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**SUBSTITUTE SENATE BILL 6339**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

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

Read first time 02/04/94.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6        (~~(8)~~) (9) "Forest land" means land primarily useful for growing  
7 trees, including Christmas trees subject to the excise tax imposed  
8 under RCW 84.33.100 through 84.33.140, for commercial purposes, and  
9 that has long-term commercial significance for growing trees  
10 commercially.

11        (~~(9)~~) (10) "Geologically hazardous areas" means areas that  
12 because of their susceptibility to erosion, sliding, earthquake, or  
13 other geological events, are not suited to the siting of commercial,  
14 residential, or industrial development consistent with public health or  
15 safety concerns.

16        (~~(10)~~) (11) "Long-term commercial significance" includes the  
17 growing capacity, productivity, and soil composition of the land for  
18 long-term commercial production, in consideration with the land's  
19 proximity to population areas, and the possibility of more intense uses  
20 of the land.

21        (~~(11)~~) (12) "Minerals" include gravel, sand, and valuable  
22 metallic substances.

23        (~~(12)~~) (13) "Public facilities" include streets, roads, highways,  
24 sidewalks, street and road lighting systems, traffic signals, domestic  
25 water systems, storm and sanitary sewer systems, parks and recreational  
26 facilities, and schools.

27        (~~(13)~~) (14) "Public services" include fire protection and  
28 suppression, law enforcement, public health, education, recreation,  
29 environmental protection, and other governmental services.

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

1       (~~(15)~~) (16) "Urban growth areas" means those areas designated by  
2 a county pursuant to RCW 36.70A.110.

3       (~~(16)~~) (17) "Urban governmental services" include those  
4 governmental services historically and typically delivered by cities,  
5 and include storm and sanitary sewer systems, domestic water systems,  
6 street cleaning services, fire and police protection services, public  
7 transit services, and other public utilities associated with urban  
8 areas and normally not associated with nonurban areas.

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

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

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

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

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

35 The legislative authority shall prescribe procedures to be followed by  
36 a hearing examiner.

37       (2) The legislative body shall specify the legal effect of a  
38 hearing examiner's procedural determination under the state



1 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may  
2 have the effect under subsection (1) (a) or (b) of this section, or may  
3 be given the effect of a final decision of the legislative body.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36       Each county legislative authority electing to use a hearing  
37 examiner pursuant to this section shall by ordinance specify the legal  
38 effect of the decisions made by the examiner. Except as provided in

1 subsection (2) of this section , such legal effect may vary for the  
2 different classes of applications decided by the examiner but shall  
3 include one of the following:

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

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

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

14 (3) Each final decision of a hearing examiner shall be in writing  
15 and shall include findings and conclusions, based on the record, to  
16 support the decision. Such findings and conclusions shall also set  
17 forth the manner in which the decision would carry out and conform to  
18 the county's comprehensive plan and the 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. 11.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read  
24 as follows:

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

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

34 ~~((2))~~ (3) "Director" means the director of ecology or the  
35 director's designee.

36 ~~((3))~~ (4) "Facility" means (a) any building, structure,  
37 installation, equipment, pipe or pipeline (including any pipe into a  
38 sewer or publicly owned treatment works), well, pit, pond, lagoon,

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

6 (~~(4)~~) (5) "Federal cleanup law" means the federal comprehensive  
7 environmental response, compensation, and liability act of 1980, 42  
8 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

9 (~~(5)~~) (6) "Hazardous substance" means:

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

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

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

18 (d) Petroleum or petroleum products; and

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

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

27 (~~(6)~~) (7) "Owner or operator" means:

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

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

33 The term does not include:

34 (i) An agency of the state or unit of local government which  
35 acquired ownership or control involuntarily through bankruptcy, tax  
36 delinquency, abandonment, or circumstances in which the government  
37 involuntarily acquires title. This exclusion does not apply to an  
38 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. 12.** 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. 13.** 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. 14.** 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. 15.** A new section is added to chapter 70.105D  
18 RCW to read as follows:

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

1 action to defray the costs of services rendered relating to the  
2 substantive requirements for the remedial action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (4) The recommendations of the task force shall be provided to the  
12 governor and the appropriate standing committees of the legislature no  
13 later than December 1, 1994, and may be incorporated with any other  
14 reports provided under executive order 93-06.

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

17 NEW SECTION. **Sec. 27.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

--- END ---