
SENATE BILL 6339

State of Washington

53rd Legislature

1994 Regular Session

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 01/19/94. Referred to Committee on Ecology & Parks.

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 43.21C.075, 35.63.130, 36.70.970, 70.105D.020, 70.105D.030,
6 70.105D.050, and 70.105D.060; adding new sections to chapter 36.70A
7 RCW; adding a new section to chapter 70.105D RCW; adding a new section
8 to chapter 70.94 RCW; adding a new section to chapter 70.95 RCW; adding
9 a new section to chapter 70.105 RCW; adding a new section to chapter
10 75.20 RCW; adding a new section to chapter 90.48 RCW; adding a new
11 section to chapter 90.58 RCW; adding a new section to chapter 43.21C
12 RCW; adding a new section to chapter 34.12 RCW; and providing an
13 effective date.

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

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

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

1 (1) Any board member may be removed for inefficiency, malfeasance,
2 and misfeasance in office, under specific written charges filed by the
3 governor. The governor shall transmit such written charges to the
4 member accused and the chief justice of the supreme court. The chief
5 justice shall thereupon designate a tribunal composed of three judges
6 of the superior court to hear and adjudicate the charges. Removal of
7 any member of a board by the tribunal shall disqualify such member for
8 reappointment.

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

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

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

35 (5) The board may ~~((also))~~ appoint ~~((as its authorized agents))~~ one
36 or more hearing examiners ~~((to assist the board in the performance of~~
37 ~~its hearing function pursuant to the authority contained in))~~ pursuant
38 to the administrative procedure act, chapter 34.05 RCW, to make
39 conclusions of law and findings of fact and, if requested by the board,

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

24 ~~((5))~~ (6) Except as provided in subsection (5) of this section,
25 each board shall make findings of fact and prepare a written decision
26 in each case decided by it, and such findings and decision shall be
27 effective upon being signed by two or more members of the board and
28 upon being filed at the board's principal office, and shall be open for
29 public inspection at all reasonable times.

30 ~~((6))~~ (7) All proceedings before the board ((or)), any of its
31 members, or a hearing examiner appointed by the board shall be
32 conducted in accordance with such administrative rules of practice and
33 procedure as the boards jointly prescribe. All three boards shall
34 jointly meet to develop and adopt joint rules of practice and
35 procedure, including rules regarding expeditious and summary
36 disposition of appeals. The boards shall publish such rules and
37 arrange for the reasonable distribution of the rules. The
38 administrative procedure act, chapter 34.05 RCW, shall govern the
39 administrative rules of practice and procedure adopted by the boards.

1 (~~(7)~~) (8) The members of the boards shall meet jointly on at
2 least an annual basis with the objective of sharing information that
3 promotes the goals and purposes of this chapter.

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

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

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

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

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

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

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

36 (1) The board shall issue a final order within one hundred eighty
37 days of receipt of the petition for review, or, when multiple petitions

1 are filed, within one hundred eighty days of receipt of the last
2 petition that is consolidated. Such a final order shall be based
3 exclusively on whether or not a state agency, county, or city is in
4 compliance with the requirements of this chapter, or chapter 43.21C RCW
5 as it relates to plans, regulations, and amendments thereto, adopted
6 under RCW 36.70A.040. In the final order, the board shall either: (a)
7 Find that the state agency, county, or city is in compliance with the
8 requirements of this chapter; or (b) find that the state agency,
9 county, or city is not in compliance with the requirements of this
10 chapter, in which case the board shall remand the matter to the
11 affected state agency, county, or city and specify a reasonable time
12 not in excess of one hundred eighty days within which the state agency,
13 county, or city shall comply with the requirements of this chapter.

14 (2) Any party aggrieved by a final decision of the hearings board
15 may appeal the decision (~~(to Thurston county superior court)~~) within
16 thirty days of the final order of the board. If the appeal is from
17 board review of city or county action, appeal shall be to the division
18 of the court of appeals to which appeal would be proper under RCW
19 2.06.020 had the action been initiated in the superior court for the
20 county wherein the city or county whose plan, regulation, or amendment
21 is being appealed is located. Where appeal is from board review of
22 state agency action, appeal shall be to any division of the courts of
23 appeal to which appeal would be proper under RCW 2.06.020 had the
24 action been initiated under RCW 34.05.514.

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

27 Development regulations adopted pursuant to RCW 36.70A.120 shall
28 provide a timely and predictable process to determine whether a
29 completed development permit application meets the requirements of
30 those development regulations. Such development regulations shall
31 specify the contents of a completed development permit application for
32 purposes of satisfying the requirements of this section.

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

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

1 That the application is complete; or that the application is incomplete
2 and what is necessary to make the application complete.

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

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

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

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

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

28 (7) "Development permit application" means any application that
29 must be submitted to a city or county for administrative approval
30 before the development or change in use of property within that city or
31 county, including, but not limited to, application for a conditional
32 use permit, application for subdivision approval, application for
33 binding site plan approval, application for a zoning permit,
34 application for planned unit development approval, and application for
35 a building permit, but does not include applications for quasi-judicial
36 or legislative acts such as rezones and alterations of the
37 comprehensive plan.

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 As an alternative to those provisions of this chapter requiring a
24 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 for appeals of procedural
28 determinations made under the state environmental policy act, which
29 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
30 such decisions shall include one of the following:

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

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

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

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

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

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

24 Each city legislative body electing to use a hearing examiner
25 pursuant to this section shall by ordinance specify the legal effect of
26 the decisions made by the examiner. Except for appeals of procedural
27 determinations made under the state environmental policy act, which
28 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
29 such decisions may vary for the different classes of applications
30 decided by the examiner but shall include one of the following:

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

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

36 Each final decision of a hearing examiner shall be in writing and
37 shall include findings and conclusions, based on the record, to support
38 the decision. Such findings and conclusions shall also set forth the

1 manner in which the decision would carry out and conform to the city's
2 comprehensive plan and the city's development regulations. Each final
3 decision of a hearing examiner, unless a longer period is mutually
4 agreed to in writing by the applicant and the hearing examiner, shall
5 be rendered within ten working days following conclusion of all
6 testimony and hearings.

7 **Sec. 9.** RCW 43.21C.075 and 1983 c 117 s 4 are each amended to read
8 as follows:

9 (1) Because a major purpose of this chapter is to combine
10 environmental considerations with public decisions, any appeal brought
11 under this chapter shall be linked to a specific governmental action.
12 The state environmental policy act provides a basis for challenging
13 whether governmental action is in compliance with the substantive and
14 procedural provisions of this chapter. The state environmental policy
15 act is not intended to create a cause of action unrelated to a specific
16 governmental action.

17 (2) Unless otherwise provided by this section:

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

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

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

25 (a) Shall not allow more than one agency appeal proceeding on a
26 procedural determination (the adequacy of a determination of
27 significance/nonsignificance or of a final environmental impact
28 statement)((~~, consistent with any state statutory requirements for~~
29 ~~appeals to local legislative bodies~~)). If a public or municipal
30 corporation, political subdivision, or county of the state uses a
31 hearing examiner, any appeal of the hearing examiner's decision shall
32 be made to superior court. The appeal proceeding on a determination of
33 significance/nonsignificance may occur before the agency's final
34 decision on a proposed action. Such an appeal shall also be allowed
35 for a determination of significance/nonsignificance which may be issued
36 by the agency after supplemental review;

37 (b) Shall consolidate appeal of procedural issues and of
38 substantive determinations made under this chapter (such as a decision

1 to require particular mitigation measures or to deny a proposal) by
2 providing for simultaneous appeal of an agency decision on a proposal
3 and any environmental determinations made under this chapter, with the
4 exception of the threshold determination appeal as provided in (a) of
5 this subsection or an appeal to the local legislative authority under
6 RCW 43.21C.060 or other applicable state statutes;

7 (c) Shall provide for the preparation of a record for use in any
8 subsequent appeal proceedings, and shall provide for any subsequent
9 appeal proceedings to be conducted on the record, consistent with other
10 applicable law. An adequate record consists of findings and
11 conclusions, testimony under oath, and taped or written transcript. An
12 electronically recorded transcript will suffice for purposes of review
13 under this paragraph; and

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

16 (4) If a person aggrieved by an agency action has the right to
17 judicial appeal and if an agency has an appeal procedure, such person
18 shall, prior to seeking any judicial review, use such procedure if any
19 such procedure is available, unless expressly provided otherwise by
20 state statute.

21 (5) RCW 43.21C.080 establishes an optional "notice of action"
22 procedure which, if used, imposes a time period for appealing decisions
23 under this chapter. Some statutes and ordinances contain time periods
24 for challenging governmental actions which are subject to review under
25 this chapter, such as various local land use approvals (the "underlying
26 governmental action"). This section does not modify any such time
27 periods. This section governs when a judicial appeal must be brought
28 under this chapter where a "notice of action" is used, and/or where
29 there is another time period which is required by statute or ordinance
30 for challenging the underlying governmental action. In this
31 subsection, the term "appeal" refers to a judicial appeal only.

32 (a) If there is a time period for appealing the underlying
33 governmental action, appeals under this chapter shall be commenced
34 within thirty days. The agency shall give official notice stating the
35 date and place for commencing an appeal. If there is an agency
36 proceeding under subsection (3) of this section, the appellant shall,
37 prior to commencing a judicial appeal, submit to the responsible
38 official a notice of intent to commence a judicial appeal. This notice

1 of intent shall be given within the time period for commencing a
2 judicial appeal on the underlying governmental action.

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

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

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

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

27 (c) Judicial review under this chapter shall without exception be
28 of the governmental action together with its accompanying environmental
29 determinations.

30 (7) Jurisdiction over the review of determinations under this
31 chapter in an appeal before an agency or superior court shall upon
32 consent of the parties be transferred in whole or part to the
33 shorelines hearings board. The shorelines hearings board shall hear
34 the matter and sign the final order expeditiously. The superior court
35 shall certify the final order of the shorelines hearings board and said
36 certified final order may only be appealed to an appellate court.

37 (8) For purposes of this section and RCW 43.21C.080, the words
38 "action", "decision", and "determination" mean substantive agency
39 action including any accompanying procedural determinations under this

1 chapter (except where the word "action" means "appeal" in RCW
2 43.21C.080(2) and (3)). The word "action" in this section and RCW
3 43.21C.080 does not mean a procedural determination by itself made
4 under this chapter. The word "determination" includes any
5 environmental document required by this chapter and state or local
6 implementing rules. The word "agency" refers to any state or local
7 unit of government. The word "appeal" refers to administrative,
8 legislative, or judicial appeals.

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

14 **Sec. 10.** RCW 35.63.130 and 1977 ex.s. c 213 s 1 are each amended
15 to read as follows:

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

28 Each city or county legislative body electing to use a hearing
29 examiner pursuant to this section shall by ordinance specify the legal
30 effect of the decisions made by the examiner. Except for appeals of
31 procedural determinations made under the state environmental policy
32 act, which shall be in accordance with RCW 43.21C.075(3)(a), the legal
33 effect of such decisions may vary for the different classes of
34 applications decided by the examiner but shall include one of the
35 following:

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

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

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

13 **Sec. 11.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended
14 to read as follows:

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

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

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

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

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

6 Each final decision of a hearing examiner shall be in writing and
7 shall include findings and conclusions, based on the record, to support
8 the decision. Such findings and conclusions shall also set forth the
9 manner in which the decision would carry out and conform to the
10 county's comprehensive plan and the county'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. 12.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read
16 as follows:

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

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

25 (~~(+2)~~) (3) "Director" means the director of ecology or the
26 director's designee.

27 (~~(+3)~~) (4) "Facility" means (a) any building, structure,
28 installation, equipment, pipe or pipeline (including any pipe into a
29 sewer or publicly owned treatment works), well, pit, pond, lagoon,
30 impoundment, ditch, landfill, storage container, motor vehicle, rolling
31 stock, vessel, or aircraft, or (b) any site or area where a hazardous
32 substance, other than a consumer product in consumer use, has been
33 deposited, stored, disposed of, or placed, or otherwise come to be
34 located.

35 (~~(+4)~~) (5) "Federal cleanup law" means the federal comprehensive
36 environmental response, compensation, and liability act of 1980, 42
37 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

38 (~~(+5)~~) (6) "Hazardous substance" means:

1 (a) Any dangerous or extremely hazardous waste as defined in RCW
2 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
3 designated by rule pursuant to chapter 70.105 RCW;

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

6 (c) Any substance that, on March 1, 1989, is a hazardous substance
7 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
8 9601(14);

9 (d) Petroleum or petroleum products; and

10 (e) Any substance or category of substances, including solid waste
11 decomposition products, determined by the director by rule to present
12 a threat to human health or the environment if released into the
13 environment.

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

18 (~~(6)~~) (7) "Owner or operator" means:

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

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

24 The term does not include:

25 (i) An agency of the state or unit of local government which
26 acquired ownership or control involuntarily through bankruptcy, tax
27 delinquency, abandonment, or circumstances in which the government
28 involuntarily acquires title. This exclusion does not apply to an
29 agency of the state or unit of local government which has caused or
30 contributed to the release or threatened release of a hazardous
31 substance from the facility; or

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

35 (~~(7)~~) (8) "Person" means an individual, firm, corporation,
36 association, partnership, consortium, joint venture, commercial entity,
37 state government agency, unit of local government, federal government
38 agency, or Indian tribe.

1 (~~(8)~~) (9) "Potentially liable person" means any person whom the
2 department finds, based on credible evidence, to be liable under RCW
3 70.105D.040. The department shall give notice to any such person and
4 allow an opportunity for comment before making the finding, unless an
5 emergency requires otherwise.

6 (~~(9)~~) (10) "Public notice" means, at a minimum, adequate notice
7 mailed to all persons who have made timely request of the department
8 and to persons residing in the potentially affected vicinity of the
9 proposed action; mailed to appropriate news media; published in the
10 newspaper of largest circulation in the city or county of the proposed
11 action; and opportunity for interested persons to comment.

12 (~~(10)~~) (11) "Release" means any intentional or unintentional
13 entry of any hazardous substance into the environment, including but
14 not limited to the abandonment or disposal of containers of hazardous
15 substances.

16 (~~(11)~~) (12) "Remedy" or "remedial action" means any action or
17 expenditure consistent with the purposes of this chapter to identify,
18 eliminate, or minimize any threat or potential threat posed by
19 hazardous substances to human health or the environment including any
20 investigative and monitoring activities with respect to any release or
21 threatened release of a hazardous substance and any health assessments
22 or health effects studies conducted in order to determine the risk or
23 potential risk to human health.

24 **Sec. 13.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
25 as follows:

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

28 (a) Investigate, provide for investigating, or require potentially
29 liable persons to investigate any releases or threatened releases of
30 hazardous substances, including but not limited to inspecting,
31 sampling, or testing to determine the nature or extent of any release
32 or threatened release. If there is a reasonable basis to believe that
33 a release or threatened release of a hazardous substance may exist, the
34 department's authorized employees, agents, or contractors may enter
35 upon any property and conduct investigations. The department shall
36 give reasonable notice before entering property unless an emergency
37 prevents such notice. The department may by subpoena require the

1 attendance or testimony of witnesses and the production of documents or
2 other information that the department deems necessary;

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

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

17 (d) Carry out all state programs authorized under the federal
18 cleanup law and the federal resource, conservation, and recovery act,
19 42 U.S.C. Sec. 6901 et seq., as amended;

20 (e) Classify substances as hazardous substances for purposes of RCW
21 70.105D.020(5) and classify substances and products as hazardous
22 substances for purposes of RCW 82.21.020(1); and

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

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

31 (a) Provide for public participation, including at least (i) the
32 establishment of regional citizen's advisory committees, (ii) public
33 notice of the development of investigative plans or remedial plans for
34 releases or threatened releases, and (iii) concurrent public notice of
35 all compliance orders, agreed orders, enforcement orders, or notices of
36 violation;

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

38 (c) Establish reasonable deadlines not to exceed ninety days for
39 initiating an investigation of a hazardous waste site after the

1 department receives information that the site may pose a threat to
2 human health or the environment and other reasonable deadlines for
3 remedying releases or threatened releases at the site; and

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

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

21 (4) The department shall establish a scientific advisory board to
22 render advice to the department with respect to the hazard ranking
23 system, cleanup standards, remedial actions, deadlines for remedial
24 actions, monitoring, the classification of substances as hazardous
25 substances for purposes of RCW 70.105D.020(5) and the classification of
26 substances or products as hazardous substances for purposes of RCW
27 82.21.020(1). The board shall consist of five independent members to
28 serve staggered three-year terms. No members may be employees of the
29 department. Members shall be reimbursed for travel expenses as
30 provided in RCW 43.03.050 and 43.03.060.

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

34 **Sec. 14.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
35 as follows:

36 (1) With respect to any release, or threatened release, for which
37 the department does not conduct or contract for conducting remedial
38 action and for which the department believes remedial action is in the

1 public interest, the director shall issue orders or agreed orders
2 requiring potentially liable persons to provide the remedial action.
3 Any liable person who refuses, without sufficient cause, to comply with
4 an order or agreed order of the director is liable in an action brought
5 by the attorney general for:

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

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

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

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

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

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

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

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

34 **Sec. 15.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
35 as follows:

36 The department's investigative and remedial decisions under RCW
37 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
38 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable

1 exclusively in superior court and only at the following times: (1) In
2 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
3 department to enforce an order or an agreed order, or seek a civil
4 penalty under this chapter; (3) in a suit for reimbursement under RCW
5 70.105D.050(2); (4) in a suit by the department to compel investigative
6 or remedial action; and (5) in a citizen's suit under RCW
7 70.105D.050(5). The court shall uphold the department's actions unless
8 they were arbitrary and capricious.

9 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.105D
10 RCW to read as follows:

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

31 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.94 RCW
32 to read as follows:

33 The procedural requirements of this chapter shall not apply to any
34 person conducting a remedial action at a facility pursuant to a consent
35 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
36 or to the department of ecology when it conducts a remedial action
37 under chapter 70.105D RCW. The department of ecology shall ensure

1 compliance with the substantive requirements of this chapter through
2 the consent decree, order, or agreed order issued pursuant to chapter
3 70.105D RCW, or during the department-conducted remedial action,
4 through the procedures developed by the department pursuant to section
5 16 of this act.

6 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.95 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. The department of ecology shall ensure
13 compliance with the substantive requirements of this chapter through
14 the consent decree, order, or agreed order issued pursuant to chapter
15 70.105D RCW, or during the department-conducted remedial action,
16 through the procedures developed by the department pursuant to section
17 16 of this act.

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

20 The procedural requirements of this chapter shall not apply to any
21 person conducting a remedial action at a facility pursuant to a consent
22 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
23 or to the department of ecology when it conducts a remedial action
24 under chapter 70.105D RCW. The department of ecology shall ensure
25 compliance with the substantive requirements of this chapter through
26 the consent decree, order, or agreed order issued pursuant to chapter
27 70.105D RCW, or during the department-conducted remedial action,
28 through the procedures developed by the department pursuant to section
29 16 of this act.

30 NEW SECTION. **Sec. 20.** A new section is added to chapter 75.20 RCW
31 to read as follows:

32 The procedural requirements of this chapter shall not apply to any
33 person conducting a remedial action at a facility pursuant to a consent
34 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
35 or to the department of ecology when it conducts a remedial action
36 under chapter 70.105D RCW. The department of ecology shall ensure

1 compliance with the substantive requirements of this chapter through
2 the consent decree, order, or agreed order issued pursuant to chapter
3 70.105D RCW, or during the department-conducted remedial action,
4 through the procedures developed by the department pursuant to section
5 16 of this act.

6 NEW SECTION. **Sec. 21.** A new section is added to chapter 90.48 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. The department of ecology shall ensure
13 compliance with the substantive requirements of this chapter through
14 the consent decree, order, or agreed order issued pursuant to chapter
15 70.105D RCW, or during the department-conducted remedial action,
16 through the procedures developed by the department pursuant to section
17 16 of this act.

18 NEW SECTION. **Sec. 22.** A new section is added to chapter 90.58 RCW
19 to read as follows:

20 The procedural requirements of this chapter shall not apply to any
21 person conducting a remedial action at a facility pursuant to a consent
22 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
23 or to the department of ecology when it conducts a remedial action
24 under chapter 70.105D RCW. The department of ecology shall ensure
25 compliance with the substantive requirements of this chapter through
26 the consent decree, order, or agreed order issued pursuant to chapter
27 70.105D RCW, or during the department-conducted remedial action,
28 through the procedures developed by the department pursuant to section
29 16 of this act.

30 NEW SECTION. **Sec. 23.** A new section is added to chapter 43.21C
31 RCW to read as follows:

32 In conducting a remedial action at a facility pursuant to a consent
33 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
34 or if conducted by the department of ecology, the department of ecology
35 to the maximum extent practicable shall integrate the procedural
36 requirements of this chapter with the procedures under chapter 70.105D

1 RCW. Such integration shall include the public participation
2 procedures of chapter 70.105D RCW and the public notice and review
3 requirements of this chapter.

4 NEW SECTION. **Sec. 24.** A new section is added to chapter 34.12 RCW
5 to read as follows:

6 The appointment of hearing examiners under RCW 36.70A.270 is not
7 subject to this chapter.

8 NEW SECTION. **Sec. 25.** Section 6 of this act shall take effect
9 July 1, 1994.

10 NEW SECTION. **Sec. 26.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

--- END ---