
SENATE BILL 6420

State of Washington

52nd Legislature

1992 Regular Session

By Senator Metcalf

Read first time 01/29/92. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to the environmental hearings office; amending RCW
2 43.21B.005, 43.21B.010, 43.21B.020, 43.21B.030, 43.21B.040, 43.21B.180,
3 and 43.21B.230; and amending 1987 c 109 s 1 (uncodified).

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

5 **Sec. 1.** 1987 c 109 s 1 (uncodified) is amended to read as follows:

6 The purposes of (~~this act~~) chapter 109, Laws of 1987 are to:

7 (1) Simplify and clarify existing statutory and administrative
8 procedures for appealing decisions of the department of ecology and air
9 pollution control authorities in order to (a) expedite those appeals,
10 (b) insure that those appeals are conducted with a minimum of expense
11 to save state and private resources, and (c) (~~allow~~) require the
12 appellate authorities to decide cases on their merits rather than on
13 procedural technicalities.

1 (2) Clarify existing statutes relating to the environment but which
2 refer to numerous agencies no longer in existence.

3 (3) Eliminate provisions no longer effective or meaningful and
4 abbreviate statutory provisions which are unnecessarily long and
5 confusing.

6 **Sec. 2.** RCW 43.21B.005 and 1990 c 65 s 1 are each amended to read
7 as follows:

8 There is created an environmental hearings office of the state of
9 Washington. The environmental hearings office shall consist of the
10 pollution control hearings board created in RCW 43.21B.010, the forest
11 practices appeals board created in RCW 76.09.210, the shorelines
12 hearings board created in RCW 90.58.170, and the hydraulic appeals
13 board created in RCW 75.20.130. The chairman of the pollution control
14 hearings board shall be the chief executive officer of the
15 environmental hearings office. Membership, powers, functions, and
16 duties of the pollution control hearings board, the forest practices
17 appeals board, the shorelines hearings board, and the hydraulic appeals
18 board shall be as provided by law.

19 The chief executive officer of the environmental hearings office
20 may appoint with advice and consent of the senate committee on
21 environment and natural resources an administrative appeals judge who
22 shall possess the powers and duties conferred by the administrative
23 procedure act, chapter 34.05 RCW, in cases before the boards comprising
24 the office. The administrative appeals judge shall have a demonstrated
25 knowledge of environmental law and chemical engineering, and shall be
26 admitted to the practice of law in the state of Washington. Additional
27 administrative appeals judges may also be appointed by the chief
28 executive officer on the same terms. Administrative appeals judges
29 shall not be subject to chapter 41.06 RCW.

1 The chief executive officer may appoint, discharge, and fix the
2 compensation of such administrative judges and administrative or
3 clerical staff as may be necessary, with the advice and consent of the
4 senate committee on environment and natural resources.

5 The chief executive officer may also contract for required services
6 on the same terms as under this section.

7 **Sec. 3.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to
8 read as follows:

9 There is hereby created within the environmental hearings office a
10 pollution control hearings board of the state of Washington.

11 The purpose of the pollution control hearings board is to provide
12 for a ~~((more expeditious and efficient))~~ fair and equitable disposition
13 of appeals with respect to the decisions and orders of the department
14 and director and with respect to all decisions of air pollution control
15 boards or authorities established pursuant to chapter 70.94 RCW.

16 **Sec. 4.** RCW 43.21B.020 and 1970 ex.s. c 62 s 32 are each amended
17 to read as follows:

18 The hearings board shall consist of three members ~~((qualified by~~
19 ~~experience or training in pertinent matters pertaining to the~~
20 ~~environment, and at least))~~. At least two of the three members shall
21 be chemical engineers or equivalent in general technology, with
22 industrial experience. One member of the ~~((hearings))~~ board shall have
23 been admitted to practice law in this state ~~((and engaged in the legal~~
24 ~~profession at the time of his appointment))~~. The hearings board shall
25 be appointed by the governor with the advice and consent of the
26 senate ~~((, and no more than two of whom at the time of appointment or~~
27 ~~during their term shall be members of the same political party))~~.

1 **Sec. 5.** RCW 43.21B.030 and 1970 ex.s. c 62 s 33 are each amended
2 to read as follows:

3 (~~Members of the hearings board shall be appointed for a term of~~
4 ~~six years and until their successors are appointed and have qualified.~~
5 ~~In case of a vacancy, it shall be filled by appointment by the governor~~
6 ~~for the unexpired portion of the term in which said vacancy occurs:~~
7 ~~PROVIDED, That the terms of the first three members of the hearings~~
8 ~~board shall be staggered so that one member shall be appointed to serve~~
9 ~~until July 1, 1972, one member until July 1, 1974, and one member until~~
10 ~~July 1, 1976.)~~) Within ninety days after the effective date of this
11 act, the term of the current members of the board shall end. The
12 governor shall appoint, with the advice and consent of the senate,
13 three new persons to the board. The initial terms shall be one each
14 for six months, twelve months, and eighteen months, respectively. New
15 board members whose terms expire may be reappointed for eighteen-month
16 terms, and vacancies may be filled by appointment by the governor, with
17 the advice and consent of the senate. In the event the senate is not
18 in session at the time of appointment, advice and consent of the senate
19 committee on the environment and natural resources shall suffice until
20 the full senate can act.

21 **Sec. 6.** RCW 43.21B.040 and 1970 ex.s. c 62 s 34 are each amended
22 to read as follows:

23 Any member of the hearings board may be removed for inefficiency,
24 malfeasance and misfeasance in office, under specific written charges
25 filed by the governor or by petition of twelve members of the
26 legislature, who shall transmit such written charges to the member
27 accused and to the chief justice of the supreme court. The chief
28 justice shall thereupon designate a tribunal composed of three judges
29 of the superior court to hear and adjudicate the charges, allowing the

1 admission to the hearing of amicus briefs from any citizen of the
2 state. Such tribunal shall fix the time of the hearing which shall be
3 public, and the procedure for the hearing, and the decision of such
4 tribunal shall be final and not subject to review by the supreme court.
5 Removal of any member of the hearings board by the tribunal shall
6 disqualify such member for reappointment.

7 **Sec. 7.** RCW 43.21B.180 and 1989 c 175 s 104 are each amended to
8 read as follows:

9 Judicial review of a decision of the hearings board shall be de
10 novo (~~((except when the decision has been rendered pursuant to a formal~~
11 ~~hearing elected under the provisions of this chapter, in which event~~
12 ~~judicial review may be obtained only pursuant to RCW 34.05.510 through~~
13 ~~34.05.598))). The decision of the hearings board is stayed for the
14 duration of any appeal and thirty days thereafter. The director shall
15 have the same right of review from a decision made pursuant to RCW
16 43.21B.110 as does any person.~~

17 **Sec. 8.** RCW 43.21B.230 and 1990 c 65 s 6 are each amended to read
18 as follows:

19 Any person having received notice of a denial of a petition, a
20 notice of determination, notice of or an order made by the department
21 may appeal, within thirty days from the date of the notice of such
22 denial, order, or determination to the hearings board. The appeal
23 shall be perfected by serving a copy of the notice of appeal upon the
24 department or air pollution authority established pursuant to chapter
25 70.94 RCW, as the case may be, within the time specified herein and by
26 filing the original thereof with proof of service with the clerk of the
27 hearings board. If the person intends that the hearing before the
28 hearings board be a formal one, the notice of appeal shall so state.

1 In the event that the notice of appeal does not so state, the hearing
2 shall be an informal one(~~(: PROVIDED, HOWEVER, That nothing shall~~
3 ~~prevent the department or the air pollution authority, as the case may~~
4 ~~be, within ten days from the date of its receipt of the notice of~~
5 ~~appeal, from filing with the clerk of the hearings board notice of its~~
6 ~~intention that the hearing be a formal one)).~~