to population areas, and the possibility of more intense uses
30 of the land.

31 (~~(11)~~) (12) "Minerals" include gravel, sand, and valuable
32 metallic substances.

33 (~~(12)~~) (13) "Public facilities" include streets, roads, highways,
34 sidewalks, street and road lighting systems, traffic signals, domestic
35 water systems, storm and sanitary sewer systems, parks and recreational
36 facilities, and schools.

37 (~~(13)~~) (14) "Public services" include fire protection and
38 suppression, law enforcement, public health, education, recreation,
39 environmental protection, and other governmental services.

1 (~~(14)~~) (15) "Urban growth" refers to growth that makes intensive
2 use of land for the location of buildings, structures, and impermeable
3 surfaces to such a degree as to be incompatible with the primary use of
4 such land for the production of food, other agricultural products, or
5 fiber, or the extraction of mineral resources. When allowed to spread
6 over wide areas, urban growth typically requires urban governmental
7 services. "Characterized by urban growth" refers to land having urban
8 growth located on it, or to land located in relationship to an area
9 with urban growth on it as to be appropriate for urban growth.

10 (~~(15)~~) (16) "Urban growth areas" means those areas designated by
11 a county pursuant to RCW 36.70A.110.

12 (~~(16)~~) (17) "Urban governmental services" include those
13 governmental services historically and typically delivered by cities,
14 and include storm and sanitary sewer systems, domestic water systems,
15 street cleaning services, fire and police protection services, public
16 transit services, and other public utilities associated with urban
17 areas and normally not associated with nonurban areas.

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

30 **Sec. 22.** RCW 58.17.330 and 1977 ex.s. c 213 s 4 are each amended
31 to read as follows:

32 As an alternative to those provisions of this chapter requiring a
33 planning commission to hear and issue recommendations for plat
34 approval, the county or city legislative body may adopt a hearing
35 examiner system and shall specify by ordinance the legal effect of the
36 decisions made by the examiner. Except for appeals of procedural
37 determinations made under the state environmental policy act, which

1 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
2 such decisions shall include one of the following:

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

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

8 The legislative authority shall prescribe procedures to be followed by
9 a hearing examiner.

10 Each final decision of a hearing examiner shall be in writing and
11 shall include findings and conclusions, based on the record, to support
12 the decision. Each final decision of a hearing examiner, unless a
13 longer period is mutually agreed to by the applicant and the hearing
14 examiner, shall be rendered within ten working days following
15 conclusion of all testimony and hearings.

16 **Sec. 23.** RCW 35A.63.170 and 1977 ex.s. c 213 s 2 are each amended
17 to read as follows:

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

33 Each city legislative body electing to use a hearing examiner
34 pursuant to this section shall by ordinance specify the legal effect of
35 the decisions made by the examiner. Except for appeals of procedural
36 determinations made under the state environmental policy act, which
37 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of

1 such decisions may vary for the different classes of applications
2 decided by the examiner but shall include one of the following:

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

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

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

17 **Sec. 24.** RCW 43.21C.075 and 1983 c 117 s 4 are each amended to
18 read as follows:

19 (1) Because a major purpose of this chapter is to combine
20 environmental considerations with public decisions, any appeal brought
21 under this chapter shall be linked to a specific governmental action.
22 The state environmental policy act provides a basis for challenging
23 whether governmental action is in compliance with the substantive and
24 procedural provisions of this chapter. The state environmental policy
25 act is not intended to create a cause of action unrelated to a specific
26 governmental action.

27 (2) Unless otherwise provided by this section:

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

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

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

35 (a) Shall not allow more than one agency appeal proceeding on a
36 procedural determination (the adequacy of a determination of
37 significance/nonsignificance or of a final environmental impact
38 statement)(~~(, consistent with any state statutory requirements for~~

1 ~~appeals to local legislative bodies~~)). If a county, city, town,
2 municipal corporation, or quasi-municipal corporation uses a hearing
3 examiner, any appeal of the hearing examiner's decision shall be made
4 to superior court. The appeal proceeding on a determination of
5 significance/nonsignificance may occur before the agency's final
6 decision on a proposed action. Such an appeal shall also be allowed
7 for a determination of significance/nonsignificance which may be issued
8 by the agency after supplemental review;

9 (b) Shall consolidate appeal of procedural issues and of
10 substantive determinations made under this chapter (such as a decision
11 to require particular mitigation measures or to deny a proposal) by
12 providing for simultaneous appeal of an agency decision on a proposal
13 and any environmental determinations made under this chapter, with the
14 exception of the threshold determination appeal as provided in (a) of
15 this subsection or an appeal to the local legislative authority under
16 RCW 43.21C.060 or other applicable state statutes;

17 (c) Shall provide for the preparation of a record for use in any
18 subsequent appeal proceedings, and shall provide for any subsequent
19 appeal proceedings to be conducted on the record, consistent with other
20 applicable law. An adequate record consists of findings and
21 conclusions, testimony under oath, and taped or written transcript. An
22 electronically recorded transcript will suffice for purposes of review
23 under this paragraph; and

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

26 (4) If a person aggrieved by an agency action has the right to
27 judicial appeal and if an agency has an appeal procedure, such person
28 shall, prior to seeking any judicial review, use such procedure if any
29 such procedure is available, unless expressly provided otherwise by
30 state statute.

31 (5) RCW 43.21C.080 establishes an optional "notice of action"
32 procedure which, if used, imposes a time period for appealing decisions
33 under this chapter. Some statutes and ordinances contain time periods
34 for challenging governmental actions which are subject to review under
35 this chapter, such as various local land use approvals (the "underlying
36 governmental action"). This section does not modify any such time
37 periods. This section governs when a judicial appeal must be brought
38 under this chapter where a "notice of action" is used, and/or where
39 there is another time period which is required by statute or ordinance

1 for challenging the underlying governmental action. In this
2 subsection, the term "appeal" refers to a judicial appeal only.

3 (a) If there is a time period for appealing the underlying
4 governmental action, appeals under this chapter shall be commenced
5 within thirty days. The agency shall give official notice stating the
6 date and place for commencing an appeal. If there is an agency
7 proceeding under subsection (3) of this section, the appellant shall,
8 prior to commencing a judicial appeal, submit to the responsible
9 official a notice of intent to commence a judicial appeal. This notice
10 of intent shall be given within the time period for commencing a
11 judicial appeal on the underlying governmental action.

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

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

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

23 (b) A taped or written transcript may be used. If a taped
24 transcript is to be reviewed, a record shall identify the location on
25 the taped transcript of testimony and evidence to be reviewed. Parties
26 are encouraged to designate only those portions of the testimony
27 necessary to present the issues raised on review, but if a party
28 alleges that a finding of fact is not supported by evidence, the party
29 should include in the record all evidence relevant to the disputed
30 finding. Any other party may designate additional portions of the
31 taped transcript relating to issues raised on review. A party may
32 provide a written transcript of portions of the testimony at the
33 party's own expense or apply to that court for an order requiring the
34 party seeking review to pay for additional portions of the written
35 transcript.

36 (c) Judicial review under this chapter shall without exception be
37 of the governmental action together with its accompanying environmental
38 determinations.

1 (7) Jurisdiction over the review of determinations under this
2 chapter in an appeal before an agency or superior court shall upon
3 consent of the parties be transferred in whole or part to the
4 shorelines hearings board. The shorelines hearings board shall hear
5 the matter and sign the final order expeditiously. The superior court
6 shall certify the final order of the shorelines hearings board and said
7 certified final order may only be appealed to an appellate court.

8 (8) For purposes of this section and RCW 43.21C.080, the words
9 "action", "decision", and "determination" mean substantive agency
10 action including any accompanying procedural determinations under this
11 chapter (except where the word "action" means "appeal" in RCW
12 43.21C.080(2) and (3)). The word "action" in this section and RCW
13 43.21C.080 does not mean a procedural determination by itself made
14 under this chapter. The word "determination" includes any
15 environmental document required by this chapter and state or local
16 implementing rules. The word "agency" refers to any state or local
17 unit of government. The word "appeal" refers to administrative,
18 legislative, or judicial appeals.

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

24 **Sec. 25.** RCW 35.63.130 and 1977 ex.s. c 213 s 1 are each amended
25 to read as follows:

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

1 Each city or county legislative body 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 for appeals of
4 procedural determinations made under the state environmental policy
5 act, which shall be in accordance with RCW 43.21C.075(3)(a), the legal
6 effect of such decisions may vary for the different classes of
7 applications decided by the examiner but shall include one of the
8 following:

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

11 (2) The decision may be given the effect of an administrative
12 decision appealable within a specified time limit to the legislative
13 body.

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

23 **Sec. 26.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended
24 to read as follows:

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

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

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

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

13 (2) The decision may be given the effect of an administrative
14 decision appealable within a specified time limit to the legislative
15 authority.

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

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

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

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

35 ~~((+2))~~ (3) "Director" means the director of ecology or the
36 director's designee.

37 ~~((+3))~~ (4) "Facility" means (a) any building, structure,
38 installation, equipment, pipe or pipeline (including any pipe into a

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

7 ~~((4))~~ (5) "Federal cleanup law" means the federal comprehensive
8 environmental response, compensation, and liability act of 1980, 42
9 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

10 ~~((5))~~ (6) "Hazardous substance" means:

11 (a) Any dangerous or extremely hazardous waste as defined in RCW
12 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
13 designated by rule pursuant to chapter 70.105 RCW;

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

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

19 (d) Petroleum or petroleum products; and

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

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

28 ~~((6))~~ (7) "Owner or operator" means:

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

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

34 The term does not include:

35 (i) An agency of the state or unit of local government which
36 acquired ownership or control involuntarily through bankruptcy, tax
37 delinquency, abandonment, or circumstances in which the government
38 involuntarily acquires title. This exclusion does not apply to an
39 agency of the state or unit of local government which has caused or

1 contributed to the release or threatened release of a hazardous
2 substance from the facility; or

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

6 ~~((+7))~~ (8) "Person" means an individual, firm, corporation,
7 association, partnership, consortium, joint venture, commercial entity,
8 state government agency, unit of local government, federal government
9 agency, or Indian tribe.

10 ~~((+8))~~ (9) "Potentially liable person" means any person whom the
11 department finds, based on credible evidence, to be liable under RCW
12 70.105D.040. The department shall give notice to any such person and
13 allow an opportunity for comment before making the finding, unless an
14 emergency requires otherwise.

15 ~~((+9))~~ (10) "Public notice" means, at a minimum, adequate notice
16 mailed to all persons who have made timely request of the department
17 and to persons residing in the potentially affected vicinity of the
18 proposed action; mailed to appropriate news media; published in the
19 newspaper of largest circulation in the city or county of the proposed
20 action; and opportunity for interested persons to comment.

21 ~~((+10))~~ (11) "Release" means any intentional or unintentional
22 entry of any hazardous substance into the environment, including but
23 not limited to the abandonment or disposal of containers of hazardous
24 substances.

25 ~~((+11))~~ (12) "Remedy" or "remedial action" means any action or
26 expenditure consistent with the purposes of this chapter to identify,
27 eliminate, or minimize any threat or potential threat posed by
28 hazardous substances to human health or the environment including any
29 investigative and monitoring activities with respect to any release or
30 threatened release of a hazardous substance and any health assessments
31 or health effects studies conducted in order to determine the risk or
32 potential risk to human health.

33 **Sec. 28.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
34 as follows:

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

37 (a) Investigate, provide for investigating, or require potentially
38 liable persons to investigate any releases or threatened releases of

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

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

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

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

28 (e) Classify substances as hazardous substances for purposes of RCW
29 70.105D.020(5) and classify substances and products as hazardous
30 substances for purposes of RCW 82.21.020(1); and

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

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

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

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

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

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

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

30 (4) The department shall establish a scientific advisory board to
31 render advice to the department with respect to the hazard ranking
32 system, cleanup standards, remedial actions, deadlines for remedial
33 actions, monitoring, the classification of substances as hazardous
34 substances for purposes of RCW 70.105D.020(5) and the classification of
35 substances or products as hazardous substances for purposes of RCW
36 82.21.020(1). The board shall consist of five independent members to
37 serve staggered three-year terms. No members may be employees of the
38 department. Members shall be reimbursed for travel expenses as
39 provided in RCW 43.03.050 and 43.03.060.

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

4 **Sec. 29.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
5 as follows:

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

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

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

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

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

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

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

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

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

4 **Sec. 30.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
5 as follows:

6 The department's investigative and remedial decisions under RCW
7 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
8 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
9 exclusively in superior court and only at the following times: (1) In
10 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
11 department to enforce an order or an agreed order, or seek a civil
12 penalty under this chapter; (3) in a suit for reimbursement under RCW
13 70.105D.050(2); (4) in a suit by the department to compel investigative
14 or remedial action; and (5) in a citizen's suit under RCW
15 70.105D.050(5). The court shall uphold the department's actions unless
16 they were arbitrary and capricious.

17 NEW SECTION. **Sec. 31.** A new section is added to chapter 70.105D
18 RCW to read as follows:

19 A person conducting a remedial action at a facility under a consent
20 decree, order, or agreed order, and the department when it conducts a
21 remedial action, are exempt from the procedural requirements of
22 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
23 procedural requirements of any laws requiring or authorizing local
24 government permits or approvals for the remedial action. This
25 exemption shall not apply if it would result in the loss of authority
26 delegated to the state by the federal government under the federal
27 resource conservation and recovery act, the federal clean water act,
28 the federal clean air act, or the federal coastal zone management act.
29 The department shall ensure compliance with the substantive provisions
30 of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
31 substantive provisions of any laws requiring or authorizing local
32 government permits of approvals. The department shall establish
33 procedures for ensuring that such remedial actions comply with the
34 substantive requirements adopted pursuant to such laws, and shall
35 consult with the state agencies and local governments charged with
36 implementing these laws. The procedures shall provide an opportunity
37 for comment by the public and by the state agencies and local

1 governments that would otherwise implement the laws referenced in this
2 section. Nothing in this section is intended to prohibit implementing
3 agencies from charging a fee to the person conducting the remedial
4 action to defray the costs of services rendered relating to the
5 substantive requirements for the remedial action.

6 NEW SECTION. **Sec. 32.** A new section is added to chapter 70.94 RCW
7 to read as follows:

8 The procedural requirements of this chapter shall not apply to any
9 person conducting a remedial action at a facility pursuant to a consent
10 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
11 or to the department of ecology when it conducts a remedial action
12 under chapter 70.105D RCW. This exemption shall not apply if it would
13 result in the loss of authority delegated to the state by the federal
14 government under the federal clean air act. The department of ecology
15 shall ensure compliance with the substantive requirements of this
16 chapter through the consent decree, order, or agreed order issued
17 pursuant to chapter 70.105D RCW, or during the department-conducted
18 remedial action, through the procedures developed by the department
19 pursuant to section 31 of this act.

20 NEW SECTION. **Sec. 33.** A new section is added to chapter 70.95 RCW
21 to read as follows:

22 The procedural requirements of this chapter shall not apply to any
23 person conducting a remedial action at a facility pursuant to a consent
24 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
25 or to the department of ecology when it conducts a remedial action
26 under chapter 70.105D RCW. This exemption shall not apply if it would
27 result in the loss of authority delegated to the state by the federal
28 government under the federal resource conservation and recovery act.
29 The department of ecology shall ensure compliance with the substantive
30 requirements of this chapter through the consent decree, order, or
31 agreed order issued pursuant to chapter 70.105D RCW, or during the
32 department-conducted remedial action, through the procedures developed
33 by the department pursuant to section 31 of this act.

34 NEW SECTION. **Sec. 34.** A new section is added to chapter 70.105
35 RCW to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. This exemption shall not apply if it would
6 result in the loss of authority delegated to the state by the federal
7 government under the federal resource conservation and recovery act.
8 The department of ecology shall ensure compliance with the substantive
9 requirements of this chapter through the consent decree, order, or
10 agreed order issued pursuant to chapter 70.105D RCW, or during the
11 department-conducted remedial action, through the procedures developed
12 by the department pursuant to section 31 of this act.

13 NEW SECTION. **Sec. 35.** 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 31 of this act.

25 NEW SECTION. **Sec. 36.** 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. This exemption shall not apply if it would
32 result in the loss of authority delegated to the state by the federal
33 government under the federal clean water act. The department of
34 ecology shall ensure compliance with the substantive requirements of
35 this chapter through the consent decree, order, or agreed order issued
36 pursuant to chapter 70.105D RCW, or during the department-conducted

1 remedial action, through the procedures developed by the department
2 pursuant to section 31 of this act.

3 NEW SECTION. **Sec. 37.** A new section is added to chapter 90.58 RCW
4 to read as follows:

5 The procedural requirements of this chapter shall not apply to any
6 person conducting a remedial action at a facility pursuant to a consent
7 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
8 or to the department of ecology when it conducts a remedial action
9 under chapter 70.105D RCW. This exemption shall not apply if it would
10 result in the loss of authority delegated to the state by the federal
11 government under the federal coastal zone management act. The
12 department of ecology shall ensure compliance with the substantive
13 requirements of this chapter through the consent decree, order, or
14 agreed order issued pursuant to chapter 70.105D RCW, or during the
15 department-conducted remedial action, through the procedures developed
16 by the department pursuant to section 31 of this act.

17 NEW SECTION. **Sec. 38.** A new section is added to chapter 43.21C
18 RCW to read as follows:

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

27 **Sec. 39.** RCW 34.12.020 and 1993 c 281 s 16 are each amended to
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

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

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

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

4 (4) "State agency" means any state board, commission, department,
5 or officer authorized by law to make rules or to conduct adjudicative
6 proceedings, except those in the legislative or judicial branches, the
7 growth management appeals boards, the pollution control hearings board,
8 the shorelines hearings board, the forest practices appeals board, the
9 environmental hearings office, the board of industrial insurance
10 appeals, the Washington personnel resources board, the public
11 employment relations commission, the personnel appeals board, and the
12 board of tax appeals.

13 **Sec. 40.** RCW 36.70A.110 and 1993 sp.s. c 6 s 2 are each amended to
14 read as follows:

15 (1) Each county that is required or chooses to plan under RCW
16 36.70A.040 shall designate an urban growth area or areas within which
17 urban growth shall be encouraged and outside of which growth can occur
18 only if it is not urban in nature. Each city that is located in such
19 a county shall be included within an urban growth area. An urban
20 growth area may include more than a single city. An urban growth area
21 may include territory that is located outside of a city only if such
22 territory already is characterized by urban growth or is adjacent to
23 territory already characterized by urban growth.

24 (2) Based upon the population growth management planning population
25 projection made for the county by the office of financial management,
26 the urban growth areas in the county shall include areas and densities
27 sufficient to permit the urban growth that is projected to occur in the
28 county for the succeeding twenty-year period. Each urban growth area
29 shall permit urban densities and shall include greenbelt and open space
30 areas. Within one year of July 1, 1990, each county that as of June 1,
31 1991, was required or chose to plan under RCW 36.70A.040, shall begin
32 consulting with each city located within its boundaries and each city
33 shall propose the location of an urban growth area. Within sixty days
34 of the date the county legislative authority of a county adopts its
35 resolution of intention or of certification by the office of financial
36 management, all other counties that are required or choose to plan
37 under RCW 36.70A.040 shall begin this consultation with each city
38 located within its boundaries. The county shall attempt to reach

1 agreement with each city on the location of an urban growth area within
2 which the city is located. If such an agreement is not reached with
3 each city located within the urban growth area, the county shall
4 justify in writing why it so designated the area an urban growth area.
5 A city may object formally with the department over the designation of
6 the urban growth area within which it is located. Where appropriate,
7 the department shall attempt to resolve the conflicts, including the
8 use of mediation services.

9 (3) Urban growth should be located first in areas already
10 characterized by urban growth that have existing public facility and
11 service capacities to serve such development, and second in areas
12 already characterized by urban growth that will be served by a
13 combination of both existing public facilities and services and any
14 additional needed public facilities and services that are provided by
15 either public or private sources. Further, it is appropriate that
16 urban government services be provided by cities, and urban government
17 services should not be provided in rural areas.

18 (4) On or before October 1, 1993, each county that was initially
19 required to plan under RCW 36.70A.040(1) shall adopt development
20 regulations designating interim urban growth areas under this chapter.
21 Within three years and three months of the date the county legislative
22 authority of a county adopts its resolution of intention or of
23 certification by the office of financial management, all other counties
24 that are required or choose to plan under RCW 36.70A.040 shall adopt
25 development regulations designating interim urban growth areas under
26 this chapter. Adoption of the interim urban growth areas may only
27 occur after public notice; public hearing; and compliance with the
28 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
29 Such action may be appealed to the appropriate growth ((planning))
30 management hearings board under RCW 36.70A.280. Final urban growth
31 areas shall be adopted at the time of comprehensive plan adoption under
32 this chapter.

33 (5) Each county shall include designations of urban growth areas in
34 its comprehensive plan.

35 **Sec. 41.** RCW 36.70A.210 and 1993 sp.s. c 6 s 4 are each amended to
36 read as follows:

37 (1) The legislature recognizes that counties are regional
38 governments within their boundaries, and cities are primary providers

1 of urban governmental services within urban growth areas. For the
2 purposes of this section, a "county-wide planning policy" is a written
3 policy statement or statements used solely for establishing a county-
4 wide framework from which county and city comprehensive plans are
5 developed and adopted pursuant to this chapter. This framework shall
6 ensure that city and county comprehensive plans are consistent as
7 required in RCW 36.70A.100. Nothing in this section shall be construed
8 to alter the land-use powers of cities.

9 (2) The legislative authority of a county that plans under RCW
10 36.70A.040 shall adopt a county-wide planning policy in cooperation
11 with the cities located in whole or in part within the county as
12 follows:

13 (a) No later than sixty calendar days from July 16, 1991, the
14 legislative authority of each county that as of June 1, 1991, was
15 required or chose to plan under RCW 36.70A.040 shall convene a meeting
16 with representatives of each city located within the county for the
17 purpose of establishing a collaborative process that will provide a
18 framework for the adoption of a county-wide planning policy. In other
19 counties that are required or choose to plan under RCW 36.70A.040, this
20 meeting shall be convened no later than sixty days after the date the
21 county adopts its resolution of intention or was certified by the
22 office of financial management.

23 (b) The process and framework for adoption of a county-wide
24 planning policy specified in (a) of this subsection shall determine the
25 manner in which the county and the cities agree to all procedures and
26 provisions including but not limited to desired planning policies,
27 deadlines, ratification of final agreements and demonstration thereof,
28 and financing, if any, of all activities associated therewith.

29 (c) If a county fails for any reason to convene a meeting with
30 representatives of cities as required in (a) of this subsection, the
31 governor may immediately impose any appropriate sanction or sanctions
32 on the county from those specified under RCW 36.70A.340.

33 (d) If there is no agreement by October 1, 1991, in a county that
34 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,
35 or if there is no agreement within one hundred twenty days of the date
36 the county adopted its resolution of intention or was certified by the
37 office of financial management in any other county that is required or
38 chooses to plan under RCW 36.70A.040, the governor shall first inquire
39 of the jurisdictions as to the reason or reasons for failure to reach

1 an agreement. If the governor deems it appropriate, the governor may
2 immediately request the assistance of the department of community,
3 trade, and economic development to mediate any disputes that preclude
4 agreement. If mediation is unsuccessful in resolving all disputes that
5 will lead to agreement, the governor may impose appropriate sanctions
6 from those specified under RCW 36.70A.340 on the county, city, or
7 cities for failure to reach an agreement as provided in this section.
8 The governor shall specify the reason or reasons for the imposition of
9 any sanction.

10 (e) No later than July 1, 1992, the legislative authority of each
11 county that was required or chose to plan under RCW 36.70A.040 as of
12 June 1, 1991, or no later than fourteen months after the date the
13 county adopted its resolution of intention or was certified by the
14 office of financial management the county legislative authority of any
15 other county that is required or chooses to plan under RCW 36.70A.040,
16 shall adopt a county-wide planning policy according to the process
17 provided under this section and that is consistent with the agreement
18 pursuant to (b) of this subsection, and after holding a public hearing
19 or hearings on the proposed county-wide planning policy.

20 (3) A county-wide planning policy shall at a minimum, address the
21 following:

22 (a) Policies to implement RCW 36.70A.110;

23 (b) Policies for promotion of contiguous and orderly development
24 and provision of urban services to such development;

25 (c) Policies for siting public capital facilities of a county-wide
26 or state-wide nature;

27 (d) Policies for county-wide transportation facilities and
28 strategies;

29 (e) Policies that consider the need for affordable housing, such as
30 housing for all economic segments of the population and parameters for
31 its distribution;

32 (f) Policies for joint county and city planning within urban growth
33 areas;

34 (g) Policies for county-wide economic development and employment;
35 and

36 (h) An analysis of the fiscal impact.

37 (4) Federal agencies and Indian tribes may participate in and
38 cooperate with the county-wide planning policy adoption process.

1 Adopted county-wide planning policies shall be adhered to by state
2 agencies.

3 (5) Failure to adopt a county-wide planning policy that meets the
4 requirements of this section may result in the imposition of a sanction
5 or sanctions on a county or city within the county, as specified in RCW
6 36.70A.340. In imposing a sanction or sanctions, the governor shall
7 specify the reasons for failure to adopt a county-wide planning policy
8 in order that any imposed sanction or sanctions are fairly and
9 equitably related to the failure to adopt a county-wide planning
10 policy.

11 (6) Cities and the governor may appeal an adopted county-wide
12 planning policy to the growth ((~~planning~~)) management hearings board
13 within sixty days of the adoption of the county-wide planning policy.

14 (7) Multicounty planning policies shall be adopted by two or more
15 counties, each with a population of four hundred fifty thousand or
16 more, with contiguous urban areas and may be adopted by other counties,
17 according to the process established under this section or other
18 processes agreed to among the counties and cities within the affected
19 counties throughout the multicounty region.

20 **Sec. 42.** RCW 36.70A.250 and 1991 sp.s. c 32 s 5 are each amended
21 to read as follows:

22 (1) There are hereby created three growth ((~~planning~~)) management
23 hearings boards for the state of Washington. The boards shall be
24 established as follows:

25 (a) An Eastern Washington board with jurisdictional boundaries
26 including all counties that are required to or choose to plan under RCW
27 36.70A.040 and are located east of the crest of the Cascade mountains;

28 (b) A Central Puget Sound board with jurisdictional boundaries
29 including King, Pierce, Snohomish, and Kitsap counties; and

30 (c) A Western Washington board with jurisdictional boundaries
31 including all counties that are required or choose to plan under RCW
32 36.70A.040 and are located west of the crest of the Cascade mountains
33 and are not included in the Central Puget Sound board jurisdictional
34 boundaries. Skamania county, should it be required or choose to plan
35 under RCW 36.70A.040, may elect to be included within the
36 jurisdictional boundaries of either the Western or Eastern board.

37 (2) Each board shall only hear matters pertaining to the cities and
38 counties located within its jurisdictional boundaries.

1 **Sec. 43.** RCW 36.70A.260 and 1991 sp.s. c 32 s 6 are each amended
2 to read as follows:

3 (1) Each growth ((~~planning~~)) management hearings board shall
4 consist of three members qualified by experience or training in matters
5 pertaining to land use planning and residing within the jurisdictional
6 boundaries of the applicable board. At least one member of each board
7 must be admitted to practice law in this state and at least one member
8 must have been a city or county elected official. Each board shall be
9 appointed by the governor and not more than two members at the time of
10 appointment or during their term shall be members of the same political
11 party. No more than two members at the time of appointment or during
12 their term shall reside in the same county.

13 (2) Each member of a board shall be appointed for a term of six
14 years. A vacancy shall be filled by appointment by the governor for
15 the unexpired portion of the term in which the vacancy occurs. The
16 terms of the first three members of a board shall be staggered so that
17 one member is appointed to serve until July 1, 1994, one member until
18 July 1, 1996, and one member until July 1, 1998.

19 **Sec. 44.** RCW 36.70A.280 and 1991 sp.s. c 32 s 9 are each amended
20 to read as follows:

21 (1) A growth ((~~planning~~)) management hearings board shall hear and
22 determine only those petitions alleging either:

23 (a) That a state agency, county, or city is not in compliance with
24 the requirements of this chapter, or chapter 43.21C RCW as it relates
25 to plans, regulations, ((~~and~~)) or amendments ((~~thereto~~)), adopted under
26 RCW 36.70A.040; or

27 (b) That the twenty-year growth management planning population
28 projections adopted by the office of financial management pursuant to
29 RCW 43.62.035 should be adjusted.

30 (2) A petition may be filed only by the state, a county or city
31 that plans under this chapter, a person who has either appeared before
32 the county or city regarding the matter on which a review is being
33 requested or is certified by the governor within sixty days of filing
34 the request with the board, or a person qualified pursuant to RCW
35 34.05.530.

36 (3) For purposes of this section "person" means any individual,
37 partnership, corporation, association, governmental subdivision or unit
38 thereof, or public or private organization or entity of any character.

1 (4) When considering a possible adjustment to a growth management
2 planning population projection prepared by the office of financial
3 management, a board shall consider the implications of any such
4 adjustment to the population forecast for the entire state.

5 The rationale for any adjustment that is adopted by a board must be
6 documented and filed with the office of financial management within ten
7 working days after adoption.

8 If adjusted by a board, a county growth management planning
9 population projection shall only be used for the planning purposes set
10 forth in this chapter and shall be known as a "board adjusted
11 population projection". None of these changes shall affect the
12 official state and county population forecasts prepared by the office
13 of financial management, which shall continue to be used for state
14 budget and planning purposes.

15 **Sec. 45.** RCW 36.70A.310 and 1991 sp.s. c 32 s 12 are each amended
16 to read as follows:

17 A request for review by the state to a growth ((~~planning~~))
18 management hearings board may be made only by the governor, or with the
19 governor's consent the head of an agency, or by the commissioner of
20 public lands as relating to state trust lands, for the review of
21 whether: (1) A county or city that is required or chooses to plan
22 under RCW 36.70A.040 has failed to adopt a comprehensive plan or
23 development regulations, or county-wide planning policies within the
24 time limits established by this chapter; or (2) a county or city that
25 is required or chooses to plan under this chapter has adopted a
26 comprehensive plan, development regulations, or county-wide planning
27 policies, that are not in compliance with the requirements of this
28 chapter.

29 **Sec. 46.** RCW 36.70A.345 and 1993 sp.s. c 6 s 5 are each amended to
30 read as follows:

31 The governor may impose a sanction or sanctions specified under RCW
32 36.70A.340 on: (1) A county or city that fails to designate critical
33 areas, agricultural lands, forest lands, or mineral resource lands
34 under RCW 36.70A.170 by the date such action was required to have been
35 taken; (2) a county or city that fails to adopt development regulations
36 under RCW 36.70A.060 protecting critical areas or conserving
37 agricultural lands, forest lands, or mineral resource lands by the date

1 such action was required to have been taken; (3) a county that fails to
2 designate urban growth areas under RCW 36.70A.110 by the date such
3 action was required to have been taken; and (4) a county or city that
4 fails to adopt its comprehensive plan or development regulations when
5 such actions are required to be taken.

6 Imposition of a sanction or sanctions under this section shall be
7 preceded by written findings by the governor, that either the county or
8 city is not proceeding in good faith to meet the requirements of the
9 act; or that the county or city has unreasonably delayed taking the
10 required action. The governor shall consult with and communicate his
11 or her findings to the appropriate growth (~~planning~~) management
12 hearings board prior to imposing the sanction or sanctions. For those
13 counties or cities that are not required to plan or have not opted in,
14 the governor in imposing sanctions shall consider the size of the
15 jurisdiction relative to the requirements of this chapter and the
16 degree of technical and financial assistance provided.

17 NEW SECTION. **Sec. 47.** Sections 8, 21, and 41 of this act shall
18 take effect July 1, 1994.

19 NEW SECTION. **Sec. 48.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

--- END ---