

2 **SB 5087** - H AMD  
3 By Representative Chandler

4 ADOPTED AS AMENDED 4/14/95

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

7 "NEW SECTION. **Sec. 1.** The legislature recognizes that judicial  
8 review of certain environmental and land use appeals can be expedited  
9 to benefit the people of the state. Allowing direct appeals to  
10 superior court or the court of appeals can reduce backlogs, conserve  
11 resources, and provide quicker guidance to individuals and communities  
12 concerning important matters impacting their area. The legislature  
13 therefore finds that it is in the public interest to reduce delays in  
14 obtaining a final resolution over certain environmental and land use  
15 matters by streamlining the judicial appeals process.

16 The legislature also finds that petitions to growth management  
17 hearings boards have resulted in costly reviews that have not accorded  
18 adequate deference to planning decisions of counties and cities.  
19 Sections 22 through 25 of this act are intended to reaffirm the  
20 presumption of validity accorded to local decisions and clarify the  
21 role of the state and the boards in the review and appeal of local  
22 plans.

23 **Sec. 2.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to read  
24 as follows:

25 (1) Except as provided in subsections (2) and (3) of this section  
26 (~~and RCW 36.70A.300(3)~~), proceedings for review under this chapter  
27 shall be instituted by filing a petition in the superior court, at the  
28 petitioner's option, for (a) Thurston county, (b) the county of the  
29 petitioner's residence or principal place of business, or (c) in any  
30 county where the property owned by the petitioner and affected by the  
31 contested decision is located.

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

1       (3) For proceedings involving water quantity decisions made by the  
2 department of ecology, as defined in section 14 of this act, the  
3 petition shall be filed in the superior court in the county that will  
4 be directly and immediately affected by the decision.

5       **Sec. 3.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to  
6 read as follows:

7       (1) The pollution control hearings board shall only have  
8 jurisdiction to hear and decide appeals from the following decisions of  
9 the department, the director, the administrator of the office of marine  
10 safety, and the air pollution control boards or authorities as  
11 established pursuant to chapter 70.94 RCW, or local health departments:

12       (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
13 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
14 90.56.330.

15       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
16 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
17 (~~90.14.130~~) and 90.48.120.

18       (c) The issuance, modification, or termination of any permit,  
19 certificate, or license by the department or any air authority in the  
20 exercise of its jurisdiction, including the issuance or termination of  
21 a waste disposal permit, the denial of an application for a waste  
22 disposal permit, or the modification of the conditions or the terms of  
23 a waste disposal permit.

24       (d) Decisions of local health departments regarding the grant or  
25 denial of solid waste permits pursuant to chapter 70.95 RCW.

26       (e) Decisions of local health departments regarding the issuance  
27 and enforcement of permits to use or dispose of biosolids under RCW  
28 70.95J.080.

29       (f) Any other decision by the department, the administrator of the  
30 office of marine safety, or an air authority which pursuant to law must  
31 be decided as an adjudicative proceeding under chapter 34.05 RCW.

32       (2) The jurisdiction of the pollution control hearings board is  
33 further limited as follows:

34       (a) The hearings board shall have no jurisdiction whatsoever to  
35 review water quantity decisions of the department of ecology as defined  
36 in section 14 of this act, which are appealed directly to a superior  
37 court, to review orders pertaining to the relinquishment of a water  
38 right under RCW 90.14.130, or to review proceedings regarding general

1 adjudications of water rights conducted pursuant to chapter 90.03 or  
2 90.44 RCW.

3 (b) The following hearings shall not be conducted by the hearings  
4 board:

5 ((a)) (i) Hearings required by law to be conducted by the  
6 shorelines hearings board pursuant to chapter 90.58 RCW.

7 ((b)) (ii) Hearings conducted by the department pursuant to RCW  
8 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
9 90.44.180.

10 ((c) ~~Proceedings by the department relating to general~~  
11 ~~adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.~~

12 (d)) (iii) Hearings conducted by the department to adopt, modify,  
13 or repeal rules.

14 (3) Review of rules and regulations adopted by the hearings board  
15 shall be subject to review in accordance with the provisions of the  
16 Administrative Procedure Act, chapter 34.05 RCW.

17 **Sec. 4.** RCW 43.21B.130 and 1990 c 65 s 3 are each amended to read  
18 as follows:

19 The administrative procedure act, chapter 34.05 RCW, shall apply to  
20 the appeal of rules and regulations adopted by the board to the same  
21 extent as it applied to the review of rules and regulations adopted by  
22 the directors and/or boards or commissions of the various departments  
23 whose powers, duties and functions were transferred by section 6,  
24 chapter 62, Laws of 1970 ex. sess. to the department. Except with  
25 regard to water quantity decisions by the department, as defined in  
26 section 14 of this act, which are appealed directly to a superior court  
27 and orders pertaining to the relinquishment of a water right under RCW  
28 90.14.130, all other decisions and orders of the director and all  
29 decisions of air pollution control boards or authorities established  
30 pursuant to chapter 70.94 RCW shall be subject to review by the  
31 hearings board as provided in this chapter.

32 **Sec. 5.** RCW 43.21B.140 and 1987 c 109 s 30 are each amended to  
33 read as follows:

34 In all appeals over which the hearings board has jurisdiction, a  
35 party taking an appeal may elect either a formal or an informal  
36 hearing, such election to be made according to rules of practice and  
37 procedure to be promulgated by the hearings board: PROVIDED, That

1 nothing herein shall be construed to modify the provisions of RCW  
2 43.21B.190 (~~and 43.21B.200~~). In the event that appeals are taken  
3 from the same decision, order, or determination, as the case may be, by  
4 different parties and only one of such parties elects (~~a formal~~) an  
5 informal hearing, (~~a formal~~) an informal hearing shall be granted.

6 **Sec. 6.** RCW 43.21B.240 and 1989 c 175 s 105 are each amended to  
7 read as follows:

8 The department and air authorities shall not have authority to hold  
9 adjudicative proceedings pursuant to the Administrative Procedure Act,  
10 chapter 34.05 RCW. (~~Such~~) All other hearings, except for water  
11 quantity decisions as defined in section 14 of this act, that are  
12 appealed directly to a superior court, and appeals of orders pertaining  
13 to the relinquishment of a water right under RCW 90.14.130, shall be  
14 held by the pollution control hearings board.

15 **Sec. 7.** RCW 43.21B.310 and 1992 c 73 s 3 are each amended to read  
16 as follows:

17 (1) Except as provided in subsection (2) of this section, any order  
18 issued by the department, the administrator of the office of marine  
19 safety, or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095,  
20 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision  
21 enacted after July 26, 1987, or any permit, certificate, or license  
22 issued by the department may be appealed to the pollution control  
23 hearings board if the appeal is filed with the board and served on the  
24 department or authority within thirty days after receipt of the order.  
25 Except as provided under chapter 70.105D RCW, (~~this is~~) these are the  
26 exclusive means of appeal of such an order.

27 (~~(2)~~) (a) The department, the administrator, or the authority in  
28 its discretion may stay the effectiveness of an order during the  
29 pendency of such an appeal.

30 (~~(3)~~) (b) At any time during the pendency of an appeal of such an  
31 order to the board, the appellant may apply pursuant to RCW 43.21B.320  
32 to the hearings board for a stay of the order or for the removal  
33 thereof.

34 (~~(4)~~) (c) Any appeal before the hearings board must contain the  
35 following in accordance with the rules of the hearings board:

36 (~~(a)~~) (i) The appellant's name and address;

1       (~~(b)~~) (ii) The date and docket number of the order, permit, or  
2 license appealed;

3       (~~(c)~~) (iii) A description of the substance of the order, permit,  
4 or license that is the subject of the appeal;

5       (~~(d)~~) (iv) A clear, separate, and concise statement of every  
6 error alleged to have been committed;

7       (~~(e)~~) (v) A clear and concise statement of facts upon which the  
8 requester relies to sustain his or her statements of error; and

9       (~~(f)~~) (vi) A statement setting forth the relief sought.

10       (~~(5)~~) (d) Upon failure to comply with any final order of the  
11 department or the administrator, the attorney general, on request of  
12 the department or the administrator, may bring an action in the  
13 superior court of the county where the violation occurred or the  
14 potential violation is about to occur to obtain such relief as  
15 necessary, including injunctive relief, to insure compliance with the  
16 order. The air authorities may bring similar actions to enforce their  
17 orders.

18       (~~(6)~~) (e) An appealable decision or order shall be identified as  
19 such and shall contain a conspicuous notice to the recipient that it  
20 may be appealed only by filing an appeal with the hearings board and  
21 serving it on the department within thirty days of receipt.

22       (2) Water quantity decisions of the department, as defined in  
23 section 14 of this act may be appealed either to the pollution control  
24 hearings board or directly to a superior court as provided in section  
25 14 of this act. Appeals of orders pertaining to the relinquishment of  
26 a water right shall be filed in superior court as provided by RCW  
27 90.14.130.

28       **Sec. 8.** RCW 43.27A.190 and 1987 c 109 s 11 are each amended to  
29 read as follows:

30       Notwithstanding and in addition to any other powers granted to the  
31 department of ecology, whenever it appears to the department that a  
32 person is violating or is about to violate any of the provisions of the  
33 following:

- 34       (1) Chapter 90.03 RCW; or
- 35       (2) Chapter 90.44 RCW; or
- 36       (3) Chapter 86.16 RCW; or
- 37       (4) Chapter 43.37 RCW; or
- 38       (5) Chapter 43.27A RCW; or

1 (6) Any other law relating to water resources administered by the  
2 department; or

3 (7) A rule or regulation adopted, or a directive or order issued by  
4 the department relating to subsections (1) through (6) of this section;  
5 the department may cause a written regulatory order to be served upon  
6 (~~said~~) the person either personally, or by registered or certified  
7 mail delivered to addressee only with return receipt requested and  
8 acknowledged by him or her. The order shall specify the provision of  
9 the statute, rule, regulation, directive or order alleged to be or  
10 about to be violated, and the facts upon which the conclusion of  
11 violating or potential violation is based, and shall order the act  
12 constituting the violation or the potential violation to cease and  
13 desist or, in appropriate cases, shall order necessary corrective  
14 action to be taken with regard to such acts within a specific and  
15 reasonable time. The regulation of a headgate or controlling works as  
16 provided in RCW 90.03.070, by a watermaster, stream patrolman, or other  
17 person so authorized by the department shall constitute a regulatory  
18 order within the meaning of this section. A regulatory order issued  
19 hereunder shall become effective immediately upon receipt by the person  
20 to whom the order is directed, except for regulations under RCW  
21 90.03.070 which shall become effective when a written notice is  
22 attached as provided therein. Any person aggrieved by such order may  
23 appeal the order pursuant to RCW 43.21B.310 unless the order is a water  
24 quantity decision of the department, as defined in section 14 of this  
25 act, in which case it may be appealed either to the pollution control  
26 hearings board or directly to a superior court as provided in section  
27 14 of this act.

28 **Sec. 9.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read  
29 as follows:

30 (1) The legislature recognizes the value of interties for improving  
31 the reliability of public water systems, enhancing their management,  
32 and more efficiently utilizing the increasingly limited resource.  
33 Given the continued growth in the most populous areas of the state, the  
34 increased complexity of public water supply management, and the trend  
35 toward regional planning and regional solutions to resource issues,  
36 interconnections of public water systems through interties provide a  
37 valuable tool to ensure reliable public water supplies for the citizens  
38 of the state. Public water systems have been encouraged in the past to

1 utilize interties to achieve public health and resource management  
2 objectives. The legislature finds that it is in the public interest to  
3 recognize interties existing and in use as of January 1, 1991, and to  
4 have associated water rights modified by the department of ecology to  
5 reflect current use of water through those interties, pursuant to  
6 subsection (3) of this section. The legislature further finds it in  
7 the public interest to develop a coordinated process to review  
8 proposals for interties commencing use after January 1, 1991.

9 (2) For the purposes of this section, the following definitions  
10 shall apply:

11 (a) "Interties" are interconnections between public water systems  
12 permitting exchange or delivery of water between those systems for  
13 other than emergency supply purposes, where such exchange or delivery  
14 is within established instantaneous and annual withdrawal rates  
15 specified in the systems' existing water right permits or certificates,  
16 or contained in claims filed pursuant to chapter 90.14 RCW, and which  
17 results in better management of public water supply consistent with  
18 existing rights and obligations. Interties include interconnections  
19 between public water systems permitting exchange or delivery of water  
20 to serve as primary or secondary sources of supply, but do not include  
21 development of new sources of supply to meet future demand.

22 (b) "Service area" is the area designated in a water system plan or  
23 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW  
24 respectively. When a public water system does not have a designated  
25 service area subject to the approval process of those chapters, the  
26 service area shall be the designated place of use contained in the  
27 water right permit or certificate, or contained in the claim filed  
28 pursuant to chapter 90.14 RCW.

29 (3) Public water systems with interties existing and in use as of  
30 January 1, 1991, or that have received written approval from the  
31 department of health prior to that date, shall file written notice of  
32 those interties with the department of health and the department of  
33 ecology. The notice may be incorporated into the public water system's  
34 five-year update of its water system plan, but shall be filed no later  
35 than June 30, 1996. The notice shall identify the location of the  
36 intertie; the dates of its first use; the purpose, capacity, and  
37 current use; the intertie agreement of the parties and the service  
38 areas assigned; and other information reasonably necessary to modify  
39 the water right permit. Notwithstanding the provisions of RCW

1 90.03.380 and 90.44.100, for public water systems with interties  
2 existing and in use as of January 1, 1991, the department of ecology,  
3 upon receipt of notice meeting the requirements of this subsection,  
4 shall, as soon as practicable, modify the place of use descriptions in  
5 the water right permits, certificates, or claims to reflect the actual  
6 use through such interties, provided that the place of use is within  
7 service area designations established in a water system plan approved  
8 pursuant to chapter 43.20 RCW, or a coordinated water system plan  
9 approved pursuant to chapter 70.116 RCW, and further provided that the  
10 water used is within the instantaneous and annual withdrawal rates  
11 specified in the water right permit and that no outstanding complaints  
12 of impairment to existing water rights have been filed with the  
13 department of ecology prior to September 1, 1991. Where such  
14 complaints of impairment have been received, the department of ecology  
15 shall make all reasonable efforts to resolve them in a timely manner  
16 through agreement of the parties or through available administrative  
17 remedies.

18 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,  
19 exchange or delivery of water through interties commencing use after  
20 January 1, 1991, shall be permitted when the intertie improves overall  
21 system reliability, enhances the manageability of the systems, provides  
22 opportunities for conjunctive use, or delays or avoids the need to  
23 develop new water sources, and otherwise meets the requirements of this  
24 section, provided that each public water system's water use shall not  
25 exceed the instantaneous or annual withdrawal rate specified in its  
26 water right authorization, shall not adversely affect existing water  
27 rights, and shall not be inconsistent with state-approved plans such as  
28 water system plans or other plans which include specific proposals for  
29 construction of interties. Interties commencing use after January 1,  
30 1991, shall not be inconsistent with regional water resource plans  
31 developed pursuant to chapter 90.54 RCW.

32 (5) For public water systems subject to the approval process of  
33 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties  
34 commencing use after January 1, 1991, shall be incorporated into water  
35 system plans pursuant to chapter 43.20 RCW or coordinated water system  
36 plans pursuant to chapter 70.116 RCW and submitted to the department of  
37 health and the department of ecology for review and approval as  
38 provided for in subsections (5) through (9) of this section. The plan  
39 shall state how the proposed intertie will improve overall system



1 reliability, enhance the manageability of the systems, provide  
2 opportunities for conjunctive use, or delay or avoid the need to  
3 develop new water sources.

4 (6) The department of health shall be responsible for review and  
5 approval of proposals for new interties. In its review the department  
6 of health shall determine whether the intertie satisfies the criteria  
7 of subsection (4) of this section, with the exception of water rights  
8 considerations, which are the responsibility of the department of  
9 ecology, and shall determine whether the intertie is necessary to  
10 address emergent public health or safety concerns associated with  
11 public water supply.

12 (7) If the intertie is determined by the department of health to be  
13 necessary to address emergent public health or safety concerns  
14 associated with public water supply, the public water system shall  
15 amend its water system plan as required and shall file an application  
16 with the department of ecology to change its existing water right to  
17 reflect the proposed use of the water as described in the approved  
18 water system plan. The department of ecology shall process the  
19 application for change pursuant to RCW 90.03.380 or 90.44.100 as  
20 appropriate, except that, notwithstanding the requirements of those  
21 sections regarding notice and protest periods, applicants shall be  
22 required to publish notice one time, and the comment period shall be  
23 fifteen days from the date of publication of the notice. Within sixty  
24 days of receiving the application, the department of ecology shall  
25 issue findings and advise the department of health if existing water  
26 rights are determined to be adversely affected. If no determination is  
27 provided by the department of ecology within the sixty-day period, the  
28 department of health shall proceed as if existing rights are not  
29 adversely affected by the proposed intertie. The department of ecology  
30 may obtain an extension of the sixty-day period by submitting written  
31 notice to the department of health and to the applicant indicating a  
32 definite date by which its determination will be made. No additional  
33 extensions shall be granted, and in no event shall the total review  
34 period for the department of ecology exceed one hundred eighty days.

35 (8) If the department of health determines the proposed intertie  
36 appears to meet the requirements of subsection (4) of this section but  
37 is not necessary to address emergent public health or safety concerns  
38 associated with public water supply, the department of health shall  
39 instruct the applicant to submit to the department of ecology an

1 application for change to the underlying water right or claim as  
2 necessary to reflect the new place of use. The department of ecology  
3 shall consider the applications pursuant to the provisions of RCW  
4 90.03.380 and 90.44.100 as appropriate. If in its review of proposed  
5 interties and associated water rights the department of ecology  
6 determines that additional information is required to act on the  
7 application, the department may request applicants to provide  
8 information necessary for its decision, consistent with agency rules  
9 and written guidelines. Parties disagreeing with the decision of the  
10 department of ecology ((~~en~~)) to approve or deny the application for  
11 change in place of use may appeal the decision to the pollution control  
12 hearings board or directly to a superior court as provided in section  
13 14 of this act.

14 (9) The department of health may approve plans containing intertie  
15 proposals prior to the department of ecology's decision on the water  
16 right application for change in place of use. However, notwithstanding  
17 such approval, construction work on the intertie shall not begin until  
18 the department of ecology issues the appropriate water right document  
19 to the applicant consistent with the approved plan.

20 **Sec. 10.** RCW 90.14.130 and 1987 c 109 s 13 are each amended to  
21 read as follows:

22 When it appears to the department of ecology that a person entitled  
23 to the use of water has not beneficially used his or her water right or  
24 some portion thereof, and it appears that ((~~said~~)) the right has or may  
25 have reverted to the state because of such nonuse, as provided by RCW  
26 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall  
27 notify such person by order: PROVIDED, That where a company,  
28 association, district, or the United States has filed a blanket claim  
29 under the provisions of RCW 90.14.060 for the total benefits of those  
30 served by it, the notice shall be served on such company, association,  
31 district or the United States and not upon any of its individual water  
32 users who may not have used the water or some portion thereof which  
33 they were entitled to use. The order shall contain: (1) A description  
34 of the water right, including the approximate location of the point of  
35 diversion, the general description of the lands or places where such  
36 waters were used, the water source, the amount involved, the purpose of  
37 use, and the apparent authority upon which the right is based; (2) a  
38 statement that unless sufficient cause be shown on appeal the water

1 right will be declared relinquished; and (3) a statement that such  
2 order may be appealed to (~~(the pollution control hearings board)~~)  
3 superior court. Any person aggrieved by such an order may appeal it to  
4 (~~(the pollution control hearings board pursuant to RCW 43.21B.310)~~) the  
5 superior court in the county where the land is located upon which the  
6 water was used. Any such appeal to superior court shall be de novo.  
7 The order shall be served by registered or certified mail to the last  
8 known address of the person and be posted at the point of division or  
9 withdrawal. The order by itself shall not alter the recipient's right  
10 to use water, if any.

11 **Sec. 11.** RCW 90.14.190 and 1987 c 109 s 14 are each amended to  
12 read as follows:

13 Any person feeling aggrieved by any decision of the department of  
14 ecology may have the same reviewed by the pollution control hearings  
15 board or directly to a superior court pursuant to ((RCW 43.21B.310))  
16 section 14 of this act. In any such review, the findings of fact as  
17 set forth in the report of the department of ecology shall be prima  
18 facie evidence of the fact of any waiver or relinquishment of a water  
19 right or portion thereof. If the hearings board affirms the decision  
20 of the department, a party seeks review in superior court of that  
21 hearings board decision pursuant to chapter 34.05 RCW, and the court  
22 determines that the party was injured by an arbitrary, capricious, or  
23 erroneous order of the department, the court may award reasonable  
24 attorneys' fees. Any order regarding the relinquishment of a water  
25 right shall be appealed pursuant to RCW 90.14.130.

26 **Sec. 12.** RCW 90.14.200 and 1989 c 175 s 180 are each amended to  
27 read as follows:

28 (1) All matters relating to the implementation and enforcement of  
29 this chapter by the department of ecology shall be carried out in  
30 accordance with chapter 34.05 RCW, the Administrative Procedure Act,  
31 except where the provisions of this chapter expressly conflict with  
32 chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 are  
33 (~~(adjudicative proceedings within the meaning of chapter 34.05 RCW.~~  
34 ~~Final decisions of the department of ecology in these proceedings))~~  
35 appealable to superior court as provided in that section. Other final  
36 decisions of the department of ecology under this chapter are subject

1 to review by the pollution control hearings board or a superior court  
2 in accordance with (~~chapter 43.21B RCW~~) section 14 of this act.

3 (2) RCW 90.14.130 provides nonexclusive procedures for determining  
4 a relinquishment of water rights under RCW 90.14.160, 90.14.170, and  
5 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in,  
6 among other proceedings, general adjudication proceedings initiated  
7 under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall  
8 apply to litigation involving determinations of the department of  
9 ecology under RCW 90.03.290 relating to the impairment of existing  
10 rights.

11 **Sec. 13.** RCW 90.66.080 and 1979 c 3 s 8 are each amended to read  
12 as follows:

13 The department is hereby empowered to promulgate such rules as may  
14 be necessary to carry out the provisions of this chapter. Decisions of  
15 the department, other than rule making, shall be subject to review by  
16 the pollution control hearings board or a superior court in accordance  
17 with (~~chapter 43.21B RCW~~) section 14 of this act.

18 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.21B  
19 RCW to read as follows:

20 (1) A person who is aggrieved or adversely affected by a water  
21 quantity decision may appeal the decision either to the pollution  
22 control hearings board pursuant to RCW 43.21B.310 or directly to a  
23 superior court. Any direct appeal to a superior court as authorized by  
24 this section shall be de novo and must be filed in the superior court  
25 in the county that will be directly and immediately affected by the  
26 decision.

27 (2) For purposes of this section, a "water quantity decision"  
28 includes the following:

29 (a) A decision to grant or deny a permit or certificate for a right  
30 to the beneficial use of water or to amend, change, or transfer such a  
31 right;

32 (b) A decision to enforce the conditions of a permit for, or right  
33 to, the beneficial use of water or to require any person to discontinue  
34 the use of water; and

35 (c) A decision to establish a minimum flow or level for water under  
36 chapter 90.03, 90.22, or 90.54 RCW, or to reserve water for such a  
37 minimum flow or level

1       **Sec. 15.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read  
2 as follows:

3       (1) Any person aggrieved by the granting, denying, or rescinding of  
4 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
5 review from the shorelines hearings board by filing a request for the  
6 same within thirty days of the date of filing as defined in RCW  
7 90.58.140(6).

8       (~~Concurrently with~~) Within seven days of the filing of any  
9 request for review with the board as provided in this section  
10 pertaining to a final order of a local government, the requestor shall  
11 (~~file a copy~~) serve copies of his or her request (~~with~~) on the  
12 department and the attorney general. (~~If it appears to the department~~  
13 ~~or the attorney general that the requestor has valid reasons to seek~~  
14 ~~review, either the department or the attorney general may certify the~~  
15 ~~request within thirty days after its receipt to the shorelines hearings~~  
16 ~~board following which the board shall then, but not otherwise, review~~  
17 ~~the matter covered by the requestor. The failure to obtain such~~  
18 ~~certification shall not preclude the requestor from obtaining a review~~  
19 ~~in the superior court under any right to review otherwise available to~~  
20 ~~the requestor.)) The department and the attorney general may intervene  
21 to protect the public interest and insure that the provisions of this  
22 chapter are complied with at any time within fifteen days from the date  
23 of the receipt by the department or the attorney general of a copy of  
24 the request for review filed pursuant to this section. (~~The~~  
25 ~~shorelines hearings board shall initially schedule review proceedings~~  
26 ~~on such requests for review without regard as to whether such requests~~  
27 ~~have or have not been certified or as to whether the period for the~~  
28 ~~department or the attorney general to intervene has or has not expired,~~  
29 ~~unless such review is to begin within thirty days of such scheduling.~~  
30 ~~If at the end of the thirty day period for certification neither the~~  
31 ~~department nor the attorney general has certified a request for review,~~  
32 ~~the hearings board shall remove the request from its review schedule.))~~~~

33       (2) The department or the attorney general may obtain review of any  
34 final order granting a permit, or granting or denying an application  
35 for a permit issued by a local government by filing a written request  
36 with the shorelines hearings board and the appropriate local government  
37 within thirty days from the date the final order was filed as provided  
38 in RCW 90.58.140(6).

1 (3) The review proceedings authorized in subsections (1) and (2) of  
2 this section are subject to the provisions of chapter 34.05 RCW  
3 pertaining to procedures in adjudicative proceedings. Judicial review  
4 of such proceedings of the shorelines hearings board is governed by  
5 chapter 34.05 RCW.

6 (4) A local government may appeal to the shorelines hearings board  
7 any rules, regulations, or guidelines adopted or approved by the  
8 department within thirty days of the date of the adoption or approval.  
9 The board shall make a final decision within sixty days following the  
10 hearing held thereon.

11 If the board determines that the rule, regulation, or guideline:

12 (a) Is clearly erroneous in light of the policy of this chapter; or

13 (b) Constitutes an implementation of this chapter in violation of  
14 constitutional or statutory provisions; or

15 (c) Is arbitrary and capricious; or

16 (d) Was developed without fully considering and evaluating all  
17 material submitted to the department by the local government; or

18 (e) Was not adopted in accordance with required procedures;

19 the board shall enter a final decision declaring the rule, regulation,  
20 or guideline invalid, remanding the rule, regulation, or guideline to  
21 the department with a statement of the reasons in support of the  
22 determination, and directing the department to adopt, after a thorough  
23 consultation with the affected local government, a new rule,  
24 regulation, or guideline. Unless the board makes one or more of the  
25 determinations as hereinbefore provided, the board shall find the rule,  
26 regulation, or guideline to be valid and enter a final decision to that  
27 effect.

28 (5) Rules, regulations, and guidelines shall be subject to review  
29 in superior court, if authorized pursuant to RCW 34.05.570(2). No  
30 review shall be granted by a superior court on petition from a local  
31 government unless the local government shall first have obtained review  
32 under subsection (4) of this section and the petition for court review  
33 is filed within three months after the date of final decision by the  
34 shorelines hearings board.

35 **Sec. 16.** RCW 34.05.518 and 1988 c 288 s 503 are each amended to  
36 read as follows:

37 (1) The final decision of an administrative agency in an  
38 adjudicative proceeding under this chapter may be directly reviewed by

1 the court of appeals either (a) upon certification by the superior  
2 court pursuant to this section or (b) if the final decision is from an  
3 environmental board as defined in subsection (3) of this section, upon  
4 acceptance by the court of appeals after a certificate of appealability  
5 has been filed by the environmental board that rendered the final  
6 decision.

7 (2) For direct review upon certification by the superior court, an  
8 application for direct review must be filed with the superior court  
9 within thirty days of the filing of the petition for review in superior  
10 court. The superior court may certify a case for direct review only if  
11 the judicial review is limited to the record of the agency proceeding  
12 and the court finds that:

13 ((+1)) (a) Fundamental and urgent issues affecting the future  
14 administrative process or the public interest are involved which  
15 require a prompt determination;

16 ((+2)) (b) Delay in obtaining a final and prompt determination of  
17 such issues would be detrimental to any party or the public interest;

18 ((+3)) (c) An appeal to the court of appeals would be likely  
19 regardless of the determination in superior court; and

20 ((+4)) (d) The appellate court's determination in the proceeding  
21 would have significant precedential value.

22 Procedures for certification shall be established by court rule.

23 (3)(a) For the purposes of direct review of final decisions of  
24 environmental boards, environmental boards include those boards  
25 identified in RCW 43.21B.005 and growth management hearings boards as  
26 identified in RCW 36.70A.250.

27 (b) An environmental board may issue a certificate of appealability  
28 if it finds that delay in obtaining a final and prompt determination of  
29 the issues would be detrimental to any party or the public interest and  
30 either:

31 (i) Fundamental and urgent state-wide or regional issues are  
32 raised; or

33 (ii) The proceeding is likely to have significant precedential  
34 value.

35 (4) The environmental board shall state in the certificate of  
36 appealability which criteria it applied, explain how that criteria was  
37 met, and file with the certificate a copy of the final decision.

1 (5) For an appellate court to accept direct review of a final  
2 decision of an environmental board, it shall consider the same criteria  
3 outlined in subsection (3) of this section.

4 (6) The procedures for direct review of final decisions of  
5 environmental boards include:

6 (a) Within thirty days after filing the petition for review with  
7 the superior court, a party may file an application for direct review  
8 with the superior court and serve the appropriate environmental board  
9 and all parties of record. The application shall request the  
10 environmental board to file a certificate of appealability.

11 (b) If an issue on review is the jurisdiction of the environmental  
12 board, the board may file an application for direct review on that  
13 issue.

14 (c) The environmental board shall have thirty days to grant or deny  
15 the request for a certificate of appealability and its decision shall  
16 be filed with the superior court and served on all parties of record.

17 (d) If a certificate of appealability is issued, the parties shall  
18 have fifteen days from the date of service to file a notice of  
19 discretionary review in the superior court, and the notice shall  
20 include a copy of the certificate of appealability and a copy of the  
21 final decision.

22 (e) If the appellate court accepts review, the certificate of  
23 appealability shall be transmitted to the court of appeals as part of  
24 the certified record.

25 (f) If a certificate of appealability is denied, review shall be by  
26 the superior court. The superior court's decision may be appealed to  
27 the court of appeals.

28 **Sec. 17.** RCW 34.05.522 and 1988 c 288 s 504 are each amended to  
29 read as follows:

30 The court of appeals may refuse to accept direct review of a case  
31 ((certified)) pursuant to RCW 34.05.518 if it finds that the case does  
32 not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of  
33 Appellate Procedure 2.3 do not apply in this instance. The refusal to  
34 accept such review is not subject to further appellate review,  
35 notwithstanding anything in Rule 13.3 of the Rules of Appellate  
36 Procedure to the contrary.



1       **Sec. 18.** RCW 34.05.542 and 1988 c 288 s 509 are each amended to  
2 read as follows:

3       Subject to other requirements of this chapter or of another  
4 statute:

5       (1) A petition for judicial review of a rule may be filed at any  
6 time, except as limited by RCW 34.05.375.

7       (2) A petition for judicial review of an order shall be filed with  
8 the court and served on the agency, the hearings board if one is  
9 involved, the office of the attorney general, and all parties of record  
10 within thirty days after service of the final order.

11       (3) A petition for judicial review of agency action other than the  
12 adoption of a rule or the entry of an order is not timely unless filed  
13 with the court and served on the agency, the office of the attorney  
14 general, and all other parties of record within thirty days after the  
15 agency action, but the time is extended during any period that the  
16 petitioner did not know and was under no duty to discover or could not  
17 reasonably have discovered that the agency had taken the action or that  
18 the agency action had a sufficient effect to confer standing upon the  
19 petitioner to obtain judicial review under this chapter.

20       (4) Service of the petition on the agency shall be by delivery of  
21 a copy of the petition to the office of the director, or other chief  
22 administrative officer or chairperson of the agency, at the principal  
23 office of the agency. Service of a copy by mail upon the other parties  
24 of record, the hearings board if one is involved, and the office of the  
25 attorney general shall be deemed complete upon deposit in the United  
26 States mail, as evidenced by the postmark.

27       (5) Failure to timely serve a petition on the office of the  
28 attorney general or the hearings board if one is involved, is not  
29 grounds for dismissal of the petition unless the service that is  
30 provided impairs the orderly conduct of judicial process. The service  
31 so provided as to the hearings board only applies to judicial  
32 proceedings pending on the effective date of this act.

33       (6) For the purposes of this section, "hearings board" means and  
34 independent, quasi-judicial, multiperson entity whose sole  
35 responsibility is to determine on review in a contested matter the  
36 validity or invalidity of an order issued by another governmental  
37 entity.

1       **Sec. 19.** RCW 34.05.566 and 1989 c 175 s 26 are each amended to  
2 read as follows:

3       (1) Within thirty days after service of the petition for judicial  
4 review, or within further time allowed by the court or by other  
5 provision of law, the agency shall transmit to the court the original  
6 or a certified copy of the agency record for judicial review of the  
7 agency action. The record shall consist of any agency documents  
8 expressing the agency action, other documents identified by the agency  
9 as having been considered by it before its action and used as a basis  
10 for its action, and any other material described in this chapter as the  
11 agency record for the type of agency action at issue, subject to the  
12 provisions of this section.

13       (2) If part of the record has been preserved without a transcript,  
14 the agency shall prepare a transcript for inclusion in the record  
15 transmitted to the court, except for portions that the parties  
16 stipulate to omit in accordance with subsection (4) of this section.

17       (3) The agency may charge a nonindigent petitioner with the  
18 reasonable costs of preparing any necessary copies and transcripts for  
19 transmittal to the court. A failure by the petitioner to pay any of  
20 this cost to the agency relieves the agency from the responsibility for  
21 preparation of the record and transmittal to the court.

22       (4) The record may be shortened, summarized, or organized  
23 temporarily or, by stipulation of all parties, permanently.

24       (5) The court may tax the cost of preparing transcripts and copies  
25 of the record:

26       (a) Against a party who unreasonably refuses to stipulate to  
27 shorten, summarize, or organize the record; or

28       (b) In accordance with any provision of law.

29       (6) Additions to the record pursuant to RCW 34.05.562 must be made  
30 as ordered by the court.

31       (7) The court may require or permit subsequent corrections or  
32 additions to the record.

33       (8) For the purposes of this section, agency includes hearings  
34 board as defined in RCW 34.05.542(6).

35       NEW SECTION. **Sec. 20.** It is the intent of the legislature through  
36 the enactment of section 18 of this act to clarify the filing  
37 procedures in RCW 34.05.542. Section 18 of this act is remedial in

1 nature and applies to all judicial proceedings pending on the effective  
2 date of this act.

3 NEW SECTION. **Sec. 21.** A new section is added to chapter 43.21B  
4 RCW to read as follows:

5 The hearings board shall ensure that a hearing pertaining to a  
6 water quantity decision, as defined in section 14 of this act, shall be  
7 conducted in the general area where the petitioner resides, or provide  
8 for the hearing to be conducted by telephone. A single member of the  
9 board may conduct such hearings.

10 **Sec. 22.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to  
11 read as follows:

12 (1) A request for review by the state to a growth management  
13 hearings board may be made only by the governor, or with the governor's  
14 consent the head of an agency, or by the commissioner of public lands  
15 as relating to state trust lands, for the review of whether: ~~((+1))~~

16 (a) A county or city that is required or chooses to plan under RCW  
17 36.70A.040 has failed to adopt a comprehensive plan or development  
18 regulations, or county-wide planning policies within the time limits  
19 established by this chapter; or ~~((+2))~~ (b) a county or city that is  
20 required or chooses to plan under this chapter has adopted a  
21 comprehensive plan, development regulations, or county-wide planning  
22 policies, that are not in compliance with the requirements of this  
23 chapter.

24 (2) Except as provided in subsection (1) of this section with  
25 regard to state trust lands, a state agency may be authorized to seek  
26 review by a growth management hearings board only if the governor  
27 finds:

28 (a) The agency has participated substantially in the local process  
29 and has consistently raised the issues to be addressed in the petition;  
30 or

31 (b) Review by a board is the best means to accomplish the state  
32 goals.

33 **Sec. 23.** RCW 36.70A.320 and 1991 sp.s. c 32 s 13 are each amended  
34 to read as follows:

35 (1)(a) Comprehensive plans and development regulations, and  
36 amendments thereto, adopted under this chapter are presumed valid upon

1 adoption. In any petition under this chapter, the board, after full  
2 consideration of the petition, shall determine whether there is  
3 compliance with the requirements of this chapter. In making its  
4 determination, the board shall consider the criteria adopted by the  
5 department under RCW 36.70A.190(4).

6 (b) The board shall find compliance unless it finds that the  
7 petitioner has demonstrated by a preponderance of the evidence that the  
8 state agency, county, or city erroneously interpreted or applied this  
9 chapter. The presumption of validity accorded to the decisions of the  
10 local legislative body places the burden upon the petitioner to  
11 demonstrate noncompliance. The failure of a county or city to develop  
12 a record that supports the action that is the basis of the petition  
13 does not by itself constitute a basis for a finding of noncompliance.

14 (2) In making its determination, the board shall take into  
15 consideration the extent of urbanization of the area in question, the  
16 planning history and capabilities of the county or city, and the  
17 relative amount of financial assistance made available to the county or  
18 city by the state for purposes of meeting the requirements of this  
19 chapter.

20 NEW SECTION. Sec. 24. A new section is added to chapter 36.70A  
21 RCW to read as follows:

22 The office of the attorney general shall, at the request of a  
23 county or city that has been found in compliance with the provisions of  
24 this chapter by a growth management hearings board, defend or provide  
25 assistance in the county or city's defense of an appeal of the board  
26 finding in superior court.

27 **Sec. 25.** RCW 36.70A.250 and 1994 c 249 s 29 are each amended to  
28 read as follows:

29 (1) There are hereby created three growth management hearings  
30 boards for the state of Washington. Each board is a quasi-judicial  
31 body. The boards shall be established as follows:

32 (a) An Eastern Washington board with jurisdictional boundaries  
33 including all counties that are required to or choose to plan under RCW  
34 36.70A.040 and are located east of the crest of the Cascade mountains;

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

1 (c) A Western Washington board with jurisdictional boundaries  
2 including all counties that are required or choose to plan under RCW  
3 36.70A.040 and are located west of the crest of the Cascade mountains  
4 and are not included in the Central Puget Sound board jurisdictional  
5 boundaries. Skamania county, should it be required or choose to plan  
6 under RCW 36.70A.040, may elect to be included within the  
7 jurisdictional boundaries of either the Western or Eastern board.

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

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.

14 NEW SECTION. **Sec. 27.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and shall take  
17 effect immediately."

18 **SB 5087** - H AMD  
19 By Representative Chandler

20 ADOPTED AS AMENDED 4/14/95

21 On page 1, line 2 of the title, after "boards;" strike the  
22 remainder of the title and insert "amending RCW 34.05.514, 43.21B.110,  
23 43.21B.130, 43.21B.240, 43.21B.310, 43.27A.190, 90.03.383, 90.14.130,  
24 90.14.190, 90.14.200, 90.66.080, 90.58.180, 34.05.542, 34.05.518,  
25 34.05.522, 34.05.542, 34.05.566, 36.70A.310, 36.70A.320, and  
26 36.70A.250; adding new sections to chapter 43.21B RCW; adding a new  
27 section to chapter 36.70A RCW; creating new sections; and declaring an  
28 emergency."

--- END ---