

2 **ESSB 6339** - H COMM AMD **ADOPTED 3-3-94**
3 By Committee on Environmental Affairs

4

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

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

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

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

9 (5) The board may ~~((also))~~ appoint ~~((as its authorized agents))~~ one
10 or more hearing examiners to assist the board in ~~((the performance of))~~
11 its hearing function ~~((pursuant to the authority contained in the~~
12 ~~administrative procedure act, chapter 34.05 RCW))~~, to make conclusions
13 of law and findings of fact and, if requested by the board, to make
14 recommendations to the board for decisions in cases before the board.
15 Such hearing examiners must have demonstrated knowledge of land use
16 planning and law. The boards shall specify in their joint rules of
17 practice and procedure, as required by subsection (7) of this section,
18 the procedure and criteria to be employed for designating hearing
19 examiners as a presiding officer. Hearing examiners selected by a
20 board shall meet the requirements of subsection (3) of this section.
21 The findings and conclusions of the hearing examiner shall not become
22 final until they have been formally approved by the board. ((Such
23 ~~hearing examiners must have demonstrated knowledge of land use planning~~
24 ~~and law. The board shall perform all the powers and duties specified~~
25 ~~in this chapter or as otherwise provided by law.~~

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

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

34 ~~((6))~~ (7) All proceedings before the board ~~((or))~~, any of its
35 members, or a hearing examiner appointed by the board shall be
36 conducted in accordance with such administrative rules of practice and
37 procedure as the boards jointly prescribe. All three boards shall
38 jointly meet to develop and adopt joint rules of practice and
39 procedure, including rules regarding expeditious and summary

1 disposition of appeals. The boards shall publish such rules and
2 arrange for the reasonable distribution of the rules. The
3 administrative procedure act, chapter 34.05 RCW, shall govern the
4 administrative rules of practice and procedure adopted by the boards.

5 ~~((7))~~ (8) A board member or hearing examiner is subject to
6 disqualification for bias, prejudice, interest, or any other cause for
7 which a judge is disqualified. The joint rules of practice of the
8 boards shall establish procedures by which a party to a hearing
9 conducted before the board may file with the board a motion to
10 disqualify, with supporting affidavit, against a board member or
11 hearing examiner assigned to preside at the hearing.

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

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

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

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

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

37 (4) The board shall base its decision on the record developed by
38 the city, county, or the state and supplemented with additional

1 evidence if the board determines that such additional evidence would be
2 necessary or of substantial assistance to the board in reaching its
3 decision.

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

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A RCW
8 to read as follows:

9 Development regulations adopted pursuant to RCW 36.70A.040 shall
10 establish time periods for local government actions on specific
11 development permit applications and provide timely and predictable
12 procedures to determine whether a completed development permit
13 application meets the requirements of those development regulations.
14 Such development regulations shall specify the contents of a completed
15 development permit application necessary for the application of such
16 time periods and procedures.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
18 to read as follows:

19 Each city and county planning pursuant to RCW 36.70A.040 shall,
20 within twenty working days of receiving a development permit
21 application as defined in RCW 36.70A.030(7), mail or provide in person
22 a written notice to the applicant, stating either: That the
23 application is complete; or that the application is incomplete and what
24 is necessary to make the application complete. To the extent known by
25 the city or county, the notice shall identify other agencies of local,
26 state, or federal governments that may have jurisdiction over some
27 aspect of the application.

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

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

32 (1) "Adopt a comprehensive land use plan" means to enact a new
33 comprehensive land use plan or to update an existing comprehensive land
34 use plan.

35 (2) "Agricultural land" means land primarily devoted to the
36 commercial production of horticultural, viticultural, floricultural,

1 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
2 straw, turf, seed, Christmas trees not subject to the excise tax
3 imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has
4 long-term commercial significance for agricultural production.

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

6 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
7 means a generalized coordinated land use policy statement of the
8 governing body of a county or city that is adopted pursuant to this
9 chapter.

10 (5) "Critical areas" include the following areas and ecosystems:
11 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
12 used for potable water; (c) fish and wildlife habitat conservation
13 areas; (d) frequently flooded areas; and (e) geologically hazardous
14 areas.

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

17 (7) For purposes of sections 3 and 4 of this act, "development
18 permit application" means any application for a development proposal
19 for a use that could be permitted under a plan adopted pursuant to this
20 chapter and is consistent with the underlying land use and zoning,
21 including but not limited to building permits, subdivisions, binding
22 site plans, planned unit developments, conditional uses or other
23 applications pertaining to land uses, but shall not include rezones,
24 proposed amendments to comprehensive plans or the adoption or amendment
25 of development regulations.

26 (8) "Development regulations" means any controls placed on
27 development or land use activities by a county or city, including, but
28 not limited to, zoning ordinances, official controls, planned unit
29 development ordinances, subdivision ordinances, and binding site plan
30 ordinances.

31 ~~((+8))~~ (9) "Forest land" means land primarily useful for growing
32 trees, including Christmas trees subject to the excise tax imposed
33 under RCW 84.33.100 through 84.33.140, for commercial purposes, and
34 that has long-term commercial significance for growing trees
35 commercially.

36 ~~((+9))~~ (10) "Geologically hazardous areas" means areas that
37 because of their susceptibility to erosion, sliding, earthquake, or
38 other geological events, are not suited to the siting of commercial,

1 residential, or industrial development consistent with public health or
2 safety concerns.

3 ~~((10))~~ (11) "Long-term commercial significance" includes the
4 growing capacity, productivity, and soil composition of the land for
5 long-term commercial production, in consideration with the land's
6 proximity to population areas, and the possibility of more intense uses
7 of the land.

8 ~~((11))~~ (12) "Minerals" include gravel, sand, and valuable
9 metallic substances.

10 ~~((12))~~ (13) "Public facilities" include streets, roads, highways,
11 sidewalks, street and road lighting systems, traffic signals, domestic
12 water systems, storm and sanitary sewer systems, parks and recreational
13 facilities, and schools.

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

17 ~~((14))~~ (15) "Urban growth" refers to growth that makes intensive
18 use of land for the location of buildings, structures, and impermeable
19 surfaces to such a degree as to be incompatible with the primary use of
20 such land for the production of food, other agricultural products, or
21 fiber, or the extraction of mineral resources. When allowed to spread
22 over wide areas, urban growth typically requires urban governmental
23 services. "Characterized by urban growth" refers to land having urban
24 growth located on it, or to land located in relationship to an area
25 with urban growth on it as to be appropriate for urban growth.

26 ~~((15))~~ (16) "Urban growth areas" means those areas designated by
27 a county pursuant to RCW 36.70A.110.

28 ~~((16))~~ (17) "Urban governmental services" include those
29 governmental services historically and typically delivered by cities,
30 and include storm and sanitary sewer systems, domestic water systems,
31 street cleaning services, fire and police protection services, public
32 transit services, and other public utilities associated with urban
33 areas and normally not associated with nonurban areas.

34 ~~((17))~~ (18) "Wetland" or "wetlands" means areas that are
35 inundated or saturated by surface water or ground water at a frequency
36 and duration sufficient to support, and that under normal circumstances
37 do support, a prevalence of vegetation typically adapted for life in
38 saturated soil conditions. Wetlands generally include swamps, marshes,
39 bogs, and similar areas. Wetlands do not include those artificial

1 wetlands intentionally created from nonwetland sites, including, but
2 not limited to, irrigation and drainage ditches, grass-lined swales,
3 canals, detention facilities, wastewater treatment facilities, farm
4 ponds, and landscape amenities. However, wetlands may include those
5 artificial wetlands intentionally created from nonwetland areas created
6 to mitigate conversion of wetlands, if permitted by the county or city.

7 **Sec. 6.** RCW 58.17.330 and 1977 ex.s. c 213 s 4 are each amended to
8 read as follows:

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

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

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

21 The legislative authority shall prescribe procedures to be followed by
22 a hearing examiner.

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

28 (3) Each final decision of a hearing examiner shall be in writing
29 and shall include findings and conclusions, based on the record, to
30 support the decision. Each final decision of a hearing examiner,
31 unless a longer period is mutually agreed to by the applicant and the
32 hearing examiner, shall be rendered within ten working days following
33 conclusion of all testimony and hearings.

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

36 (1) As an alternative to those provisions of this chapter relating
37 to powers or duties of the planning commission to hear and report on

1 any proposal to amend a zoning ordinance, the legislative body of a
2 city may adopt a hearing examiner system under which a hearing examiner
3 or hearing examiners may hear and decide applications for amending the
4 zoning ordinance when the amendment which is applied for is not of
5 general applicability. In addition, the legislative body may vest in
6 a hearing examiner the power to hear and decide applications for
7 conditional uses, variances or any other class of applications for or
8 pertaining to land uses which the legislative body believes should be
9 reviewed and decided by a hearing examiner. The legislative body shall
10 prescribe procedures to be followed by a hearing examiner. If the
11 legislative authority vests in a hearing examiner the authority to hear
12 and decide variances, then the provisions of RCW 35A.63.110 shall not
13 apply to the city.

14 Each city legislative body electing to use a hearing examiner
15 pursuant to this section shall by ordinance specify the legal effect of
16 the decisions made by the examiner. Except as provided in subsection
17 (2) of this section, the legal effect of such decisions may vary for
18 the different classes of applications decided by the examiner but shall
19 include one of the following:

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

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

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

30 (3) Each final decision of a hearing examiner shall be in writing
31 and shall include findings and conclusions, based on the record, to
32 support the decision. Such findings and conclusions shall also set
33 forth the manner in which the decision would carry out and conform to
34 the city's comprehensive plan and the city's development regulations.
35 Each final decision of a hearing examiner, unless a longer period is
36 mutually agreed to in writing by the applicant and the hearing
37 examiner, shall be rendered within ten working days following
38 conclusion of all testimony and hearings.

1 **Sec. 8.** RCW 35.63.130 and 1977 ex.s. c 213 s 1 are each amended to
2 read as follows:

3 (1) As an alternative to those provisions of this chapter relating
4 to powers or duties of the planning commission to hear and report on
5 any proposal to amend a zoning ordinance, the legislative body of a
6 city or county may adopt a hearing examiner system under which a
7 hearing examiner or hearing examiners may hear and decide applications
8 for amending the zoning ordinance when the amendment which is applied
9 for is not of general applicability. In addition, the legislative body
10 may vest in a hearing examiner the power to hear and decide
11 applications for conditional uses, variances, or any other class of
12 applications for or pertaining to land uses which the legislative body
13 believes should be reviewed and decided by a hearing examiner. The
14 legislative body shall prescribe procedures to be followed by the
15 hearing examiner.

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

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

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

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

32 (3) Each final decision of a hearing examiner shall be in writing
33 and shall include findings and conclusions, based on the record, to
34 support the decision. Such findings and conclusions shall also set
35 forth the manner in which the decision would carry out and conform to
36 the city's or county's comprehensive plan and the city's or county's
37 development regulations. Each final decision of a hearing examiner,
38 unless a longer period is mutually agreed to in writing by the

1 applicant and the hearing examiner, shall be rendered within ten
2 working days following conclusion of all testimony and hearings.

3 **Sec. 9.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended to
4 read as follows:

5 (1) As an alternative to those provisions of this chapter relating
6 to powers or duties of the planning commission to hear and issue
7 recommendations on applications for plat approval and applications for
8 amendments to the zoning ordinance, the county legislative authority
9 may adopt a hearing examiner system under which a hearing examiner or
10 hearing examiners may hear and issue decisions on proposals for plat
11 approval and for amendments to the zoning ordinance when the amendment
12 which is applied for is not of general applicability. In addition, the
13 legislative authority may vest in a hearing examiner the power to hear
14 and decide conditional use applications, variance applications,
15 applications for shoreline permits or any other class of applications
16 for or pertaining to land uses. The legislative authority shall
17 prescribe procedures to be followed by a hearing examiner.

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

21 Each county legislative authority electing to use a hearing
22 examiner pursuant to this section shall by ordinance specify the legal
23 effect of the decisions made by the examiner. Except as provided in
24 subsection (2) of this section, such legal effect may vary for the
25 different classes of applications decided by the examiner but shall
26 include one of the following:

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

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

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

37 (3) Each final decision of a hearing examiner shall be in writing
38 and shall include findings and conclusions, based on the record, to

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

8 **Sec. 10.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read
9 as follows:

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

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

19 ~~((+2))~~ (3) "Director" means the director of ecology or the
20 director's designee.

21 ~~((+3))~~ (4) "Facility" means (a) any building, structure,
22 installation, equipment, pipe or pipeline (including any pipe into a
23 sewer or publicly owned treatment works), well, pit, pond, lagoon,
24 impoundment, ditch, landfill, storage container, motor vehicle, rolling
25 stock, vessel, or aircraft, or (b) any site or area where a hazardous
26 substance, other than a consumer product in consumer use, has been
27 deposited, stored, disposed of, or placed, or otherwise come to be
28 located.

29 ~~((+4))~~ (5) "Federal cleanup law" means the federal comprehensive
30 environmental response, compensation, and liability act of 1980, 42
31 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

32 ~~((+5))~~ (6) "Hazardous substance" means:

33 (a) Any dangerous or extremely hazardous waste as defined in RCW
34 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
35 designated by rule pursuant to chapter 70.105 RCW;

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

1 (c) Any substance that, on March 1, 1989, is a hazardous substance
2 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
3 9601(14);

4 (d) Petroleum or petroleum products; and

5 (e) Any substance or category of substances, including solid waste
6 decomposition products, determined by the director by rule to present
7 a threat to human health or the environment if released into the
8 environment.

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

13 (~~(6)~~) (7) "Owner or operator" means:

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

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

19 The term does not include:

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

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

30 (~~(7)~~) (8) "Person" means an individual, firm, corporation,
31 association, partnership, consortium, joint venture, commercial entity,
32 state government agency, unit of local government, federal government
33 agency, or Indian tribe.

34 (~~(8)~~) (9) "Potentially liable person" means any person whom the
35 department finds, based on credible evidence, to be liable under RCW
36 70.105D.040. The department shall give notice to any such person and
37 allow an opportunity for comment before making the finding, unless an
38 emergency requires otherwise.

1 (~~(9)~~) (10) "Public notice" means, at a minimum, adequate notice
2 mailed to all persons who have made timely request of the department
3 and to persons residing in the potentially affected vicinity of the
4 proposed action; mailed to appropriate news media; published in the
5 newspaper of largest circulation in the city or county of the proposed
6 action; and opportunity for interested persons to comment.

7 (~~(10)~~) (11) "Release" means any intentional or unintentional
8 entry of any hazardous substance into the environment, including but
9 not limited to the abandonment or disposal of containers of hazardous
10 substances.

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

19 **Sec. 11.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
20 as follows:

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

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

35 (b) Conduct, provide for conducting, or require potentially liable
36 persons to conduct remedial actions (including investigations under (a)
37 of this subsection) to remedy releases or threatened releases of
38 hazardous substances. In carrying out such powers, the department's

1 authorized employees, agents, or contractors may enter upon property.
2 The department shall give reasonable notice before entering property
3 unless an emergency prevents such notice. In conducting, providing for,
4 or requiring remedial action, the department shall give preference to
5 permanent solutions to the maximum extent practicable and shall provide
6 for or require adequate monitoring to ensure the effectiveness of the
7 remedial action;

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

11 (d) Carry out all state programs authorized under the federal
12 cleanup law and the federal resource, conservation, and recovery act,
13 42 U.S.C. Sec. 6901 et seq., as amended;

14 (e) Classify substances as hazardous substances for purposes of RCW
15 70.105D.020(5) and classify substances and products as hazardous
16 substances for purposes of RCW 82.21.020(1); and

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

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

25 (a) Provide for public participation, including at least (i) the
26 establishment of regional citizen's advisory committees, (ii) public
27 notice of the development of investigative plans or remedial plans for
28 releases or threatened releases, and (iii) concurrent public notice of
29 all compliance orders, agreed orders, enforcement orders, or notices of
30 violation;

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

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

37 (d) Publish and periodically update minimum cleanup standards for
38 remedial actions at least as stringent as the cleanup standards under
39 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at

1 least as stringent as all applicable state and federal laws, including
2 health-based standards under state and federal law.

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

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

25 (5) The department shall establish a program to identify potential
26 hazardous waste sites and to encourage persons to provide information
27 about hazardous waste sites.

28 **Sec. 12.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
29 as follows:

30 (1) With respect to any release, or threatened release, for which
31 the department does not conduct or contract for conducting remedial
32 action and for which the department believes remedial action is in the
33 public interest, the director shall issue orders or agreed orders
34 requiring potentially liable persons to provide the remedial action.
35 Any liable person who refuses, without sufficient cause, to comply with
36 an order or agreed order of the director is liable in an action brought
37 by the attorney general for:

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

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

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

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

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

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

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

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

29 **Sec. 13.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
30 as follows:

31 The department's investigative and remedial decisions under RCW
32 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
33 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
34 exclusively in superior court and only at the following times: (1) In
35 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
36 department to enforce an order or an agreed order, or seek a civil
37 penalty under this chapter; (3) in a suit for reimbursement under RCW
38 70.105D.050(2); (4) in a suit by the department to compel investigative

1 or remedial action; and (5) in a citizen's suit under RCW
2 70.105D.050(5). The court shall uphold the department's actions unless
3 they were arbitrary and capricious.

4 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.105D
5 RCW to read as follows:

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

26 (2) An exemption in this section or in sections 15, 16, 17, 18, 19,
27 and 20 of this act shall not apply if the department determines that
28 the exemption would result in loss of approval from a federal agency
29 necessary for the state to administer any federal law, including the
30 federal resource conservation and recovery act, the federal clean water
31 act, the federal clean air act, and the federal coastal zone management
32 act. Such a determination by the department shall not affect the
33 applicability of the exemptions to other statutes specified in this
34 section.

35 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.94 RCW
36 to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. The department of ecology shall ensure
6 compliance with the substantive requirements of this chapter through
7 the consent decree, order, or agreed order issued pursuant to chapter
8 70.105D RCW, or during the department-conducted remedial action,
9 through the procedures developed by the department pursuant to section
10 14 of this act.

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.95 RCW
12 to read as follows:

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

23 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.105
24 RCW to read as follows:

25 The procedural requirements of this chapter shall not apply to any
26 person conducting a remedial action at a facility pursuant to a consent
27 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
28 or to the department of ecology when it conducts a remedial action
29 under chapter 70.105D RCW. The department of ecology shall ensure
30 compliance with the substantive requirements of this chapter through
31 the consent decree, order, or agreed order issued pursuant to chapter
32 70.105D RCW, or during the department-conducted remedial action,
33 through the procedures developed by the department pursuant to section
34 14 of this act.

35 NEW SECTION. **Sec. 18.** A new section is added to chapter 75.20 RCW
36 to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. The department of ecology shall ensure
6 compliance with the substantive requirements of this chapter through
7 the consent decree, order, or agreed order issued pursuant to chapter
8 70.105D RCW, or during the department-conducted remedial action,
9 through the procedures developed by the department pursuant to section
10 14 of this act.

11 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.48 RCW
12 to read as follows:

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

23 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.58 RCW
24 to read as follows:

25 The procedural requirements of this chapter shall not apply to any
26 person conducting a remedial action at a facility pursuant to a consent
27 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
28 or to the department of ecology when it conducts a remedial action
29 under chapter 70.105D RCW. The department of ecology shall ensure
30 compliance with the substantive requirements of this chapter through
31 the consent decree, order, or agreed order issued pursuant to chapter
32 70.105D RCW, or during the department-conducted remedial action,
33 through the procedures developed by the department pursuant to section
34 14 of this act.

35 NEW SECTION. **Sec. 21.** A new section is added to chapter 43.21C
36 RCW to read as follows:

1 In conducting a remedial action at a facility pursuant to a consent
2 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
3 or if conducted by the department of ecology, the department of ecology
4 to the maximum extent practicable shall integrate the procedural
5 requirements and documents of this chapter with the procedures and
6 documents under chapter 70.105D RCW. Such integration shall at a
7 minimum include the public participation procedures of chapter 70.105D
8 RCW and the public notice and review requirements of this chapter.

9 **Sec. 22.** RCW 34.12.020 and 1993 c 281 s 16 are each amended to
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

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

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

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

20 (4) "State agency" means any state board, commission, department,
21 or officer authorized by law to make rules or to conduct adjudicative
22 proceedings, except those in the legislative or judicial branches, the
23 growth planning hearings boards, the pollution control hearings board,
24 the shorelines hearings board, the forest practices appeals board, the
25 environmental hearings office, the board of industrial insurance
26 appeals, the Washington personnel resources board, the public
27 employment relations commission, the personnel appeals board, and the
28 board of tax appeals.

29 **Sec. 23.** RCW 34.05.514 and 1988 c 288 s 502 are each amended to
30 read as follows:

31 (1) Except as provided in subsection (2) of this section and RCW
32 ((34.05.538)) 36.70A.300(3), proceedings for review under this chapter
33 shall be instituted by filing a petition in the superior court, at the
34 petitioner's option, for (a) Thurston county, (b) the county of the
35 petitioner's residence or principal place of business, or (c) in any
36 county where the property owned by the petitioner and affected by the
37 contested decision is located.

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

5 NEW SECTION. **Sec. 24.** Section 5 of this act shall take effect
6 July 1, 1994.

7 NEW SECTION. **Sec. 25.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected."

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