

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5776

58th Legislature
2003 Regular Session

Passed by the Senate April 27, 2003
YEAS 31 NAYS 18

President of the Senate

Passed by the House April 14, 2003
YEAS 88 NAYS 8

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE SENATE BILL
5776** as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5776

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

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; creating a new
5 section; and declaring an 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 final permit decisions made by state
9 agencies and local governments for qualifying economic development
10 projects, by establishing uniform, expedited, and coordinated appeal
11 procedures and uniform criteria for reviewing such decisions, in order
12 to provide consistent, predictable, and timely review. The appeal
13 process authorized in this chapter is intended to be the exclusive
14 process for review of final decisions made by state agencies and local
15 governments on permit applications for qualifying economic development
16 projects, superseding other existing administrative board and judicial
17 appeal procedures.

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

3 (1) "Board" means the environmental and land use hearings board
4 established in this chapter.

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

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

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

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

36 (6) "Qualifying project" means an economic development project that
37 is (a) located within a county that in its entirety qualifies as a
38 distressed area as defined in RCW 43.168.020(3) and a rural natural

1 resources impact area as defined in RCW 43.160.020, (b) designed to
2 provide at least thirty full-time year-round jobs, and (c) designated
3 as a qualifying project by the office of permit assistance established
4 under chapter 43.42 RCW if a request for a determination of such
5 designation is made to the office by the project applicant as provided
6 under this chapter.

7 NEW SECTION. **Sec. 3.** The appeal process authorized in this
8 chapter shall, notwithstanding any other provisions of this code, be
9 the exclusive process for review of the decisions made by participating
10 permit agencies on permit applications for a qualifying project. This
11 chapter shall not apply to applications for certification by the energy
12 facility site evaluation council pursuant to chapter 80.50 RCW. The
13 superior court civil rules and the rules of appellate procedure shall
14 govern procedural matters for the judicial appeal process under this
15 chapter to the extent that the rules are consistent with this chapter.

16 NEW SECTION. **Sec. 4.** (1) Any applicant for a project that meets
17 the criteria set forth in section 2(6) (a) and (b) of this act may use
18 the process of appeal and review of this chapter by filing with the
19 office of permit assistance a request for a determination of
20 designation as a qualifying project as required in section 2(6)(c) of
21 this act. Such request shall be filed with the office no later than
22 thirty days after the filing with a permit agency of the first
23 application for a permit relating to the subject project that is filed
24 after the effective date of this act. No requests may be filed with
25 the office of permit assistance after December 31, 2010. The request
26 shall include a list of permits that the project applicant reasonably
27 believes will be required for the subject project.

28 (2) The office of permit assistance shall: (a) Respond to such
29 request within thirty days after the filing of the request; and (b) if
30 the office determines to designate the project as a qualifying project
31 under section 2(6)(c) of this act, contemporaneously provide a copy of
32 the designation response to all permit agencies responsible for the
33 project permits listed in the request. The office of permit assistance
34 shall provide notice of any project designation to the code reviser for
35 publication in the state register and to any persons that have filed

1 with the office of permit assistance a general request for such notice.
2 Nothing in this section creates an independent cause of action or
3 affects any existing cause of action.

4 (3) All final decisions of a permit agency notified under
5 subsection (2) of this section shall include the following sentence:
6 Any appeal of this decision shall be in accordance with the provisions
7 of this chapter.

8 NEW SECTION. **Sec. 5.** (1) An environmental and land use hearings
9 board is hereby established within the environmental hearings office
10 created under RCW 43.21B.005. The environmental and land use hearings
11 board shall be composed of six members, as provided in RCW 90.58.170.
12 The chairperson of the pollution control hearings board shall be the
13 chairperson of the environmental and land use hearings board. The
14 members of the environmental and land use hearings board shall receive
15 the compensation, travel, and subsistence expenses as provided in RCW
16 43.03.050 and 43.03.060.

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

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

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

34 (a) The participating permit agencies, which for purposes of the
35 petition shall be (i) if a state agency, the director thereof, and (ii)

1 if a local government, the jurisdiction's corporate entity which shall
2 be served as provided in RCW 4.28.080; and

3 (b) Each of the following persons if the person is not the
4 petitioner:

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

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

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

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

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

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

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

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

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

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

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

36 (b) That person's asserted interests are among those that the

1 permit agency was required to consider when it made its permit
2 decision;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 9.** (1) Within seven days after receipt of
27 service of the petition filed pursuant to section 6 of this act, the
28 project applicant shall file with the board and serve on all parties an
29 affidavit certifying all applications for permits that the project
30 applicant has filed with participating permit agencies for the
31 qualifying project, provided, however, that no permit may be included
32 that has been issued and appealed to an administrative hearings board
33 or to court prior to the date of service of the petition filed with the
34 board under this chapter. The board shall request verification from
35 the participating agencies of the permit applications certified in the
36 project applicant's affidavit and of the expected date for final

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

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

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

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

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

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

35 (7) The parties may waive the initial hearing by scheduling with
36 the board a date for the hearing or hearings on the merits and filing
37 a stipulated order that resolves the jurisdictional and procedural

1 issues raised by the petition, including the issues identified in
2 subsections (5) and (6) of this section.

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

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

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

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

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

30 NEW SECTION. **Sec. 12.** (1) Within forty-five days after entry of
31 an order to submit the decision record, where applicable, or within
32 such a further time as the board allows or as the parties agree, each
33 participating agency shall submit to the board a certified copy of the
34 decision record for board review of the permit decision, except that

1 the petitioner shall prepare at the petitioner's expense and submit a
2 verbatim transcript of any hearings held on the matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (f) The permit decision violates the constitutional rights of the
6 party seeking relief.

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

10 NEW SECTION. **Sec. 15.** (1) In order to obtain judicial review of
11 a final decision of the environmental and land use hearings board, a
12 party to the board case as consolidated shall timely file a petition
13 for judicial review in the superior court for Thurston county and
14 timely serve the board and all parties to the proceedings before the
15 board by personal service or by mail. Such petition is timely filed
16 and served only if it is filed and served on all parties within thirty
17 days after the filing of the final decision and order of the board.
18 Service by mail shall be deemed effective on the date of deposit with
19 the United States postal service. Any party may apply for direct
20 review by the court of appeals. An application for direct review must
21 be filed with the superior court within ten days after the filing of
22 the petition for judicial review. In considering an application for
23 direct review under this chapter, it shall be presumed that: (a) The
24 qualifying project presents fundamental and urgent issues affecting the
25 public interest which require a prompt determination, and (b) delay in
26 obtaining a final and prompt determination of such issues would be
27 detrimental to a party and the public interest.

28 (2) The presumption set forth in subsection (1) of this section
29 shall require that the superior court certify the direct review not
30 less than ten days, and not more than fifteen days, after the filing of
31 the application therefore, unless, upon motion of a party with
32 supporting excerpts from the record within ten days after the filing of
33 such application, the superior court finds that: (a) The project is
34 not a qualifying project, or (b) the project will not in fact provide
35 new employment within the county in which the project is located. The
36 court may make such findings upon a showing that said record contains

1 clear, cogent, and convincing evidence to support such findings, which
2 evidence has been testified to by at least one witness competent to
3 testify on employment matters.

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

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

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

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

26 (2) For direct review upon certification by the superior court, an
27 application for direct review must be filed with the superior court
28 within thirty days of the filing of the petition for review in superior
29 court. The superior court may certify a case for direct review only if
30 the judicial review is limited to the record of the agency proceeding
31 and the court finds that:

32 (a) Fundamental and urgent issues affecting the future
33 administrative process or the public interest are involved which
34 require a prompt determination;

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

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

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

5 Procedures for certification shall be established by court rule.

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

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

14 (i) Fundamental and urgent statewide or regional issues are raised;
15 or

16 (ii) The proceeding is likely to have significant precedential
17 value.

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

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

25 (6) The procedures for direct review of final decisions of
26 environmental boards include:

27 (a) Within thirty days after filing the petition for review with
28 the superior court, a party may file an application for direct review
29 with the superior court and serve the appropriate environmental board
30 and all parties of record. The application shall request the
31 environmental board to file a certificate of appealability.

32 (b) If an issue on review is the jurisdiction of the environmental
33 board, the board may file an application for direct review on that
34 issue.

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

1 (d) If a certificate of appealability is issued, the parties shall
2 have fifteen days from the date of service to file a notice of
3 discretionary review in the superior court, and the notice shall
4 include a copy of the certificate of appealability and a copy of the
5 final decision.

6 (e) If the appellate court accepts review, the certificate of
7 appealability shall be transmitted to the court of appeals as part of
8 the certified record.

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

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

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

17 (a) Judicial review of:

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

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

24 (b) Judicial review of applications for a writ of mandamus or
25 prohibition; or

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

33 (2) The superior court civil rules govern procedural matters under
34 this chapter to the extent that the rules are consistent with this
35 chapter.

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

3 (1) There is created an environmental hearings office of the state
4 of Washington. The environmental hearings office shall consist of the
5 pollution control hearings board created in RCW 43.21B.010, the forest
6 practices appeals board created in RCW 76.09.210, the shorelines
7 hearings board created in RCW 90.58.170, the environmental and land use
8 hearings board created in chapter 43.-- RCW (sections 1 through 15 of
9 this act), and the hydraulic appeals board created in RCW ((~~75.20.130~~)
10 77.55.170). The chairman of the pollution control hearings board shall
11 be the chief executive officer of the environmental hearings office.
12 Membership, powers, functions, and duties of the pollution control
13 hearings board, the forest practices appeals board, the shorelines
14 hearings board, and the hydraulic appeals board shall be as provided by
15 law.

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

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

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

37 (5) The chief executive officer may also contract for required
38 services.

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

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

8 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
9 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
10 90.56.330.

11 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
12 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
13 90.14.130, 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

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

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

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

18 (1) The appeals board shall operate on either a part-time or a
19 full-time basis, as determined by the governor. If it is determined
20 that the appeals board shall operate on a full-time basis, each member
21 shall receive an annual salary to be determined by the governor. If it
22 is determined that the appeals board shall operate on a part-time
23 basis, each member shall be compensated in accordance with RCW
24 43.03.250. The director of the environmental hearings office shall
25 make the determination, required under RCW 43.03.250, as to what
26 statutorily prescribed duties, in addition to attendance at a hearing
27 or meeting of the board, shall merit compensation. This compensation
28 shall not exceed ten thousand dollars in a fiscal year. Each member
29 shall receive reimbursement for travel expenses incurred in the
30 discharge of his or her duties in accordance with the provisions of RCW
31 43.03.050 and 43.03.060.

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

36 (3) The principal office of the appeals board shall be at the state
37 capital, but it may sit or hold hearings at any other place in the

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

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

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

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

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

29 (8)(a) Any person aggrieved by the approval or disapproval of an
30 application to conduct a forest practice or the approval or disapproval
31 of any landscape plan or permit or watershed analysis may, except as
32 otherwise provided in chapter 43.-- RCW (sections 1 through 15 of this
33 act), seek review from the appeals board by filing a request for the
34 same within thirty days of the approval or disapproval. Concurrently
35 with the filing of any request for review with the board as provided in
36 this section, the requestor shall file a copy of his or her request
37 with the department and the attorney general. The attorney general may

1 intervene to protect the public interest and ensure that the provisions
2 of this chapter are complied with.

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

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

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

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

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

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

25 (5) The board has exclusive jurisdiction to hear appeals arising
26 from the approval, denial, conditioning, or modification of a hydraulic
27 approval issued by the department: (a) Under the authority granted in
28 RCW 77.55.110 for the diversion of water for agricultural irrigation or
29 stock watering purposes or when associated with streambank
30 stabilization to protect farm and agricultural land as defined in RCW
31 84.34.020; or (b) under the authority granted in RCW 77.55.230 for off-
32 site mitigation proposals.

33 (6)(a) Any person aggrieved by the approval, denial, conditioning,
34 or modification of a hydraulic approval pursuant to RCW 77.55.110 may,
35 except as otherwise provided in chapter 43.-- RCW (sections 1 through
36 15 of this act), seek review from the board by filing a request for the

1 same within thirty days of notice of the approval, denial,
2 conditioning, or modification of such approval.

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

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

8 (1) Any person aggrieved by the granting, denying, or rescinding of
9 a permit on shorelines of the state pursuant to RCW 90.58.140 may,
10 except as otherwise provided in chapter 43.-- RCW (sections 1 through
11 15 of this act), seek review from the shorelines hearings board by
12 filing a petition for review within twenty-one days of the date of
13 filing as defined in RCW 90.58.140(6).

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

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

32 (3) The review proceedings authorized in subsections (1) and (2) of
33 this section are subject to the provisions of chapter 34.05 RCW
34 pertaining to procedures in adjudicative proceedings. Judicial review
35 of such proceedings of the shorelines hearings board is governed by
36 chapter 34.05 RCW. The board shall issue its decision on the appeal
37 authorized under subsections (1) and (2) of this section within one

1 hundred eighty days after the date the petition is filed with the board
2 or a petition to intervene is filed by the department or the attorney
3 general, whichever is later. The time period may be extended by the
4 board for a period of thirty days upon a showing of good cause or may
5 be waived by the parties.

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

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

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

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

16 (c) Is arbitrary and capricious; or

17 (d) Was developed without fully considering and evaluating all
18 material submitted to the department during public review and comment;
19 or

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

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

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

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

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

5 NEW SECTION. **Sec. 25.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

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