

ESSB 5776 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 04/14/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The purpose of this chapter is to reform
4 the process of appeal and review of final permit decisions made by
5 state agencies and local governments for qualifying economic
6 development projects by establishing uniform, expedited, and
7 consolidated appeal procedures and uniform criteria for reviewing such
8 decisions in order to provide consistent, predictable, and timely
9 review. The appeal process authorized in this chapter is intended to
10 be the exclusive process for review of final decisions made by state
11 agencies and local governments on permit applications for qualifying
12 economic development projects, superseding other existing
13 administrative board and judicial appeal procedures.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Board" means the environmental and land use hearings board.

17 (2) "Final decision" means the highest and last decision available
18 within the permit agency with respect to a permit application to the
19 agency, including but not limited to decisions resulting from internal
20 appeals available within the agency for the permit decision.

21 (3) "Participating permit agency" means any permit agency in which
22 the applicant for a qualifying project has filed an application for an
23 environmental or land use permit necessary for the economic development
24 project.

25 (4) "Permit" means any license, permit, certificate, certification,
26 approval, compliance schedule, or other similar document pertaining to
27 any regulatory or management program related to the protection,
28 conservation, use of, or interference with the land, air, or water in
29 the state. This document must be required to be obtained from a state

1 agency or local government, including but not limited to counties,
2 cities, and air agencies, prior to constructing or operating a
3 qualifying project. Local government permits include, but are not
4 limited to, subdivisions, binding site plans, planned unit
5 developments, shoreline permits or other approvals under RCW 90.58.140,
6 master plan approvals, site plan approvals, permits or approvals
7 required by critical area ordinances, conditional use permits,
8 variances, site-specific rezones authorized by a comprehensive plan or
9 subarea plan, or other equivalent documents however titled or
10 denominated. Local government permits excluded under this definition
11 include the adoption or amendment of a comprehensive plan, subarea
12 plan, legislative actions on development regulations, certifications by
13 local health districts of water and sewer availability, and building,
14 grading, flood hazard, utility connection, and other nondiscretionary
15 construction permits.

16 (5) "Permit agency" means any state agency or local government,
17 including but not limited to air agencies, authorized by law to issue
18 permits.

19 (6) "Qualifying project" means an economic development project (a)
20 that is located within a county that in its entirety qualifies as a
21 distressed area as defined in RCW 43.168.020(3) and a rural natural
22 resources impact area as defined in RCW 43.160.020, (b) that is
23 reasonably expected to provide at least thirty full-time year-round
24 jobs, (c) for which the project applicant reasonably believes will
25 require a minimum of two permits prior to its construction or
26 operation, (d) for which the applicant has timely requested from the
27 office of permit assistance a determination designating the economic
28 development project as a qualifying project, and (e) that is designated
29 as a qualifying project by the office of permit assistance.

30 NEW SECTION. **Sec. 3.** The appeal process authorized in this
31 chapter shall, notwithstanding any other provisions of law, be the
32 exclusive process for review of the decisions made by participating
33 permit agencies on permit applications for qualifying projects. This
34 chapter does not apply to applications for certification by the energy
35 facility site evaluation council pursuant to chapter 80.50 RCW. The

1 superior court civil rules and the rules of appellate procedure shall
2 govern procedural matters for the judicial appeal process under this
3 chapter to the extent that the rules are consistent with this chapter.

4 NEW SECTION. **Sec. 4.** (1) An applicant for a permit for an
5 economic development project that meets the criteria set forth in
6 section 2(5) (a), (b), and (c) of this act must file with the office of
7 permit assistance a request for a determination designating the
8 economic development project as a qualifying project. Such request
9 must be filed with the office of permit assistance no later than thirty
10 days after the date the first application for a permit required for the
11 economic development project is filed with the permit agency. The
12 permit applicant must provide a copy of the request to each permit
13 agency with which a permit application has or will be filed.

14 (2) The request must include (a) evidence that the economic
15 development project is located within a county that in its entirety
16 qualifies as a distressed area and a rural natural resources impact
17 area, (b) evidence that the economic development project is reasonably
18 expected to provide at least thirty full-time year-round jobs, and (c)
19 a list of permits that the project applicant reasonably believes will
20 be required prior to construction or operation of the economic
21 development project.

22 (3) The office of permit assistance must (a) approve the request if
23 it is reasonably satisfied that the requirements of subsection (2) of
24 this section are met, (b) respond to such request no later than thirty
25 days after the filing of the request, and (c) provide a copy of the
26 designation decision to each permit agency responsible for project
27 permits listed in the request.

28 NEW SECTION. **Sec. 5.** (1) An environmental and land use hearings
29 board is hereby established within the environmental hearings office
30 created under RCW 43.21B.005. The environmental and land use hearings
31 board shall be composed of six members, as provided in RCW 90.58.170.
32 The chairperson of the pollution control hearings board shall be the
33 chairperson of the environmental and land use hearings board. The
34 members of the environmental and land use hearings board shall receive

1 the compensation, travel, and subsistence expenses as provided in RCW
2 43.03.050 and 43.03.060.

3 (2) All proceedings before the board or any of its members shall be
4 conducted in accordance with such rules of practice and procedure as
5 the board may adopt. In all such proceedings, the board shall have all
6 powers relating to the administration of oaths, issuance of subpoenas,
7 and taking of depositions as set forth in RCW 34.05.446. The board
8 shall publish any such rules and arrange for the reasonable
9 distribution thereof. Failure to adopt such rules shall not deprive
10 the board of jurisdiction nor relieve the board of the duty to hear
11 petitions for review filed under this chapter.

12 NEW SECTION. **Sec. 6.** (1) Proceedings for review under this
13 chapter shall be commenced by filing a petition with the environmental
14 and land use hearings board. The board may adopt by rule procedures
15 for filing and service that are consistent with this chapter.

16 (2) Such petition is barred, and the board may not grant review,
17 unless the petition is timely filed with the board and timely served on
18 the following persons who shall be parties to the review of the
19 petition:

20 (a) The participating permit agencies, which for purposes of the
21 petition shall be (i) if a state agency, the director thereof, and (ii)
22 if a local government, the jurisdiction's corporate entity which shall
23 be served as provided in RCW 4.28.080; and

24 (b) Each of the following persons if the person is not the
25 petitioner:

26 (i) Each person identified by name and address as applicant in the
27 application to the participating permit agencies;

28 (ii) Each person identified in project application documents as an
29 owner of the property at issue or, if none, each person identified as
30 a taxpayer for the property at issue in the records of the county
31 assessor.

32 (3) The petition is timely if it is filed and served on all parties
33 listed in subsection (2) of this section no more than twenty-one days
34 after the issuance by the permit agency of the permit decision for the
35 qualifying project.

1 (4) For the purposes of this section, the date on which a permit
2 decision is issued is:

3 (a) Three days after a written decision is mailed by the permit
4 agency to the project applicant or, if not mailed, the date on which
5 the permit agency provides notice that a written decision is publicly
6 available; or

7 (b) If (a) of this subsection does not apply, the date the decision
8 is entered into the public record.

9 (5) Service on all parties shall be by personal service or by mail.
10 Service by mail is effective on the date of mailing. Proof of service
11 shall be by affidavit or declaration under penalty of perjury.

12 NEW SECTION. **Sec. 7.** Standing to bring a petition under this
13 chapter is limited to the following persons:

14 (1) The applicant and the owner of the property to which the permit
15 decision is directed;

16 (2) A person aggrieved or adversely affected by the permit
17 decision, or who would be aggrieved or adversely affected by a reversal
18 or modification of the permit decision. A person is aggrieved or
19 adversely affected within the meaning of this section only when all of
20 the following conditions are present:

21 (a) The permit decision has prejudiced or is likely to prejudice
22 that person;

23 (b) That person's asserted interests are among those that the
24 permit agency was required to consider when it made its permit
25 decision;

26 (c) A decision of the board in favor of that person would
27 substantially eliminate or redress the prejudice to that person caused
28 or likely to be caused by the permit decision; and

29 (d) The petitioner has exhausted his or her administrative remedies
30 to the extent required by law;

31 (3) A participating permit agency under this chapter.

32 NEW SECTION. **Sec. 8.** A petition must set forth:

33 (1) The name and mailing address of the petitioner;

34 (2) The name and mailing address of the petitioner's attorney, if
35 any;

1 (3) The name and mailing address of the permit agency whose permit
2 is at issue, if any;

3 (4) A duplicate copy of the permit decision;

4 (5) Identification of each person to be made a party under this
5 chapter;

6 (6) Facts demonstrating that the petitioner has standing to seek
7 board review under this chapter;

8 (7) A separate and concise statement of each error alleged to have
9 been committed;

10 (8) A concise statement of facts upon which the petitioner relies
11 to sustain the statement of error; and

12 (9) A request for relief, specifying the type and extent of relief
13 requested.

14 NEW SECTION. **Sec. 9.** (1) Within seven days after receipt of
15 service of the petition filed pursuant to section 6 of this act, the
16 project applicant shall file with the board and serve on all parties an
17 affidavit certifying all applications for permits that the project
18 applicant has filed with participating permit agencies for the
19 qualifying project, provided, however, that no permit may be included
20 that has been appealed to an administrative hearings board outside the
21 permit agency or to court prior to the date of service of the petition
22 filed with the board under this chapter. The board shall request
23 verification from the participating agencies of the permit applications
24 certified in the project applicant's affidavit and of the expected date
25 for final decision on the permit applications. Filing of the affidavit
26 shall toll the schedule for hearing by the board until twenty-one days
27 after issuance of the final permit decision on the last permit required
28 for the qualifying project that has been certified in the project
29 applicant's affidavit and verified by a participating agency as applied
30 for, unless the petition filed and served by the petitioner relates to
31 the final permit decision.

32 (2) Within seven days after the expiration of the appeal period for
33 the final permit decision on the last permit required for the
34 qualifying project, the petitioner shall note an initial hearing on
35 jurisdictional and other preliminary matters, and, if applicable, on
36 other pretrial matters. This initial hearing shall be set no sooner

1 than thirty-five days and no later than fifty days after the expiration
2 of the appeal period for the final permit decision on the last permit
3 required for the qualifying project.

4 (3) The board shall contemporaneously process all such petitions in
5 accordance with the case schedule requirements set forth in this act.

6 (4) The parties shall note all motions on jurisdictional and
7 procedural issues for resolution at the initial hearing, except that a
8 motion to allow discovery may be brought sooner.

9 (5) The defenses of lack of standing, untimely filing or service of
10 the petition, lack of good faith or improper purpose in filing, and
11 failure to join persons needed for just adjudication are waived if not
12 raised by timely motion noted to be heard at the initial hearing,
13 unless the board allows discovery on such issues.

14 (6) The petitioner shall move the board for an order at the initial
15 hearing setting the date the permit decision records of the applicable
16 permit agencies must be submitted, setting a briefing schedule, setting
17 a discovery schedule if discovery is to be allowed, and scheduling one
18 or more hearings on the merits.

19 (7) The parties may waive the initial hearing by scheduling dates
20 for the hearings on the merits and filing a stipulated order that
21 resolves the jurisdictional and procedural issues raised by the
22 petition, including the issues identified in subsections (5) and (6) of
23 this section.

24 (8) A party need not file an answer to a petition for review filed
25 pursuant to section 6 of this act.

26 NEW SECTION. **Sec. 10.** The board shall provide expedited review of
27 petitions filed under this chapter. Any matter reviewed on the
28 decision record as provided in section 13(1) of this act must be set
29 for hearing within sixty days of the date set for submitting the
30 decision record of all participating permit agencies, absent a showing
31 of good cause for a different date or a stipulation of the parties.
32 Any matter reviewed de novo as provided in section 13(3) of this act
33 must be set for hearing or trial no later than one hundred twenty days
34 after the initial hearing date. The board shall issue a final decision
35 and order within thirty days after the final hearing required in this
36 section.

1 NEW SECTION. **Sec. 11.** (1) A petitioner or other party may request
2 the board to stay or suspend an action by a participating permit agency
3 or another party to implement the decision under review. The request
4 must set forth a statement of grounds for the stay and the factual
5 basis for the request.

6 (2) The board may grant a stay only if the board finds that: (a)
7 The party requesting the stay is likely to prevail on the merits, (b)
8 without the stay the party requesting it will suffer irreparable harm,
9 (c) the grant of a stay will not substantially harm other parties to
10 the proceedings, and (d) the request for the stay is timely in light of
11 the circumstances of the case.

12 (3) The board may grant the request for a stay upon such terms and
13 conditions, including the filing of security, as are necessary to
14 prevent harm to other parties by the stay.

15 NEW SECTION. **Sec. 12.** (1) Within forty-five days after entry of
16 an order to submit the decision record, where applicable, or within
17 such a further time as the board allows or as the parties agree, each
18 participating agency shall submit to the board a certified copy of the
19 decision record for board review of the permit decision, except that
20 the petitioner shall prepare at the petitioner's expense and submit a
21 verbatim transcript of any hearings held on the matter.

22 (2) If the parties agree, or upon order of the board, the record
23 shall be shortened or summarized to avoid reproduction and
24 transcription of portions of the record that are duplicative or not
25 relevant to the issues to be reviewed by the board.

26 (3) The petitioner shall pay the participating agency the cost of
27 preparing the record before the participating agency submits the
28 decision record to the board. Failure by the petitioner to timely pay
29 the participating agency relieves the participating agency of
30 responsibility to submit the record and is grounds for dismissal of the
31 petition.

32 (4) If the relief sought by the petitioner is granted in whole or
33 in part the board shall equitably assess the cost of preparing the
34 record among the parties. In assessing costs the board shall take into
35 account the extent to which each party prevailed and the reasonableness

1 of the parties' conduct in agreeing or not agreeing to shorten or
2 summarize the record under subsection (2) of this section.

3 NEW SECTION. **Sec. 13.** (1) For all permit decisions being reviewed
4 that were made by quasi-judicial bodies or permit agency officers who
5 made factual determinations in support of the decisions, after the
6 conduct of proceedings in which the parties had an opportunity
7 consistent with due process to make records on the factual issues,
8 board review of factual issues and the conclusions drawn from the
9 factual issues shall be confined to the records created by the quasi-
10 judicial bodies or permit agency officers, except as provided in
11 subsections (2) through (4) of this section.

12 (2) For decisions described in subsection (1) of this section, the
13 records may be supplemented by additional evidence only if the
14 additional evidence relates to:

15 (a) Grounds for disqualification of a member of the body or of the
16 officer that made the permit decision, when such grounds were unknown
17 by the petitioner at the time the record was created;

18 (b) Matters that were improperly excluded from the record after
19 being offered by a party to a permit decision proceeding; or

20 (c) Matters that were outside the jurisdiction of the body or
21 officer that made the permit decision.

22 (3) For permit decisions other than those described in subsection
23 (1) of this section, the board review of the permit decision shall be
24 de novo on issues presented as error in the petition.

25 (4) The board may require or permit corrections of ministerial
26 errors or inadvertent omissions in the preparation of the record.

27 (5)(a) The parties may not conduct pretrial discovery except with
28 the prior permission of the board, which may be sought by motion at any
29 time after service of the petition. The board shall not grant
30 permission unless the party requesting it makes a prima facie showing
31 of need. The board shall strictly limit discovery to what is necessary
32 for equitable and timely review of the issues.

33 (b) If the board allows the record to be supplemented, or in any de
34 novo proceeding under subsection (3) of this section, the board shall
35 require the parties to disclose before the hearing or trial on the

1 merits the identity of witnesses and the specific evidence they intend
2 to offer.

3 (c) If any party, or anyone acting on behalf of any party, requests
4 records under chapter 42.17 RCW relating to the matters at issue, a
5 copy of the request shall simultaneously be given to all other parties,
6 and the board shall take such request into account in fashioning an
7 equitable discovery order under this section.

8 NEW SECTION. **Sec. 14.** (1) The board shall review the decision
9 record and all such evidence as is permitted to supplement the record
10 for review restricted to the decision record or is required for de novo
11 review under section 13 of this act. The board may grant relief only
12 if the party seeking relief has carried the burden of establishing that
13 one of the standards set forth in (a) through (f) of this subsection
14 has been met. The standards are:

15 (a) The body or officer that made the permit decision engaged in
16 unlawful procedure or failed to follow a prescribed process, unless the
17 error was harmless;

18 (b) The permit decision is an erroneous interpretation of the law,
19 after allowing for such deference as is due the construction of a law
20 by an agency with expertise;

21 (c) The permit decision is not supported by evidence that is
22 substantial when viewed in light of the whole record before the board;

23 (d) The permit decision is a clearly erroneous application of the
24 law to the facts;

25 (e) The permit decision is outside the authority or jurisdiction of
26 the body or officer making the decision; or

27 (f) The permit decision violates the constitutional rights of the
28 party seeking relief.

29 (2) The board may affirm or reverse each permit decision under
30 review or remand the permit decision to the appropriate permit agency
31 for modification or further proceedings.

32 NEW SECTION. **Sec. 15.** (1) In order to obtain judicial review of
33 a final decision of the environmental and land use hearings board, a
34 party to the board case as consolidated shall timely file a petition
35 for judicial review in the superior court for Thurston county and

1 timely serve the board and all parties to the proceedings before the
2 board by personal service or by mail. Such petition is timely filed
3 and served only if it is filed and served on all parties no more than
4 thirty days after the final decision and order of the board. Any party
5 may apply for direct review by the court of appeals. An application
6 for direct review must be filed with the superior court no more than
7 ten days after the petition for judicial review is filed in superior
8 court. The superior court must presume that: (a) The qualifying
9 project presents fundamental and urgent issues affecting the public
10 interest which require a prompt determination, and (b) delay in
11 obtaining a final and prompt determination of such issues would be
12 detrimental to a party and the public interest.

13 (2) The presumption set forth in subsection (1) of this section
14 shall require the superior court to certify the board decision for
15 direct review not less than ten days and not more than fifteen days
16 after the application therefore is filed unless, based on a motion of
17 a party filed with supporting excerpts from the record no more than ten
18 days after the application is filed, the superior court finds that the
19 economic development project does not meet the definition of a
20 qualifying project.

21 (3) A motion as set forth in subsection (2) of this section shall
22 be heard no more than fourteen days after the filing of the motion and
23 shall be confined to certified excerpts from the record, which any
24 party may produce. The court may make such findings upon a showing
25 that the record contains clear, cogent, and convincing evidence to
26 support such findings, which evidence has been testified to by at least
27 one witness. It shall not be necessary to certify the entire record to
28 the court for the purpose of hearing such motion.

29 (4) The court of appeals shall accept direct review of a case
30 unless it finds that the superior court's certification under the
31 standards contained in this section was clearly erroneous. Review by
32 the court of appeals shall be restricted to the decision record of the
33 permit agency and the board proceedings. All certified appeals shall
34 be provided priority processing by the court of appeals.

35 **Sec. 16.** RCW 34.05.518 and 1995 c 382 s 5 are each amended to read
36 as follows:

1 (1) The final decision of an administrative agency in an
2 adjudicative proceeding under this chapter may, except as otherwise
3 provided in chapter 43.-- RCW (sections 1 through 15 of this act), be
4 directly reviewed by the court of appeals either (a) upon certification
5 by the superior court pursuant to this section or (b) if the final
6 decision is from an environmental board as defined in subsection (3) of
7 this section, upon acceptance by the court of appeals after a
8 certificate of appealability has been filed by the environmental board
9 that rendered the final decision.

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

16 (a) Fundamental and urgent issues affecting the future
17 administrative process or the public interest are involved which
18 require a prompt determination;

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

21 (c) An appeal to the court of appeals would be likely regardless of
22 the determination in superior court; and

23 (d) The appellate court's determination in the proceeding would
24 have significant precedential value.

25 Procedures for certification shall be established by court rule.

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

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

34 (i) Fundamental and urgent statewide or regional issues are raised;
35 or

36 (ii) The proceeding is likely to have significant precedential
37 value.

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

4 (5) For an appellate court to accept direct review of a final
5 decision of an environmental board, it shall consider the same criteria
6 outlined in subsection (3) of this section, except as otherwise
7 provided in chapter 43.-- RCW (sections 1 through 15 of this act).

8 (6) The procedures for direct review of final decisions of
9 environmental boards include:

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

15 (b) If an issue on review is the jurisdiction of the environmental
16 board, the board may file an application for direct review on that
17 issue.

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

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

26 (e) If the appellate court accepts review, the certificate of
27 appealability shall be transmitted to the court of appeals as part of
28 the certified record.

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

32 **Sec. 17.** RCW 36.70C.030 and 1995 c 347 s 704 are each amended to
33 read as follows:

34 (1) This chapter replaces the writ of certiorari for appeal of land
35 use decisions and shall be the exclusive means of judicial review of
36 land use decisions, except that this chapter does not apply to:

1 (a) Judicial review of:

2 (i) Land use decisions made by bodies that are not part of a local
3 jurisdiction;

4 (ii) Land use decisions of a local jurisdiction that are subject to
5 review by a quasi-judicial body created by state law, such as the
6 shorelines hearings board, the environmental and land use hearings
7 board, or the growth management hearings board;

8 (b) Judicial review of applications for a writ of mandamus or
9 prohibition; or

10 (c) Claims provided by any law for monetary damages or
11 compensation. If one or more claims for damages or compensation are
12 set forth in the same complaint with a land use petition brought under
13 this chapter, the claims are not subject to the procedures and
14 standards, including deadlines, provided in this chapter for review of
15 the petition. The judge who hears the land use petition may, if
16 appropriate, preside at a trial for damages or compensation.

17 (2) The superior court civil rules govern procedural matters under
18 this chapter to the extent that the rules are consistent with this
19 chapter.

20 **Sec. 18.** RCW 43.21B.005 and 1999 c 125 s 1 are each amended to
21 read as follows:

22 (1) There is created an environmental hearings office of the state
23 of Washington. The environmental hearings office shall consist of the
24 pollution control hearings board created in RCW 43.21B.010, the forest
25 practices appeals board created in RCW 76.09.210, the shorelines
26 hearings board created in RCW 90.58.170, the environmental and land use
27 hearings board created in chapter 43.-- RCW (sections 1 through 15 of
28 this act), and the hydraulic appeals board created in RCW (~~75.20.130~~)
29 77.55.170. The chairman of the pollution control hearings board shall
30 be the chief executive officer of the environmental hearings office.
31 Membership, powers, functions, and duties of the pollution control
32 hearings board, the forest practices appeals board, the shorelines
33 hearings board, and the hydraulic appeals board shall be as provided by
34 law.

35 (2) The chief executive officer of the environmental hearings
36 office may appoint an administrative appeals judge who shall possess

1 the powers and duties conferred by the administrative procedure act,
2 chapter 34.05 RCW, in cases before the boards comprising the office.
3 The administrative appeals judge shall have a demonstrated knowledge of
4 environmental law, and shall be admitted to the practice of law in the
5 state of Washington. Additional administrative appeals judges may also
6 be appointed by the chief executive officer on the same terms.
7 Administrative appeals judges shall not be subject to chapter 41.06
8 RCW.

9 (3) The administrative appeals judges appointed under subsection
10 (2) of this section are subject to discipline and termination, for
11 cause, by the chief executive officer. Upon written request by the
12 person so disciplined or terminated, the chief executive officer shall
13 state the reasons for such action in writing. The person affected has
14 a right of review by the superior court of Thurston county on petition
15 for reinstatement or other remedy filed within thirty days of receipt
16 of such written reasons.

17 (4) The chief executive officer may appoint, discharge, and fix the
18 compensation of such administrative or clerical staff as may be
19 necessary.

20 (5) The chief executive officer may also contract for required
21 services.

22 **Sec. 19.** RCW 43.21B.110 and 2001 c 220 s 2 are each amended to
23 read as follows:

24 (1) The hearings board shall only have jurisdiction to hear and
25 decide appeals from the following decisions of the department, the
26 director, local conservation districts, and the air pollution control
27 boards or authorities as established pursuant to chapter 70.94 RCW, or
28 local health departments:

29 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
30 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
31 90.56.330.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
33 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
34 90.14.130, 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license by

1 the department or any air authority in the exercise of its
2 jurisdiction, including the issuance or termination of a waste disposal
3 permit, the denial of an application for a waste disposal permit, the
4 modification of the conditions or the terms of a waste disposal permit,
5 or a decision to approve or deny an application for a solid waste
6 permit exemption under RCW 70.95.300.

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

9 (e) Decisions of local health departments regarding the issuance
10 and enforcement of permits to use or dispose of biosolids under RCW
11 70.95J.080.

12 (f) Decisions of the department regarding waste-derived fertilizer
13 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
14 department regarding waste-derived soil amendments under RCW 70.95.205.

15 (g) Decisions of local conservation districts related to the denial
16 of approval or denial of certification of a dairy nutrient management
17 plan; conditions contained in a plan; application of any dairy nutrient
18 management practices, standards, methods, and technologies to a
19 particular dairy farm; and failure to adhere to the plan review and
20 approval timelines in RCW 90.64.026.

21 (h) Any other decision by the department or an air authority which
22 pursuant to law must be decided as an adjudicative proceeding under
23 chapter 34.05 RCW.

24 (2) The following hearings shall not be conducted by the hearings
25 board:

26 (a) Hearings required by law to be conducted by the shorelines
27 hearings board pursuant to chapter 90.58 RCW.

28 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
29 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

30 (c) Proceedings conducted by the department, or the department's
31 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

32 (d) Hearings conducted by the department to adopt, modify, or
33 repeal rules.

34 (e) Appeals of decisions by the department as provided in chapter
35 43.-- RCW (sections 1 through 15 of this act).

36 (3) Review of rules and regulations adopted by the hearings board

1 shall be subject to review in accordance with the provisions of the
2 Administrative Procedure Act, chapter 34.05 RCW.

3 **Sec. 20.** RCW 76.09.220 and 1999 sp.s. c 4 s 902 are each amended
4 to read as follows:

5 (1) The appeals board shall operate on either a part-time or a
6 full-time basis, as determined by the governor. If it is determined
7 that the appeals board shall operate on a full-time basis, each member
8 shall receive an annual salary to be determined by the governor. If it
9 is determined that the appeals board shall operate on a part-time
10 basis, each member shall be compensated in accordance with RCW
11 43.03.250. The director of the environmental hearings office shall
12 make the determination, required under RCW 43.03.250, as to what
13 statutorily prescribed duties, in addition to attendance at a hearing
14 or meeting of the board, shall merit compensation. This compensation
15 shall not exceed ten thousand dollars in a fiscal year. Each member
16 shall receive reimbursement for travel expenses incurred in the
17 discharge of his or her duties in accordance with the provisions of RCW
18 43.03.050 and 43.03.060.

19 (2) The appeals board shall as soon as practicable after the
20 initial appointment of the members thereof, meet and elect from among
21 its members a chair, and shall at least biennially thereafter meet and
22 elect or reelect a chair.

23 (3) The principal office of the appeals board shall be at the state
24 capital, but it may sit or hold hearings at any other place in the
25 state. A majority of the appeals board shall constitute a quorum for
26 making orders or decisions, adopting rules necessary for the conduct of
27 its powers and duties, or transacting other official business, and may
28 act though one position on the board be vacant. One or more members
29 may hold hearings and take testimony to be reported for action by the
30 board when authorized by rule or order of the board. The appeals board
31 shall perform all the powers and duties granted to it in this chapter
32 or as otherwise provided by law.

33 (4) The appeals board shall make findings of fact and prepare a
34 written decision in each case decided by it, and such findings and
35 decision shall be effective upon being signed by two or more members

1 and upon being filed at the appeals board's principal office, and shall
2 be open to public inspection at all reasonable times.

3 (5) The appeals board shall either publish at its expense or make
4 arrangements with a publishing firm for the publication of those of its
5 findings and decisions which are of general public interest, in such
6 form as to assure reasonable distribution thereof.

7 (6) The appeals board shall maintain at its principal office a
8 journal which shall contain all official actions of the appeals board,
9 with the exception of findings and decisions, together with the vote of
10 each member on such actions. The journal shall be available for public
11 inspection at the principal office of the appeals board at all
12 reasonable times.

13 (7) The forest practices appeals board shall have exclusive
14 jurisdiction to hear appeals arising from an action or determination by
15 the department, and the department of fish and wildlife, and the
16 department of ecology with respect to management plans provided for
17 under RCW 76.09.350.

18 (8)(a) Any person aggrieved by the approval or disapproval of an
19 application to conduct a forest practice or the approval or disapproval
20 of any landscape plan or permit or watershed analysis may, except as
21 otherwise provided in chapter 43.-- RCW (sections 1 through 15 of this
22 act), seek review from the appeals board by filing a request for the
23 same within thirty days of the approval or disapproval. Concurrently
24 with the filing of any request for review with the board as provided in
25 this section, the requestor shall file a copy of his or her request
26 with the department and the attorney general. The attorney general may
27 intervene to protect the public interest and ensure that the provisions
28 of this chapter are complied with.

29 (b) The review proceedings authorized in (a) of this subsection are
30 subject to the provisions of chapter 34.05 RCW pertaining to procedures
31 in adjudicative proceedings.

32 **Sec. 21.** RCW 77.55.170 and 2000 c 107 s 20 are each amended to
33 read as follows:

34 (1) There is hereby created within the environmental hearings
35 office under RCW 43.21B.005 the hydraulic appeals board of the state of
36 Washington.

1 (2) The hydraulic appeals board shall consist of three members:
2 The director of the department of ecology or the director's designee,
3 the director of the department of agriculture or the director's
4 designee, and the director or the director's designee of the department
5 whose action is appealed under subsection (6) of this section. A
6 decision must be agreed to by at least two members of the board to be
7 final.

8 (3) The board may adopt rules necessary for the conduct of its
9 powers and duties or for transacting other official business.

10 (4) The board shall make findings of fact and prepare a written
11 decision in each case decided by it, and that finding and decision
12 shall be effective upon being signed by two or more board members and
13 upon being filed at the hydraulic appeals board's principal office, and
14 shall be open to public inspection at all reasonable times.

15 (5) The board has exclusive jurisdiction to hear appeals arising
16 from the approval, denial, conditioning, or modification of a hydraulic
17 approval issued by the department: (a) Under the authority granted in
18 RCW 77.55.110 for the diversion of water for agricultural irrigation or
19 stock watering purposes or when associated with streambank
20 stabilization to protect farm and agricultural land as defined in RCW
21 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-
22 site mitigation proposals.

23 (6)(a) Any person aggrieved by the approval, denial, conditioning,
24 or modification of a hydraulic approval pursuant to RCW 77.55.110 may,
25 except as otherwise provided in chapter 43.-- RCW (sections 1 through
26 15 of this act), seek review from the board by filing a request for the
27 same within thirty days of notice of the approval, denial,
28 conditioning, or modification of such approval.

29 (b) The review proceedings authorized in (a) of this subsection are
30 subject to the provisions of chapter 34.05 RCW pertaining to procedures
31 in adjudicative proceedings.

32 **Sec. 22.** RCW 90.58.180 and 1997 c 199 s 1 are each amended to read
33 as follows:

34 (1) Any person aggrieved by the granting, denying, or rescinding of
35 a permit on shorelines of the state pursuant to RCW 90.58.140 may,
36 except as otherwise provided in chapter 43.-- RCW (sections 1 through

1 15 of this act), seek review from the shorelines hearings board by
2 filing a petition for review within twenty-one days of the date of
3 filing as defined in RCW 90.58.140(6).

4 Within seven days of the filing of any petition for review with the
5 board as provided in this section pertaining to a final decision of a
6 local government, the petitioner shall serve copies of the petition on
7 the department, the office of the attorney general, and the local
8 government. The department and the attorney general may intervene to
9 protect the public interest and insure that the provisions of this
10 chapter are complied with at any time within fifteen days from the date
11 of the receipt by the department or the attorney general of a copy of
12 the petition for review filed pursuant to this section. The shorelines
13 hearings board shall schedule review proceedings on the petition for
14 review without regard as to whether the period for the department or
15 the attorney general to intervene has or has not expired.

16 (2) The department or the attorney general may obtain review of any
17 final decision granting a permit, or granting or denying an application
18 for a permit issued by a local government by filing a written petition
19 with the shorelines hearings board and the appropriate local government
20 within twenty-one days from the date the final decision was filed as
21 provided in RCW 90.58.140(6).

22 (3) The review proceedings authorized in subsections (1) and (2) of
23 this section are subject to the provisions of chapter 34.05 RCW
24 pertaining to procedures in adjudicative proceedings. Judicial review
25 of such proceedings of the shorelines hearings board is governed by
26 chapter 34.05 RCW. The board shall issue its decision on the appeal
27 authorized under subsections (1) and (2) of this section within one
28 hundred eighty days after the date the petition is filed with the board
29 or a petition to intervene is filed by the department or the attorney
30 general, whichever is later. The time period may be extended by the
31 board for a period of thirty days upon a showing of good cause or may
32 be waived by the parties.

33 (4) Any person may appeal any rules, regulations, or guidelines
34 adopted or approved by the department within thirty days of the date of
35 the adoption or approval. The board shall make a final decision within
36 sixty days following the hearing held thereon.

1 (5) The board shall find the rule, regulation, or guideline to be
2 valid and enter a final decision to that effect unless it determines
3 that the rule, regulation, or guideline:

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

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

7 (c) Is arbitrary and capricious; or

8 (d) Was developed without fully considering and evaluating all
9 material submitted to the department during public review and comment;
10 or

11 (e) Was not adopted in accordance with required procedures.

12 (6) If the board makes a determination under subsection (5)(a)
13 through (e) of this section, it shall enter a final decision declaring
14 the rule, regulation, or guideline invalid, remanding the rule,
15 regulation, or guideline to the department with a statement of the
16 reasons in support of the determination, and directing the department
17 to adopt, after a thorough consultation with the affected local
18 government and any other interested party, a new rule, regulation, or
19 guideline consistent with the board's decision.

20 (7) A decision of the board on the validity of a rule, regulation,
21 or guideline shall be subject to review in superior court, if
22 authorized pursuant to chapter 34.05 RCW. A petition for review of the
23 decision of the shorelines hearings board on a rule, regulation, or
24 guideline shall be filed within thirty days after the date of final
25 decision by the shorelines hearings board.

26 NEW SECTION. **Sec. 23.** Sections 1 through 15 of this act
27 constitute a new chapter in Title 43 RCW.

28 NEW SECTION. **Sec. 24.** The legislature does not intend to
29 appropriate additional funds for the implementation of this act and
30 expects all affected state agencies to implement this act's provisions
31 within existing appropriations.

32 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately."

3 Correct the title.

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