
ENGROSSED SUBSTITUTE SENATE BILL 5776

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Land Use & Planning (originally sponsored by Senators Doumit, Morton, Hargrove, Mulliken, Rasmussen, Swecker, Haugen, Zarelli, Reardon, Parlette, McAuliffe and Winsley)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to review of permit decisions by state agencies and
2 local governments for economic development projects; amending RCW
3 34.05.518, 36.70C.030, 43.21B.005, 43.21B.110, 76.09.220, 77.55.170,
4 and 90.58.180; adding a new chapter to Title 43 RCW; and declaring an
5 emergency.

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

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

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

3 (1) "Final decision" means the highest and last decision available
4 within the permit agency with respect to a permit application to the
5 agency, including but not limited to decisions resulting from internal
6 appeals available within the agency for the permit decision.

7 (2) "Participating permit agency" means any permit agency in which
8 the applicant for a qualifying project has filed an application for an
9 environmental or land use permit that is required for the qualifying
10 project.

11 (3) "Permit" means any license, permit, certificate, certification,
12 approval, compliance schedule, or other similar document pertaining to
13 any regulatory or management program related to the protection,
14 conservation, use of, or interference with the land, air, or water in
15 the state. This document must be required to be obtained from a state
16 agency or local government, including but not limited to counties,
17 cities, and air agencies, prior to constructing or operating a
18 qualifying project. Local government permits include, but are not
19 limited to, subdivisions, binding site plans, planned unit
20 developments, shoreline permits or other approvals under RCW 90.58.140,
21 master plan approvals, site plan approvals, permits or approvals
22 required by critical area ordinances, conditional use permits,
23 variances, and site-specific rezones authorized by a comprehensive plan
24 or subarea plan or other equivalent documents however titled or
25 denominated. Local government permits excluded under this definition
26 include the adoption or amendment of a comprehensive plan, subarea
27 plan, legislative actions on development regulations, and building,
28 grading, flood hazard, utility connection, and other nondiscretionary
29 construction permits.

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

33 (5) "Qualifying project" means an economic development project that
34 is (a) located within a county that in its entirety qualifies as a
35 distressed area as defined in RCW 43.168.020(3) and a rural natural
36 resources impact area as defined in RCW 43.160.020, (b) designed to
37 provide at least thirty full-time year-round jobs, and (c) designated

1 as a qualifying project by the office of permit assistance established
2 under chapter 43.42 RCW.

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

10 NEW SECTION. **Sec. 4.** (1) An environmental and land use hearings
11 board is hereby established within the environmental hearings office
12 created under RCW 43.21B.005. The environmental and land use hearings
13 board shall be composed of six members, as provided in RCW 90.58.170.
14 The chairperson of the pollution control hearings board shall be the
15 chairperson of the environmental and land use hearings board. The
16 members of the environmental and land use hearings board shall receive
17 the compensation, travel, and subsistence expenses as provided in RCW
18 43.03.050 and 43.03.060.

19 (2) All proceedings before the board or any of its members shall be
20 conducted in accordance with such rules of practice and procedure as
21 the board may adopt. In all such proceedings, the board shall have all
22 powers relating to the administration of oaths, issuance of subpoenas,
23 and taking of depositions as set forth in RCW 34.05.446. The board
24 shall publish any such rules and arrange for the reasonable
25 distribution thereof. Failure to adopt such rules shall not deprive
26 the board of jurisdiction nor relieve the board of the duty to hear
27 petitions for review filed under this chapter.

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

32 (2) Such petition is barred, and the board may not grant review,
33 unless the petition is timely filed with the board and timely served on
34 the following persons who shall be parties to the review of the
35 petition:

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

5 (b) Each of the following persons if the person is not the
6 petitioner:

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

9 (ii) Each person identified in project application documents as an
10 owner of the property at issue or, if none, each person identified as
11 a taxpayer for the property at issue in the records of the county
12 assessor.

13 (3) The petition is timely if it is filed and served on all parties
14 listed in subsection (2) of this section within twenty-one days of the
15 issuance by the permit agency of the permit for the qualifying project.

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

18 (a) Three days after a written decision is mailed by the permit
19 agency to the project applicant or, if not mailed, the date on which
20 the permit agency provides notice that a written decision is publicly
21 available; or

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

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

27 NEW SECTION. **Sec. 6.** Standing to bring a petition under this
28 chapter is limited to the following persons:

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

31 (2) Another person aggrieved or adversely affected by the permit
32 decision, or who would be aggrieved or adversely affected by a reversal
33 or modification of the permit decision. A person is aggrieved or
34 adversely affected within the meaning of this section only when all of
35 the following conditions are present:

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

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

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

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

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

10 NEW SECTION. **Sec. 7.** A petition must set forth:

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

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

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

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

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

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

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

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

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

27 NEW SECTION. **Sec. 8.** (1) Within seven days after receipt of
28 service of the petition filed pursuant to section 5 of this act, the
29 project applicant shall file with the board and serve on all parties an
30 affidavit certifying all applications for permits that the project
31 applicant has filed with participating permit agencies for the
32 qualifying project, provided, however, that no permit may be included
33 that has been issued and appealed to the board or to court prior to the
34 date of service of the petition filed with the board under this
35 chapter. The board shall request verification from the participating
36 agencies of the permit applications certified in the project

1 applicant's affidavit and of the expected date for final decision on
2 the permit applications. Filing of the affidavit shall toll the
3 schedule for hearing by the board until twenty-one days after issuance
4 of the final permit decision for the qualifying project that has been
5 certified in the project applicant's affidavit and verified by a
6 participating agency as applied for, unless the petition filed and
7 served by the petitioner relates to the final permit.

8 (2) Within seven days after the expiration of the appeal period for
9 the final permit decision for the qualifying project, the petitioner
10 shall note an initial hearing on jurisdictional and other preliminary
11 matters, and, if applicable, on other pretrial matters. This initial
12 hearing shall be set no sooner than thirty-five days and not later than
13 fifty days after the expiration of the appeal period for the final
14 permit decision for the qualifying project.

15 (3) If petitions for review of more than one permit issued by
16 participating permit agencies for a qualifying project are filed with
17 the board, the board shall contemporaneously process all such petitions
18 in accordance with the case schedule requirements set forth in this
19 act.

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

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

28 (6) The petitioner shall move the board for an order at the initial
29 hearing that sets the date on which the permit decision record or
30 records of the applicable permit agency or agencies, if any, must be
31 submitted, sets a briefing schedule, sets a discovery schedule if
32 discovery is to be allowed, and schedules a hearing or hearings on the
33 merits.

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

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

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

14 NEW SECTION. **Sec. 10.** (1) A petitioner or other party may request
15 the board to stay or suspend an action by a participating permit agency
16 or another party to implement the decision under review. The request
17 must set forth a statement of grounds for the stay and the factual
18 basis for the request.

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

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

28 NEW SECTION. **Sec. 11.** (1) Within forty-five days after entry of
29 an order to submit the decision record, where applicable, or within
30 such a further time as the board allows or as the parties agree, each
31 participating agency shall submit to the board a certified copy of the
32 decision record for board review of the permit decision, except that
33 the petitioner shall prepare at the petitioner's expense and submit a
34 verbatim transcript of any hearings held on the matter.

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

5 (3) The petitioner shall pay the participating agency the cost of
6 preparing the record before the participating agency submits the
7 decision record to the board. Failure by the petitioner to timely pay
8 the participating agency relieves the participating agency of
9 responsibility to submit the record and is grounds for dismissal of the
10 petition.

11 (4) If the relief sought by the petitioner is granted in whole or
12 in part the board shall equitably assess the cost of preparing the
13 record among the parties. In assessing costs the board shall take into
14 account the extent to which each party prevailed and the reasonableness
15 of the parties' conduct in agreeing or not agreeing to shorten or
16 summarize the record under subsection (2) of this section.

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

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

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

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

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

36 (3) For permit decisions other than those described in subsection

1 (1) of this section, the board review of the permit decision shall be
2 de novo on issues presented as error in the petition.

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

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

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

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

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

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

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

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

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

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

3 (f) The permit decision violates the constitutional rights of the
4 party seeking relief.

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

8 NEW SECTION. **Sec. 14.** (1) In order to obtain judicial review of
9 a final decision of the environmental and land use hearings board, a
10 party to the board case as consolidated shall file a petition for
11 judicial review in the superior court for Thurston county within thirty
12 days after the filing of the final decision and order of the board.
13 Any party may apply for direct review by the court of appeals. An
14 application for direct review must be filed with the superior court
15 within ten days after the filing of the petition for judicial review.
16 In considering an application for direct review under this chapter, it
17 shall be presumed that: (a) The qualifying project presents
18 fundamental and urgent issues affecting the public interest which
19 require a prompt determination, and (b) delay in obtaining a final and
20 prompt determination of such issues would be detrimental to a party and
21 the public interest.

22 (2) The presumption set forth in subsection (1) of this section
23 shall require that the superior court certify the direct review not
24 less than ten days, and not more than fifteen days, after the filing of
25 the application therefore, unless, upon motion of a party with
26 supporting excerpts from the record within ten days after the filing of
27 such application, the superior court finds that: (a) The project is
28 not a qualifying project, or (b) the project will not in fact provide
29 new employment within the county in which the project is located. The
30 court may make such findings upon a showing that said record contains
31 clear, cogent, and convincing evidence to support such findings, which
32 evidence has been testified to by at least one witness competent to
33 testify on employment matters.

34 (3) A motion as set forth in subsection (2) of this section shall
35 be heard within fourteen days after the filing of the motion and shall
36 be confined to certified excerpts from the record, which any party may

1 produce. It shall not be necessary to certify the entire record to the
2 court for the purpose of hearing such motion.

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

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

11 (1) The final decision of an administrative agency in an
12 adjudicative proceeding under this chapter may, except as otherwise
13 provided in chapter 43.-- RCW (sections 1 through 14 of this act), be
14 directly reviewed by the court of appeals either (a) upon certification
15 by the superior court pursuant to this section or (b) if the final
16 decision is from an environmental board as defined in subsection (3) of
17 this section, upon acceptance by the court of appeals after a
18 certificate of appealability has been filed by the environmental board
19 that rendered the final decision.

20 (2) For direct review upon certification by the superior court, an
21 application for direct review must be filed with the superior court
22 within thirty days of the filing of the petition for review in superior
23 court. The superior court may certify a case for direct review only if
24 the judicial review is limited to the record of the agency proceeding
25 and the court finds that:

26 (a) Fundamental and urgent issues affecting the future
27 administrative process or the public interest are involved which
28 require a prompt determination;

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

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

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

35 Procedures for certification shall be established by court rule.

36 (3)(a) For the purposes of direct review of final decisions of

1 environmental boards, environmental boards include those boards
2 identified in RCW 43.21B.005 and growth management hearings boards as
3 identified in RCW 36.70A.250.

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

8 (i) Fundamental and urgent statewide or regional issues are raised;
9 or

10 (ii) The proceeding is likely to have significant precedential
11 value.

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

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

19 (6) The procedures for direct review of final decisions of
20 environmental boards include:

21 (a) Within thirty days after filing the petition for review with
22 the superior court, a party may file an application for direct review
23 with the superior court and serve the appropriate environmental board
24 and all parties of record. The application shall request the
25 environmental board to file a certificate of appealability.

26 (b) If an issue on review is the jurisdiction of the environmental
27 board, the board may file an application for direct review on that
28 issue.

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

32 (d) If a certificate of appealability is issued, the parties shall
33 have fifteen days from the date of service to file a notice of
34 discretionary review in the superior court, and the notice shall
35 include a copy of the certificate of appealability and a copy of the
36 final decision.

37 (e) If the appellate court accepts review, the certificate of

1 appealability shall be transmitted to the court of appeals as part of
2 the certified record.

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

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

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

11 (a) Judicial review of:

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

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

18 (b) Judicial review of applications for a writ of mandamus or
19 prohibition; or

20 (c) Claims provided by any law for monetary damages or
21 compensation. If one or more claims for damages or compensation are
22 set forth in the same complaint with a land use petition brought under
23 this chapter, the claims are not subject to the procedures and
24 standards, including deadlines, provided in this chapter for review of
25 the petition. The judge who hears the land use petition may, if
26 appropriate, preside at a trial for damages or compensation.

27 (2) The superior court civil rules govern procedural matters under
28 this chapter to the extent that the rules are consistent with this
29 chapter.

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

32 (1) There is created an environmental hearings office of the state
33 of Washington. The environmental hearings office shall consist of the
34 pollution control hearings board created in RCW 43.21B.010, the forest
35 practices appeals board created in RCW 76.09.210, the shorelines
36 hearings board created in RCW 90.58.170, the environmental and land use

1 hearings board created in chapter 43.-- RCW (sections 1 through 14 of
2 this act), and the hydraulic appeals board created in RCW ((~~75.20.130~~))
3 77.55.170. The chairman of the pollution control hearings board shall
4 be the chief executive officer of the environmental hearings office.
5 Membership, powers, functions, and duties of the pollution control
6 hearings board, the forest practices appeals board, the shorelines
7 hearings board, and the hydraulic appeals board shall be as provided by
8 law.

9 (2) The chief executive officer of the environmental hearings
10 office may appoint an administrative appeals judge who shall possess
11 the powers and duties conferred by the administrative procedure act,
12 chapter 34.05 RCW, in cases before the boards comprising the office.
13 The administrative appeals judge shall have a demonstrated knowledge of
14 environmental law, and shall be admitted to the practice of law in the
15 state of Washington. Additional administrative appeals judges may also
16 be appointed by the chief executive officer on the same terms.
17 Administrative appeals judges shall not be subject to chapter 41.06
18 RCW.

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

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

30 (5) The chief executive officer may also contract for required
31 services.

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

34 (1) The hearings board shall only have jurisdiction to hear and
35 decide appeals from the following decisions of the department, the
36 director, local conservation districts, and the air pollution control

1 boards or authorities as established pursuant to chapter 70.94 RCW, or
2 local health departments:

3 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
4 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
5 90.56.330.

6 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
7 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
8 90.14.130, 90.48.120, and 90.56.330.

9 (c) Except as provided in RCW 90.03.210(2), the issuance,
10 modification, or termination of any permit, certificate, or license by
11 the department or any air authority in the exercise of its
12 jurisdiction, including the issuance or termination of a waste disposal
13 permit, the denial of an application for a waste disposal permit, the
14 modification of the conditions or the terms of a waste disposal permit,
15 or a decision to approve or deny an application for a solid waste
16 permit exemption under RCW 70.95.300.

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

19 (e) Decisions of local health departments regarding the issuance
20 and enforcement of permits to use or dispose of biosolids under RCW
21 70.95J.080.

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

25 (g) Decisions of local conservation districts related to the denial
26 of approval or denial of certification of a dairy nutrient management
27 plan; conditions contained in a plan; application of any dairy nutrient
28 management practices, standards, methods, and technologies to a
29 particular dairy farm; and failure to adhere to the plan review and
30 approval timelines in RCW 90.64.026.

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

34 (2) The following hearings shall not be conducted by the hearings
35 board:

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

1 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
2 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

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

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

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

14 (1) The appeals board shall operate on either a part-time or a
15 full-time basis, as determined by the governor. If it is determined
16 that the appeals board shall operate on a full-time basis, each member
17 shall receive an annual salary to be determined by the governor. If it
18 is determined that the appeals board shall operate on a part-time
19 basis, each member shall be compensated in accordance with RCW
20 43.03.250. The director of the environmental hearings office shall
21 make the determination, required under RCW 43.03.250, as to what
22 statutorily prescribed duties, in addition to attendance at a hearing
23 or meeting of the board, shall merit compensation. This compensation
24 shall not exceed ten thousand dollars in a fiscal year. Each member
25 shall receive reimbursement for travel expenses incurred in the
26 discharge of his or her duties in accordance with the provisions of RCW
27 43.03.050 and 43.03.060.

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

32 (3) The principal office of the appeals board shall be at the state
33 capital, but it may sit or hold hearings at any other place in the
34 state. A majority of the appeals board shall constitute a quorum for
35 making orders or decisions, adopting rules necessary for the conduct of
36 its powers and duties, or transacting other official business, and may
37 act though one position on the board be vacant. One or more members

1 may hold hearings and take testimony to be reported for action by the
2 board when authorized by rule or order of the board. The appeals board
3 shall perform all the powers and duties granted to it in this chapter
4 or as otherwise provided by law.

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

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

14 (6) The appeals board shall maintain at its principal office a
15 journal which shall contain all official actions of the appeals board,
16 with the exception of findings and decisions, together with the vote of
17 each member on such actions. The journal shall be available for public
18 inspection at the principal office of the appeals board at all
19 reasonable times.

20 (7) The forest practices appeals board shall have exclusive
21 jurisdiction to hear appeals arising from an action or determination by
22 the department, and the department of fish and wildlife, and the
23 department of ecology with respect to management plans provided for
24 under RCW 76.09.350.

25 (8)(a) Any person aggrieved by the approval or disapproval of an
26 application to conduct a forest practice or the approval or disapproval
27 of any landscape plan or permit or watershed analysis may, except as
28 otherwise provided in chapter 43.-- RCW (sections 1 through 14 of this
29 act), seek review from the appeals board by filing a request for the
30 same within thirty days of the approval or disapproval. Concurrently
31 with the filing of any request for review with the board as provided in
32 this section, the requestor shall file a copy of his or her request
33 with the department and the attorney general. The attorney general may
34 intervene to protect the public interest and ensure that the provisions
35 of this chapter are complied with.

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

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

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

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

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

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

20 (5) The board has exclusive jurisdiction to hear appeals arising
21 from the approval, denial, conditioning, or modification of a hydraulic
22 approval issued by the department: (a) Under the authority granted in
23 RCW 77.55.110 for the diversion of water for agricultural irrigation or
24 stock watering purposes or when associated with streambank
25 stabilization to protect farm and agricultural land as defined in RCW
26 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-
27 site mitigation proposals.

28 (6)(a) Any person aggrieved by the approval, denial, conditioning,
29 or modification of a hydraulic approval pursuant to RCW 77.55.110 may,
30 except as otherwise provided in chapter 43.-- RCW (sections 1 through
31 14 of this act), seek review from the board by filing a request for the
32 same within thirty days of notice of the approval, denial,
33 conditioning, or modification of such approval.

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

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

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

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

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

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

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

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

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

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

11 (c) Is arbitrary and capricious; or

12 (d) Was developed without fully considering and evaluating all
13 material submitted to the department during public review and comment;
14 or

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

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

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

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

32 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and takes effect

1 immediately.

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