

SSB 5776 - S AMD 205

By Senators Doumit, Mulliken, Kline

ADOPTED 03/18/2003

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 permit decisions made by state  
5 agencies and local governments for qualifying economic development  
6 projects, by establishing uniform, expedited, and consolidated appeal  
7 procedures and uniform criteria for reviewing such decisions, in order  
8 to provide consistent, predictable, and timely review. The appeal  
9 process authorized in this chapter is intended to be the exclusive  
10 process for review of decisions made by state agencies and local  
11 governments on permit applications for qualifying economic development  
12 projects, superseding other existing administrative board and judicial  
13 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) "Final decision" means the highest and last decision available  
17 within the permit agency with respect to a permit application to the  
18 agency, including but not limited to decisions resulting from internal  
19 appeals available within the agency for the permit decision.

20 (2) "Participating permit agency" means any permit agency in which  
21 the applicant for a qualifying project has filed an application for an  
22 environmental or land use permit that is required for the qualifying  
23 project.

24 (3) "Permit" means any license, permit, certificate, certification,  
25 approval, compliance schedule, or other similar document pertaining to  
26 any regulatory or management program related to the protection,  
27 conservation, use of, or interference with the land, air, or water in  
28 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, and site-specific rezones authorized by a comprehensive plan  
9 or 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, and building,  
13 grading, flood hazard, utility connection, and other nondiscretionary  
14 construction permits.

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

18 (5) "Qualifying project" means an economic development project that  
19 is (a) located within a county that in its entirety qualifies as a  
20 distressed area as defined in RCW 43.168.020(3) and a rural natural  
21 resources impact area as defined in RCW 43.160.020, (b) designed to  
22 provide at least thirty full-time year-round jobs, and (c) designated  
23 as a qualifying project by the office of permit assistance established  
24 under chapter 43.42 RCW.

25 NEW SECTION. **Sec. 3.** The appeal process authorized in this  
26 chapter shall, notwithstanding any other provisions of this code, be  
27 the exclusive process for review of the decisions made by participating  
28 permit agencies on permit applications for a qualifying project. The  
29 superior court civil rules and the rules of appellate procedure shall  
30 govern procedural matters for the judicial appeal process under this  
31 chapter to the extent that the rules are consistent with this chapter.

32 NEW SECTION. **Sec. 4.** (1) An environmental and land use hearings  
33 board is hereby established within the environmental hearings office  
34 created under RCW 43.21B.005. The environmental and land use hearings  
35 board shall be composed of six members, as provided in RCW 90.58.170.  
36 The chairperson of the pollution control hearings board shall be the

1 chairperson of the environmental and land use hearings board. The  
2 members of the environmental and land use hearings board shall receive  
3 the compensation, travel, and subsistence expenses as provided in RCW  
4 43.03.050 and 43.03.060.

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

14 NEW SECTION. **Sec. 5.** (1) Proceedings for review under this  
15 chapter shall be commenced by filing a petition with the environmental  
16 and land use hearings board. The board may adopt by rule procedures  
17 for filing and service that are consistent with this chapter.

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

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

26 (b) Each of the following persons if the person is not the  
27 petitioner:

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

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

34 (3) The petition is timely if it is filed and served on all parties  
35 listed in subsection (2) of this section within twenty-one days of the  
36 issuance by the permit agency of the permit for the 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. 6.** 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) Another 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. 7.** 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. 8.** (1) Within seven days after receipt of  
15 service of the petition filed pursuant to section 5 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 issued and appealed to the board or to court prior to the  
21 date of service of the petition filed with the board under this  
22 chapter. The board shall request verification from the participating  
23 agencies of the permit applications certified in the project  
24 applicant's affidavit and of the expected date for final decision on  
25 the permit applications. Filing of the affidavit shall toll the  
26 schedule for hearing by the board until twenty-one days after issuance  
27 of the final permit decision for the qualifying project that has been  
28 certified in the project applicant's affidavit and verified by a  
29 participating agency as applied for, unless the petition filed and  
30 served by the petitioner relates to the final permit.

31 (2) Within seven days after the expiration of the appeal period for  
32 the final permit decision for the qualifying project, the petitioner  
33 shall note an initial hearing on jurisdictional and other preliminary  
34 matters, and, if applicable, on other pretrial matters. This initial  
35 hearing shall be set no sooner than thirty-five days and not later than  
36 fifty days after the expiration of the appeal period for the final  
37 permit decision for the qualifying project.

1 (3) If petitions for review of more than one permit issued by  
2 participating permit agencies for a qualifying project are filed with  
3 the board, the board shall contemporaneously process all such petitions  
4 in accordance with the case schedule requirements set forth in this  
5 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 that sets the date on which the permit decision record or  
16 records of the applicable permit agency or agencies, if any, must be  
17 submitted, sets a briefing schedule, sets a discovery schedule if  
18 discovery is to be allowed, and schedules a hearing or hearings on the  
19 merits.

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

25 (8) A party need not file an answer to a petition for review filed  
26 pursuant to section 5 of this act.

27 NEW SECTION. **Sec. 9.** The board shall provide expedited review of  
28 petitions filed under this chapter. Any matter reviewed on the  
29 decision record as provided in section 12(1) of this act must be set  
30 for hearing within sixty days of the date set for submitting the  
31 decision record of all participating permit agencies, absent a showing  
32 of good cause for a different date or a stipulation of the parties.  
33 Any matter reviewed de novo as provided in section 12(3) of this act  
34 must be set for hearing or trial no later than one hundred twenty days  
35 after the initial hearing date. The board shall issue a final decision  
36 and order within thirty days after the final hearing required in this  
37 section.

1        NEW SECTION.    **Sec. 10.**    (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. 11.**    (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  
36 of the parties' conduct in agreeing or not agreeing to shorten or  
37 summarize the record under subsection (2) of this section.

1        NEW SECTION.    **Sec. 12.**    (1) For all permit decisions being reviewed  
2 that were made by quasi-judicial bodies or permit agency officers who  
3 made factual determinations in support of the decisions, after the  
4 conduct of proceedings in which the parties had an opportunity  
5 consistent with due process to make records on the factual issues,  
6 board review of factual issues and the conclusions drawn from the  
7 factual issues shall be confined to the records created by the  
8 quasi-judicial bodies or permit agency officers, except as provided in  
9 subsections (2) through (4) of this section.

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

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

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

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

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

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

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

31        (b) If the board allows the record to be supplemented, or in any de  
32 novo proceeding under subsection (3) of this section, the board shall  
33 require the parties to disclose before the hearing or trial on the  
34 merits the identity of witnesses and the specific evidence they intend  
35 to offer.

36        (c) If any party, or anyone acting on behalf of any party, requests  
37 records under chapter 42.17 RCW relating to the matters at issue, a



1 copy of the request shall simultaneously be given to all other parties,  
2 and the board shall take such request into account in fashioning an  
3 equitable discovery order under this section.

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

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

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

17 (c) The permit decision is not supported by evidence that is  
18 substantial when viewed in light of the whole record before the court;

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

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

23 (f) The permit decision violates the constitutional rights of the  
24 party seeking relief.

25 (2) The board may affirm or reverse each and every permit decision  
26 under review or remand the decision for modification or further  
27 proceedings involving the permit agencies.

28 NEW SECTION. **Sec. 14.** (1) In order to obtain judicial review of  
29 a final decision of the environmental and land use hearings board, a  
30 party to the board case as consolidated shall file a petition for  
31 judicial review in the superior court for Thurston county within thirty  
32 days after the filing of the final decision and order of the board.  
33 Any party may apply for direct review by the court of appeals. An  
34 application for direct review must be filed with the superior court  
35 within ten days after the filing of the petition for judicial review.  
36 In considering an application for direct review under this chapter, it

1 shall be presumed that: (a) The qualifying project presents  
2 fundamental and urgent issues affecting the public interest which  
3 require a prompt determination, and (b) delay in obtaining a final and  
4 prompt determination of such issues would be detrimental to a party and  
5 the public interest.

6 (2) The presumption set forth in subsection (1) of this section  
7 shall require that the superior court certify the direct review not  
8 less than ten days, and not more than fifteen days, after the filing of  
9 the application therefore, unless, upon motion of a party with  
10 supporting excerpts from the record within ten days after the filing of  
11 such application, the superior court finds that: (a) The project is  
12 not a qualifying project, or (b) the project will not in fact provide  
13 new employment within the county in which the project is located. The  
14 court may make such findings upon a showing that said record contains  
15 clear, cogent, and convincing evidence to support such findings, which  
16 evidence has been testified to by at least one witness competent to  
17 testify on employment matters.

18 (3) A motion as set forth in subsection (2) of this section shall  
19 be heard within fourteen days after the filing of the motion and shall  
20 be confined to certified excerpts from the record, which any party may  
21 produce. It shall not be necessary to certify the entire record to the  
22 court for the purpose of hearing such motion.

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

29 **Sec. 15.** RCW 34.05.518 and 1995 c 382 s 5 are each amended to read  
30 as follows:

31 (1) The final decision of an administrative agency in an  
32 adjudicative proceeding under this chapter may, except as otherwise  
33 provided in chapter 43.-- RCW (sections 1 through 14 of this act), be  
34 directly reviewed by the court of appeals either (a) upon certification  
35 by the superior court pursuant to this section or (b) if the final  
36 decision is from an environmental board as defined in subsection (3) of

1 this section, upon acceptance by the court of appeals after a  
2 certificate of appealability has been filed by the environmental board  
3 that rendered the final decision.

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

10 (a) Fundamental and urgent issues affecting the future  
11 administrative process or the public interest are involved which  
12 require a prompt determination;

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

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

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

19 Procedures for certification shall be established by court rule.

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

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

28 (i) Fundamental and urgent statewide or regional issues are raised;  
29 or

30 (ii) The proceeding is likely to have significant precedential  
31 value.

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

35 (5) For an appellate court to accept direct review of a final  
36 decision of an environmental board, it shall consider the same criteria  
37 outlined in subsection (3) of this section, except as otherwise  
38 provided in chapter 43.-- RCW (sections 1 through 14 of this act).

1 (6) The procedures for direct review of final decisions of  
2 environmental boards include:

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

8 (b) If an issue on review is the jurisdiction of the environmental  
9 board, the board may file an application for direct review on that  
10 issue.

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

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

19 (e) If the appellate court accepts review, the certificate of  
20 appealability shall be transmitted to the court of appeals as part of  
21 the certified record.

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

25 **Sec. 16.** RCW 36.70C.030 and 1995 c 347 s 704 are each amended to  
26 read as follows:

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

30 (a) Judicial review of:

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

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

1 (b) Judicial review of applications for a writ of mandamus or  
2 prohibition; or

3 (c) Claims provided by any law for monetary damages or  
4 compensation. If one or more claims for damages or compensation are  
5 set forth in the same complaint with a land use petition brought under  
6 this chapter, the claims are not subject to the procedures and  
7 standards, including deadlines, provided in this chapter for review of  
8 the petition. The judge who hears the land use petition may, if  
9 appropriate, preside at a trial for damages or compensation.

10 (2) The superior court civil rules govern procedural matters under  
11 this chapter to the extent that the rules are consistent with this  
12 chapter.

13 **Sec. 17.** RCW 43.21B.005 and 1999 c 125 s 1 are each amended to  
14 read as follows:

15 (1) There is created an environmental hearings office of the state  
16 of Washington. The environmental hearings office shall consist of the  
17 pollution control hearings board created in RCW 43.21B.010, the forest  
18 practices appeals board created in RCW 76.09.210, the shorelines  
19 hearings board created in RCW 90.58.170, the environmental and land use  
20 hearings board created in chapter 43.-- RCW (sections 1 through 14 of  
21 this act), and the hydraulic appeals board created in RCW ((75.20.130))  
22 77.55.170. The chairman of the pollution control hearings board shall  
23 be the chief executive officer of the environmental hearings office.  
24 Membership, powers, functions, and duties of the pollution control  
25 hearings board, the forest practices appeals board, the shorelines  
26 hearings board, and the hydraulic appeals board shall be as provided by  
27 law.

28 (2) The chief executive officer of the environmental hearings  
29 office may appoint an administrative appeals judge who shall possess  
30 the powers and duties conferred by the administrative procedure act,  
31 chapter 34.05 RCW, in cases before the boards comprising the office.  
32 The administrative appeals judge shall have a demonstrated knowledge of  
33 environmental law, and shall be admitted to the practice of law in the  
34 state of Washington. Additional administrative appeals judges may also  
35 be appointed by the chief executive officer on the same terms.  
36 Administrative appeals judges shall not be subject to chapter 41.06  
37 RCW.

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

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

12 (5) The chief executive officer may also contract for required  
13 services.

14 **Sec. 18.** RCW 43.21B.110 and 2001 c 220 s 2 are each amended to  
15 read as follows:

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

21 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
22 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
23 90.56.330.

24 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
25 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
26 90.14.130, 90.48.120, and 90.56.330.

27 (c) Except as provided in RCW 90.03.210(2), the issuance,  
28 modification, or termination of any permit, certificate, or license by  
29 the department or any air authority in the exercise of its  
30 jurisdiction, including the issuance or termination of a waste disposal  
31 permit, the denial of an application for a waste disposal permit, the  
32 modification of the conditions or the terms of a waste disposal permit,  
33 or a decision to approve or deny an application for a solid waste  
34 permit exemption under RCW 70.95.300.

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

1 (e) Decisions of local health departments regarding the issuance  
2 and enforcement of permits to use or dispose of biosolids under RCW  
3 70.95J.080.

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

7 (g) Decisions of local conservation districts related to the denial  
8 of approval or denial of certification of a dairy nutrient management  
9 plan; conditions contained in a plan; application of any dairy nutrient  
10 management practices, standards, methods, and technologies to a  
11 particular dairy farm; and failure to adhere to the plan review and  
12 approval timelines in RCW 90.64.026.

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

16 (2) The following hearings shall not be conducted by the hearings  
17 board:

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

20 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
21 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

26 (e) Appeals of decisions by the department as provided in chapter  
27 43.-- RCW (sections 1 through 14 of this act).

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

31 **Sec. 19.** RCW 76.09.220 and 1999 sp.s. c 4 s 902 are each amended  
32 to read as follows:

33 (1) The appeals board shall operate on either a part-time or a  
34 full-time basis, as determined by the governor. If it is determined  
35 that the appeals board shall operate on a full-time basis, each member  
36 shall receive an annual salary to be determined by the governor. If it  
37 is determined that the appeals board shall operate on a part-time

1 basis, each member shall be compensated in accordance with RCW  
2 43.03.250. The director of the environmental hearings office shall  
3 make the determination, required under RCW 43.03.250, as to what  
4 statutorily prescribed duties, in addition to attendance at a hearing  
5 or meeting of the board, shall merit compensation. This compensation  
6 shall not exceed ten thousand dollars in a fiscal year. Each member  
7 shall receive reimbursement for travel expenses incurred in the  
8 discharge of his or her duties in accordance with the provisions of RCW  
9 43.03.050 and 43.03.060.

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

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

24 (4) The appeals board shall make findings of fact and prepare a  
25 written decision in each case decided by it, and such findings and  
26 decision shall be effective upon being signed by two or more members  
27 and upon being filed at the appeals board's principal office, and shall  
28 be open to public inspection at all reasonable times.

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

33 (6) The appeals board shall maintain at its principal office a  
34 journal which shall contain all official actions of the appeals board,  
35 with the exception of findings and decisions, together with the vote of  
36 each member on such actions. The journal shall be available for public  
37 inspection at the principal office of the appeals board at all  
38 reasonable times.



1 (7) The forest practices appeals board shall have exclusive  
2 jurisdiction to hear appeals arising from an action or determination by  
3 the department, and the department of fish and wildlife, and the  
4 department of ecology with respect to management plans provided for  
5 under RCW 76.09.350.

6 (8)(a) Any person aggrieved by the approval or disapproval of an  
7 application to conduct a forest practice or the approval or disapproval  
8 of any landscape plan or permit or watershed analysis may, except as  
9 otherwise provided in chapter 43.-- RCW (sections 1 through 14 of this  
10 act), seek review from the appeals board by filing a request for the  
11 same within thirty days of the approval or disapproval. Concurrently  
12 with the filing of any request for review with the board as provided in  
13 this section, the requestor shall file a copy of his or her request  
14 with the department and the attorney general. The attorney general may  
15 intervene to protect the public interest and ensure that the provisions  
16 of this chapter are complied with.

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

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

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

25 (2) The hydraulic appeals board shall consist of three members:  
26 The director of the department of ecology or the director's designee,  
27 the director of the department of agriculture or the director's  
28 designee, and the director or the director's designee of the department  
29 whose action is appealed under subsection (6) of this section. A  
30 decision must be agreed to by at least two members of the board to be  
31 final.

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

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

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

3 (5) The board has exclusive jurisdiction to hear appeals arising  
4 from the approval, denial, conditioning, or modification of a hydraulic  
5 approval issued by the department: (a) Under the authority granted in  
6 RCW 77.55.110 for the diversion of water for agricultural irrigation or  
7 stock watering purposes or when associated with streambank  
8 stabilization to protect farm and agricultural land as defined in RCW  
9 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-  
10 site mitigation proposals.

11 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
12 or modification of a hydraulic approval pursuant to RCW 77.55.110 may,  
13 except as otherwise provided in chapter 43.-- RCW (sections 1 through  
14 14 of this act), seek review from the board by filing a request for the  
15 same within thirty days of notice of the approval, denial,  
16 conditioning, or modification of such approval.

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

20 **Sec. 21.** RCW 90.58.180 and 1997 c 199 s 1 are each amended to read  
21 as follows:

22 (1) Any person aggrieved by the granting, denying, or rescinding of  
23 a permit on shorelines of the state pursuant to RCW 90.58.140 may,  
24 except as otherwise provided in chapter 43.-- RCW (sections 1 through  
25 14 of this act), seek review from the shorelines hearings board by  
26 filing a petition for review within twenty-one days of the date of  
27 filing as defined in RCW 90.58.140(6).

28 Within seven days of the filing of any petition for review with the  
29 board as provided in this section pertaining to a final decision of a  
30 local government, the petitioner shall serve copies of the petition on  
31 the department, the office of the attorney general, and the local  
32 government. The department and the attorney general may intervene to  
33 protect the public interest and insure that the provisions of this  
34 chapter are complied with at any time within fifteen days from the date  
35 of the receipt by the department or the attorney general of a copy of  
36 the petition for review filed pursuant to this section. The shorelines

1 hearings board shall schedule review proceedings on the petition for  
2 review without regard as to whether the period for the department or  
3 the attorney general to intervene has or has not expired.

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

10 (3) The review proceedings authorized in subsections (1) and (2) of  
11 this section are subject to the provisions of chapter 34.05 RCW  
12 pertaining to procedures in adjudicative proceedings. Judicial review  
13 of such proceedings of the shorelines hearings board is governed by  
14 chapter 34.05 RCW. The board shall issue its decision on the appeal  
15 authorized under subsections (1) and (2) of this section within one  
16 hundred eighty days after the date the petition is filed with the board  
17 or a petition to intervene is filed by the department or the attorney  
18 general, whichever is later. The time period may be extended by the  
19 board for a period of thirty days upon a showing of good cause or may  
20 be waived by the parties.

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

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

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

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

31 (c) Is arbitrary and capricious; or

32 (d) Was developed without fully considering and evaluating all  
33 material submitted to the department during public review and comment;  
34 or

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

36 (6) If the board makes a determination under subsection (5)(a)  
37 through (e) of this section, it shall enter a final decision declaring  
38 the rule, regulation, or guideline invalid, remanding the rule,

1 regulation, or guideline to the department with a statement of the  
2 reasons in support of the determination, and directing the department  
3 to adopt, after a thorough consultation with the affected local  
4 government and any other interested party, a new rule, regulation, or  
5 guideline consistent with the board's decision.

6 (7) A decision of the board on the validity of a rule, regulation,  
7 or guideline shall be subject to review in superior court, if  
8 authorized pursuant to chapter 34.05 RCW. A petition for review of the  
9 decision of the shorelines hearings board on a rule, regulation, or  
10 guideline shall be filed within thirty days after the date of final  
11 decision by the shorelines hearings board.

12 NEW SECTION. **Sec. 22.** Sections 1 through 14 of this act  
13 constitute a new chapter in Title 43 RCW.

14 NEW SECTION. **Sec. 23.** 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 takes effect  
17 immediately."

**SSB 5776 - S AMD 205**  
By Senators Doumit, Mulliken, Kline

**ADOPTED 03/18/2003**

18 On page 1, line 2 of the title, after "projects;" strike the  
19 remainder of the title and insert "amending RCW 34.05.518, 36.70C.030,  
20 43.21B.005, 43.21B.110, 76.09.220, 77.55.170, and 90.58.180; adding a  
21 new chapter to Title 43 RCW; and declaring an emergency."

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