
HOUSE BILL 2067

State of Washington

60th Legislature

2007 Regular Session

By Representative B. Sullivan

Read first time 02/07/2007. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to improving the clarity of the Washington clean
2 air act by increasing readability through policy neutral changes;
3 amending RCW 70.94.011, 70.94.015, 70.94.017, 70.94.030, 70.94.035,
4 70.94.037, 70.94.040, 70.94.041, 70.94.053, 70.94.055, 70.94.069,
5 70.94.070, 70.94.081, 70.94.085, 70.94.091, 70.94.092, 70.94.093,
6 70.94.094, 70.94.096, 70.94.097, 70.94.100, 70.94.120, 70.94.130,
7 70.94.141, 70.94.142, 70.94.151, 70.94.153, 70.94.154, 70.94.155,
8 70.94.157, 70.94.161, 70.94.162, 70.94.163, 70.94.165, 70.94.170,
9 70.94.181, 70.94.200, 70.94.205, 70.94.211, 70.94.230, 70.94.240,
10 70.94.260, 70.94.262, 70.94.331, 70.94.332, 70.94.335, 70.94.350,
11 70.94.370, 70.94.380, 70.94.385, 70.94.390, 70.94.395, 70.94.400,
12 70.94.405, 70.94.410, 70.94.420, 70.94.422, 70.94.425, 70.94.430,
13 70.94.431, 70.94.435, 70.94.440, 70.94.450, 70.94.455, 70.94.457,
14 70.94.460, 70.94.470, 70.94.473, 70.94.475, 70.94.477, 70.94.480,
15 70.94.483, 70.94.510, 70.94.521, 70.94.527, 70.94.528, 70.94.531,
16 70.94.534, 70.94.537, 70.94.541, 70.94.544, 70.94.547, 70.94.551,
17 70.94.600, 70.94.610, 70.94.620, 70.94.630, 70.94.640, 70.94.650,
18 70.94.651, 70.94.654, 70.94.656, 70.94.660, 70.94.665, 70.94.670,
19 70.94.690, 70.94.700, 70.94.710, 70.94.715, 70.94.720, 70.94.725,
20 70.94.730, 70.94.743, 70.94.745, 70.94.750, 70.94.755, 70.94.760,
21 70.94.765, 70.94.775, 70.94.780, 70.94.785, 70.94.800, 70.94.820,

1 70.94.850, 70.94.875, 70.94.880, 70.94.892, 70.94.901, 70.94.960,
2 70.94.970, 70.94.996, 1.16.030, 28B.130.010, 43.01.225, 43.01.230,
3 43.01.240, 43.21B.110, 43.21B.310, 43.21B.300, 43.21C.0381, 43.21K.020,
4 43.41.140, 43.42.070, 46.08.172, 46.68.020, and 52.12.150; reenacting
5 and amending RCW 70.94.152; adding a new chapter to Title 70 RCW;
6 creating new sections; recodifying RCW 70.94.011, 70.94.030, 70.94.331,
7 70.94.040, 70.94.181, 70.94.035, 70.94.200, 70.94.205, 70.94.335,
8 70.94.157, 70.94.370, 70.94.420, 70.94.510, 70.94.033, 70.94.440,
9 70.94.015, 70.94.017, 70.94.960, 70.94.630, 70.94.544, 70.94.053,
10 70.94.081, 70.94.055, 70.94.390, 70.94.400, 70.94.069, 70.94.070,
11 70.94.120, 70.94.100, 70.94.141, 70.94.130, 70.94.142, 70.94.091,
12 70.94.092, 70.94.093, 70.94.094, 70.94.096, 70.94.385, 70.94.097,
13 70.94.380, 70.94.230, 70.94.170, 70.94.085, 70.94.240, 70.94.600,
14 70.94.405, 70.94.410, 70.94.262, 70.94.260, 70.94.395, 70.94.151,
15 70.94.152, 70.94.153, 70.94.154, 70.94.155, 70.94.161, 70.94.162,
16 70.94.163, 70.94.850, 70.94.892, 70.94.710, 70.94.715, 70.94.720,
17 70.94.725, 70.94.730, 70.94.450, 70.94.455, 70.94.457, 70.94.470,
18 70.94.460, 70.94.473, 70.94.477, 70.94.475, 70.94.041, 70.94.483,
19 70.94.480, 70.94.650, 70.94.656, 70.94.660, 70.94.670, 70.94.690,
20 70.94.700, 70.94.665, 70.94.745, 70.94.755, 70.94.743, 70.94.780,
21 70.94.750, 70.94.765, 70.94.775, 70.94.651, 70.94.654, 70.94.800,
22 70.94.820, 70.94.875, 70.94.880, 70.94.521, 70.94.037, 70.94.527,
23 70.94.528, 70.94.531, 70.94.534, 70.94.537, 70.94.541, 70.94.547,
24 70.94.551, 70.94.555, 70.94.996, 70.94.165, 70.94.970, 70.94.350,
25 70.94.425, 70.94.430, 70.94.431, 70.94.435, 70.94.785, 70.94.211,
26 70.94.332, 70.94.422, 70.94.610, 70.94.620, 70.94.640, 70.94.645,
27 70.94.760, and 70.94.901; decodifying RCW 70.94.025, 70.94.445,
28 70.94.902, 70.94.904, 70.94.905, 70.94.906, 70.94.911, and 70.94.950;
29 and repealing RCW 70.94.860, 70.94.057, 70.94.068, 70.94.095,
30 70.94.110, 70.94.143, 70.94.221, 70.94.231, 70.94.453, 70.94.463,
31 70.94.467, 70.94.805, 70.94.524, 70.94.980, and 70.94.990.

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

33
34

PART 1
PURPOSE OF ACT

1 control strategies state and local agencies shall support those
2 strategies that lessen the negative environmental impact of the project
3 on all environmental media, including air, water, and land.

4 (5) The legislature further recognizes that energy efficiency and
5 energy conservation can help to reduce air pollution and shall
6 therefore be considered when making decisions on air pollution control
7 strategies and projects.

8 (6) It is the policy of the state that the costs of protecting the
9 air resource and operating state and local air pollution control
10 programs shall be shared as equitably as possible among all sources
11 whose emissions cause air pollution.

12 (7) It is also declared as public policy that regional air
13 pollution control programs are to be encouraged and supported to the
14 extent practicable as essential instruments for the securing and
15 maintenance of appropriate levels of air quality.

16 (8) To these ends it is the purpose of this chapter to safeguard
17 the public interest through an intensive, progressive, and coordinated
18 statewide program of air pollution prevention and control, to provide
19 for an appropriate distribution of responsibilities, and to encourage
20 coordination and cooperation between the state, regional, and local
21 units of government, to improve cooperation between state and federal
22 government, public and private organizations, and the concerned
23 individual, as well as to provide for the use of all known, available,
24 and reasonable methods to reduce, prevent, and control air pollution.

25 (9) The legislature recognizes that the problems and effects of air
26 pollution cross political boundaries, are frequently regional or
27 interjurisdictional in nature, and are dependent upon the existence of
28 human activity in areas having common topography and weather conditions
29 conducive to the buildup of air contaminants. In addition, the
30 legislature recognizes that air pollution levels are aggravated and
31 compounded by increased population, and its consequences. These
32 changes often result in increasingly serious problems for the public
33 and the environment.

34 (10) The legislature further recognizes that air emissions from
35 thousands of small individual sources are major contributors to air
36 pollution in many regions of the state. As the population of a region
37 grows, small sources may contribute an increasing proportion of that
38 region's total air emissions. It is declared to be the policy of the

1 state to achieve significant reductions in emissions from those small
2 sources whose aggregate emissions constitute a significant contribution
3 to air pollution in a particular region.

4 (11) It is the intent of the legislature that air pollution goals
5 be incorporated in the missions and actions of state agencies.

6 **Sec. 102.** RCW 70.94.015 and 1998 c 321 s 33 are each amended to
7 read as follows:

8 (1) The air pollution control account is established in the state
9 treasury. All receipts collected by or on behalf of the department
10 from RCW 70.94.151(2) (as recodified by this act), and receipts from
11 nonpermit program sources under RCW 70.94.152(1) and 70.94.154(7) (as
12 recodified by this act), and all receipts from RCW 70.94.650(~~(7)~~) and
13 70.94.660(~~(7)~~, ~~82.44.020(2)~~, and ~~82.50.405~~) (as recodified by this act)
14 shall be deposited into the account. Moneys in the account may be
15 spent only after appropriation. Expenditures from the account may be
16 used only to develop and implement the provisions of ~~((chapters 70.94))~~
17 this chapter and chapter 70.120 RCW.

18 (2) Except as otherwise provided in this section, the amounts
19 collected and allocated in accordance with this section shall be
20 expended upon appropriation except ~~((as otherwise provided in this~~
21 ~~section and in accordance with the following limitations:))~~ that
22 portions of moneys received by the department ((of ecology)) from the
23 air pollution control account shall be distributed by the department to
24 local authorities based on:

25 (a) The level and extent of air quality problems within ~~((such))~~
26 the authority's jurisdiction;

27 (b) The costs associated with implementing air pollution regulatory
28 programs by ~~((such))~~ the authority; and

29 (c) The amount of funding available to ~~((such))~~ the authority from
30 other sources, whether state, federal, or local, that could be used to
31 implement ~~((such))~~ their programs.

32 ~~((3) The air operating permit account is created in the custody of~~
33 ~~the state treasurer. All receipts collected by or on behalf of the~~
34 ~~department from permit program sources under RCW 70.94.152(1),~~
35 ~~70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the~~
36 ~~account. Expenditures from the account may be used only for the~~

1 ~~activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and~~
2 ~~70.94.154(7). Moneys in the account may be spent only after~~
3 ~~appropriation.)~~

4 **Sec. 103.** RCW 70.94.017 and 2005 c 295 s 5 are each amended to
5 read as follows:

6 (1) Money deposited in the segregated subaccount of the air
7 pollution control account under RCW 46.68.020(2) shall be distributed
8 as follows:

9 (a) Eighty-five percent shall be distributed to air pollution
10 control authorities created under this chapter. The money must be
11 distributed in direct proportion with the amount of fees imposed under
12 RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the
13 boundaries of each authority. However, an amount in direct proportion
14 with those fees collected in counties for which no air pollution
15 control authority exists must be distributed to the department.

16 (b) The remaining fifteen percent shall be distributed to the
17 department.

18 (2) Money distributed to air pollution control authorities and the
19 department under subsection (1) of this section must be used as
20 follows:

21 (a) Eighty-five percent of the money received by an air pollution
22 control authority or the department is available on a priority basis to
23 retrofit school buses with exhaust emission control devices or to
24 provide funding for fueling infrastructure necessary to allow school
25 bus fleets to use alternative, cleaner fuels. In addition, the
26 director (~~of ecology~~) or the air pollution control officer may direct
27 funding under this section for other publicly owned diesel equipment if
28 the director (~~of ecology~~) or the air pollution control officer finds
29 that funding for other publicly owned diesel equipment will provide
30 public health benefits and further the purposes of this chapter.

31 (b) The remaining fifteen percent may be used by the air pollution
32 control authority or department to reduce transportation-related air
33 contaminant emissions and clean up air pollution, or reduce and monitor
34 toxic air contaminants.

35 (3) Money in the air pollution control account may be spent by the
36 department only after appropriation.

37 (4) This section expires July 1, 2020.

1 **Sec. 104.** RCW 70.94.030 and 2005 c 197 s 2 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Acid deposition" means wet or dry deposition from the
6 atmosphere of chemical compounds with a pH of less than 5.6.

7 (2)(a) "Affected urban growth area" means:

8 (i) An urban growth area, designated pursuant to RCW 36.70A.110,
9 whose boundaries contain a state highway segment exceeding the one
10 hundred person hours of delay threshold calculated by the department of
11 transportation, and any contiguous urban growth areas; and

12 (ii) An urban growth area, designated pursuant to RCW 36.70A.110,
13 containing a jurisdiction with a population over seventy thousand that
14 adopted a commute trip reduction ordinance before the year 2000, and
15 any contiguous urban growth areas.

16 (b) Affected urban growth areas will be listed by the department of
17 transportation in the rules for chapter 329, Laws of 2006 using the
18 criteria identified in (a) of this subsection.

19 (3) "Agricultural activity" means the growing, raising, or
20 production of horticultural or viticultural crops, berries, poultry,
21 livestock, shellfish, grain, mint, hay, and dairy products.

22 (4) "Agricultural land" means at least five acres of land devoted
23 primarily to the commercial production of livestock, agricultural
24 commodities, or cultured aquatic products.

25 (5) "Air contaminant" means dust, fumes, mist, smoke, other
26 particulate matter, vapor, gas, odorous substance, or any combination
27 ((thereof)) of these substances.

28 ((+2)) (6) "Air pollution" is presence in the outdoor atmosphere
29 of one or more air contaminants in sufficient quantities and of such
30 characteristics and duration as is, or is likely to be, injurious to
31 human health, plant or animal life, or property, or which unreasonably
32 interfere with enjoyment of life and property. For the purpose of this
33 chapter, air pollution shall not include air contaminants emitted in
34 compliance with chapter 17.21 RCW.

35 ((+3)) (7) "Air quality standard" means an established
36 concentration, exposure time, and frequency of occurrence of an air
37 contaminant or multiple air contaminants in the ambient air which shall
38 not be exceeded.

1 ((+4)) (8) "Ambient air" means the surrounding outside air.

2 ((+5)) (9) "Areas threatening to exceed air quality standards"
3 means areas projected by the department to exceed air quality standards
4 within five years.

5 (10) "Authority" and "authorities" means any air pollution control
6 agency created under RCW 70.94.053 (as recodified by this act) whose
7 jurisdictional boundaries are coextensive with the boundaries of one or
8 more counties.

9 ((+6)) (11) "Base year" means the twelve-month period commencing
10 when a major employer is determined to be participating by the local
11 jurisdiction, on which commute trip reduction goals shall be based.

12 (12) "Best available control technology" (~~((BACT))~~) or "BACT" means
13 an emission limitation based on the maximum degree of reduction for
14 each air pollutant subject to regulation under this chapter emitted
15 from or that results from any new or modified stationary source, that
16 the permitting authority, on a case-by-case basis, taking into account
17 energy, environmental, and economic impacts and other costs, determines
18 is achievable for such a source or modification through application of
19 production processes and available methods, systems, and techniques,
20 including fuel cleaning, clean fuels, or treatment or innovative fuel
21 combustion techniques for control of each such a pollutant. (~~((In no~~
22 ~~event shall application of "best available control technology" result~~
23 ~~in emissions of any pollutants that will exceed the emissions allowed~~
24 ~~by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they~~
25 ~~exist on July 25, 1993, or their later enactments as adopted by~~
26 ~~reference by the director by rule. Emissions from any source utilizing~~
27 ~~clean fuels, or any other means, to comply with this subsection shall~~
28 ~~not be allowed to increase above levels that would have been required~~
29 ~~under the definition of BACT as it existed prior to enactment of the~~
30 ~~federal clean air act amendments of 1990.~~

31 (+7)) (13) "Best available retrofit technology" (~~((BART))~~) or
32 "BART" means an emission limitation based on the degree of reduction
33 achievable through the application of the best system of continuous
34 emission reduction for each pollutant that is emitted by an existing
35 stationary facility. The emission limitation must be established, on
36 a case-by-case basis, taking into consideration the technology
37 available, the costs of compliance, the energy and nonair quality
38 environmental impacts of compliance, any pollution control equipment in

1 use or in existence at the source, the remaining useful life of the
2 source, and the degree of improvement in visibility that might
3 reasonably be anticipated to result from the use of the technology.

4 ~~((+8))~~ (14) "Board" means the board of directors of an authority.

5 ~~((+9))~~ (15) "Bubble" or "bubble concept" means an air pollution
6 control system that permits aggregate measurements of allowable
7 emissions for a single category of pollutant and for emissions points
8 from a specified emissions-generating facility or facilities.

9 (16) "Certification" means a determination by a regional
10 transportation planning organization that a locally designated growth
11 and transportation efficiency center program meets the minimum criteria
12 developed in a collaborative regional process and the rules established
13 by the department of transportation.

14 (17) "Commute trip" means trips made from a worker's home to a
15 worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

16 (18) "Commute trip vehicle miles traveled per employee" means the
17 sum of the individual vehicle commute trip lengths in miles over a set
18 period divided by the number of full-time employees during that period.

19 (19) "Component city," "component town," or "component county"
20 means a city, town, or county that is a component of an authority.

21 (20) "Control officer" means the air pollution control officer of
22 any authority.

23 ~~((+10))~~ (21) "Critical level of acid deposition and lake, stream,
24 and soil acidification" means the level at which irreparable damage may
25 occur unless corrective action is taken.

26 (22) "De minimis new sources" means new sources with trivial levels
27 of emissions that do not pose a threat to human health or the
28 environment.

29 (23) "Department" (~~or "ecology"~~) means the department of ecology.

30 ~~((+11))~~ (24) "Director" means the director of the department.

31 (25) "Emission" means a release of air contaminants into the
32 ambient air.

33 ~~((+12))~~ (26) "Emission standard" and "emission limitation" mean a
34 requirement established under the federal clean air act or this chapter
35 that limits the quantity, rate, or concentration of emissions of air
36 contaminants on a continuous basis, including any requirement relating
37 to the operation or maintenance of a source to assure continuous

1 emission reduction, and any design, equipment, work practice, or
2 operational standard adopted under the federal clean air act or this
3 chapter.

4 ~~((+13+))~~ (27) "Episode" means an air pollution episode, as
5 described in RCW 70.94.710 (as recodified by this act).

6 (28) "Fine particulate" means particulates with a diameter of two
7 and one-half microns and smaller.

8 ~~((+14+))~~ (29) "Fireplace" means:

9 (a) Any permanently installed masonry fireplace; or

10 (b) Any factory-built metal solid fuel burning device designed to
11 be used with an open combustion chamber and without features to control
12 the air to fuel ratio.

13 (30) "Fugitive dust" means a particulate emission made airborne by
14 human activity, forces of wind, or both, and which do not pass through
15 a stack, chimney, vent, or other functionally equivalent opening.

16 (31) "Good agricultural practices" means economically feasible
17 practices that are customary among or appropriate to farms and ranches
18 of a similar nature in the local area.

19 (32) "Grain" means a grain or a pulse.

20 (33) "Grain warehouse" or "grain elevator" is an establishment
21 classified in standard industrial classification (SIC) code 5153 for
22 wholesale trade for which a license, as defined by this section, is
23 required and includes, but is not limited to, a licensed facility that
24 also conducts cleaning operations for grain.

25 (34) "Growth and transportation efficiency center" means a defined,
26 compact, mixed-use urban area that contains jobs or housing and
27 supports multiple modes of transportation. For the purpose of funding,
28 a growth and transportation efficiency center must meet minimum
29 criteria established by the commute trip reduction board under RCW
30 70.94.537 (as recodified by this act), and must be certified by a
31 regional transportation planning organization as established in RCW
32 47.80.020.

33 (35) "License" is a license issued by the department of agriculture
34 licensing a facility as a grain warehouse or grain elevator under
35 chapter 22.09 RCW or a license issued by the federal government
36 licensing a facility as a grain warehouse or grain elevator for
37 purposes similar to those of licensure for the facility under chapter
38 22.09 RCW.

1 (36) "Lowest achievable emission rate" (~~((+LAER+))~~) or "LAER" means
2 for any source that rate of emissions that reflects:

3 (a) The most stringent emission limitation that is contained in the
4 implementation plan of any state for such class or category of source,
5 unless the owner or operator of the proposed source demonstrates that
6 such limitations are not achievable; or

7 (b) The most stringent emission limitation that is achieved in
8 practice by such class or category of source, whichever is more
9 stringent.

10 In no event shall the application of this term permit a proposed
11 new or modified source to emit any pollutant in excess of the amount
12 allowable under applicable new source performance standards.

13 (~~((+15+))~~) (37) "Major employer" means a private or public employer,
14 including state agencies, that employs one hundred or more full-time
15 employees at a single worksite who begin their regular work day between
16 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous
17 months during the year.

18 (38) "Major employment installation" means a military base or
19 federal reservation, excluding tribal reservations, at which there are
20 one hundred or more full-time employees, who begin their regular
21 workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least
22 twelve continuous months during the year.

23 (39) "Major worksite" means a building or group of buildings that
24 are on physically contiguous parcels of land or on parcels separated
25 solely by private or public roadways or rights of way, and at which
26 there are one hundred or more full-time employees, who begin their
27 regular work day between 6:00 a.m. and 9:00 a.m. on weekdays, for at
28 least twelve continuous months.

29 (40) "Modification" means any physical change in, or change in the
30 method of operation of, a stationary source that increases the amount
31 of any air contaminant emitted by such source or that results in the
32 emission of any air contaminant not previously emitted. The term
33 modification shall be construed consistent with the definition of
34 modification in Section 7411, Title 42, United States Code, and with
35 rules implementing that section.

36 (~~((+16+))~~) (41) "Multicounty authority" means an authority which
37 consists of two or more counties.

1 ~~((+17+))~~ (42) "New source" means (a) the construction or
2 modification of a stationary source that increases the amount of any
3 air contaminant emitted by such source or that results in the emission
4 of any air contaminant not previously emitted, and (b) any other
5 project that constitutes a new source under the federal clean air act.

6 ~~((+18+))~~ (43) "New wood stove" means a wood stove that:

7 (a) Is sold at retail, bargained, exchanged, or given away for the
8 first time by the manufacturer, the manufacturer's dealer or agency, or
9 a retailer; and

10 (b) Has not been so used to have become what is commonly known as
11 "second hand" within the ordinary meaning of that term.

12 (44) "Nonurban areas" are unincorporated areas within a county that
13 is not designated as an urban growth area under chapter 36.70A RCW.

14 (45) "Opacity" means the degree to which an object seen through a
15 plume is obscured, stated as a percentage. The methods approved by the
16 department in accordance with RCW 70.94.331 (as recodified by this act)
17 must be used to establish opacity for the purposes of this chapter.

18 (46) "Outdoor burning" means the combustion of material of any type
19 in an open fire or in an outdoor container without providing for the
20 control of combustion or the control of emissions from the combustion.

21 (47) "Permit program source" means a source required to apply for
22 or to maintain an operating permit under RCW 70.94.161 (as recodified
23 by this act).

24 ~~((+19+))~~ (48) "Person" means an individual, firm, public or private
25 corporation, association, partnership, political subdivision of the
26 state, municipality, or governmental agency.

27 ~~((+20+))~~ (49) "Person hours of delay" means the daily person hours
28 of delay per mile in the peak period of 6:00 a.m. to 9:00 a.m., as
29 calculated using the best available methodology by the department of
30 transportation.

31 (50) "Proportion of single-occupant vehicle commute trips" means
32 the number of commute trips made by single-occupant automobiles divided
33 by the number of full-time employees.

34 (51) "Reasonably available control technology" ~~((+RACT+))~~ or "RACT"
35 means the lowest emission limit that a particular source or source
36 category is capable of meeting by the application of control technology
37 that is reasonably available considering technological and economic
38 feasibility. ~~((RACT is determined on a case by case basis for an~~

1 ~~individual source or source category taking into account the impact of~~
2 ~~the source upon air quality, the availability of additional controls,~~
3 ~~the emission reduction to be achieved by additional controls, the~~
4 ~~impact of additional controls on air quality, and the capital and~~
5 ~~operating costs of the additional controls. RACT requirements for a~~
6 ~~source or source category shall be adopted only after notice and~~
7 ~~opportunity for comment are afforded.~~

8 ~~(+21+))~~ (52) "Regulated pollutant" has the same meaning as defined
9 in section 502(b) of the federal clean air act as it existed on July
10 25, 1993, or its later enactment as adopted by reference by the
11 director by rule.

12 (53) "Regulated refrigerant" means a class I or class II substance
13 as listed in Title VI of section 602 of the federal clean air act
14 amendments of November 15, 1990.

15 (54) "Silvicultural burning" means burning of wood fiber on forest
16 land consistent with the provisions of RCW 70.94.660 (as recodified by
17 this act).

18 ~~((+22+))~~ (55) "Solid fuel burning device" means any device for
19 burning wood, coal, or any other nongaseous and nonliquid fuel,
20 including a wood stove and fireplace.

21 (56) "Source" means all of the emissions units including
22 quantifiable fugitive emissions, that are located on one or more
23 contiguous or adjacent properties, and are under the control of the
24 same person, or persons under common control, whose activities are
25 ancillary to the production of a single product or functionally related
26 group of products.

27 ~~((+23+))~~ (57) "Stationary source" means any building, structure,
28 facility, or installation that emits or may emit any air contaminant.

29 ~~((+24+))~~ (58) "Substantially remodeled" means any alteration or
30 restoration of a building exceeding sixty percent of the appraised
31 value of the building within a twelve-month period.

32 (59) "Trigger level" means the ambient level of fine particulates,
33 measured in micrograms per cubic meter, that must be detected prior to
34 initiating a first or second stage of impaired air quality under ((RCW
35 70.94.473)) section 316 of this act.

36 (60) "Wood stove" means a solid fuel burning device, other than a
37 fireplace not meeting the requirements of RCW 70.94.457 (as recodified
38 by this act), including any fireplace insert, wood stove, wood burning

1 heater, wood stick boiler, coal-fired furnace, coal stove, or similar
2 device burning any solid fuel used for aesthetic or space-heating
3 purposes in a private residence or commercial establishment, which has
4 a heat input less than one million British thermal units per hour.
5 "Wood stove" does not include wood cook stoves.

6 **Sec. 105.** RCW 70.94.035 and 1991 c 199 s 308 are each amended to
7 read as follows:

8 (1) The department shall establish a technical assistance unit
9 within its air quality program, consistent with the federal clean air
10 act, to provide the regulated community, especially small businesses
11 with:

12 ~~((+1))~~ (a) Information on air pollution laws, rules, compliance
13 methods, and technologies;

14 ~~((+2))~~ (b) Information on air pollution prevention methods and
15 technologies, and prevention of accidental releases;

16 ~~((+3))~~ (c) Assistance in obtaining permits and developing emission
17 reduction plans;

18 ~~((+4))~~ (d) Information on the health and environmental effects of
19 air pollution.

20 (2) No representatives of the department designated as part of the
21 technical assistance unit created in this section may have any
22 enforcement authority.

23 (3) Staff of the technical assistance unit created in this section
24 who provide on-site consultation at an industrial or commercial
25 facility and who observe violations of air quality rules shall
26 immediately inform the owner or operator of the facility of such
27 violations. On-site consultation visits shall not be regarded as an
28 inspection or investigation and no notices or citations may be issued
29 or civil penalties assessed during such a visit. However, violations
30 shall be reported to the appropriate enforcement agency and the
31 facility owner or operator shall be notified that the violations will
32 be reported.

33 (4) No enforcement action shall be taken by the enforcement agency
34 for violations reported by technical assistance unit staff unless and
35 until the facility owner or operator has been provided reasonable time
36 to correct the violation~~((+))~~, except that violations that place any
37 person in imminent danger of death or substantial bodily harm or cause

1 physical damage to the property of another in an amount exceeding one
2 thousand dollars may result in immediate enforcement action by the
3 appropriate enforcement agency.

4 **Sec. 106.** RCW 70.94.037 and 1991 c 199 s 219 are each amended to
5 read as follows:

6 (1) Except as otherwise provided in this section, in areas subject
7 to a state implementation plan under this chapter, no state agency,
8 metropolitan planning organization, or local government shall approve
9 or fund a transportation plan, program, or project within or that
10 affects a nonattainment area unless a determination has been made that
11 the plan, program, or project conforms with the state implementation
12 plan for air quality as required by the federal clean air act.

13 (2) Conformity determinations under this section shall be made by
14 the state or local government or metropolitan planning organization
15 administering or developing the plan, program, or project.

16 ~~((No later than eighteen months after May 15, 1991,))~~ (3) A project
17 with a scope that is limited to preservation or maintenance, or both,
18 is exempt from a conformity determination requirement under this
19 section.

20 (4) The director of the department ((of ecology)) and the secretary
21 of transportation, in consultation with other state, regional, and
22 local agencies as appropriate, shall adopt by rule criteria and
23 guidance for demonstrating and assuring conformity of plans, programs,
24 and projects that are wholly or partially federally funded.

25 ~~((A project with a scope that is limited to preservation or~~
26 ~~maintenance, or both, shall be exempted from a conformity determination~~
27 ~~requirement.))~~

28 **Sec. 107.** RCW 70.94.040 and 1980 c 175 s 2 are each amended to
29 read as follows:

30 Except where specified in a variance permit, as provided in RCW
31 70.94.181 (as recodified by this act), it shall be unlawful for any
32 person to cause air pollution or permit it to be caused in violation of
33 this chapter, or of any ordinance, resolution, rule, or regulation
34 validly ~~((promulgated hereunder))~~ adopted under this chapter.

1 **Sec. 108.** RCW 70.94.041 and 1991 c 199 s 506 are each amended to
2 read as follows:

3 (1) Except as otherwise provided in this section, any building or
4 structure listed on the national register of historic sites,
5 structures, or buildings established pursuant to 80 Stat. 915, 16
6 U.S.C. Sec. 470a, or on the state register established pursuant to RCW
7 27.34.220, shall be permitted to burn wood as it would have when it was
8 a functioning facility as an authorized exception to the provisions of
9 this chapter. (~~Such~~)

10 (2) The burning of wood permitted under this section shall not be
11 exempted from the provisions of RCW 70.94.710 (~~through 70.94.730~~),
12 70.94.715, 70.94.720, 70.94.725, or 70.94.730 (as recodified by this
13 act).

14 **Sec. 109.** RCW 70.94.053 and 1995 c 135 s 5 are each amended to
15 read as follows:

16 (1) In each county of the state there is hereby created an air
17 pollution control authority, which shall bear the name of the county
18 within which it is located. The boundaries of each authority shall be
19 coextensive with the boundaries of the county within which it is
20 located. An authority shall include all incorporated and
21 unincorporated areas of the county within which it is located.

22 (2) Except as provided in RCW 70.94.262 (as recodified by this
23 act), all authorities which are presently activated authorities shall
24 carry out the duties and exercise the powers provided in this chapter.
25 Those activated authorities which encompass contiguous counties are
26 declared to be and directed to function as a multicounty authority.

27 (3) All other air pollution control authorities are hereby
28 designated as inactive authorities.

29 (4) The boards of those authorities designated as activated
30 authorities by this chapter shall be comprised of such individuals as
31 is provided in RCW 70.94.100 (as recodified by this act).

32 **Sec. 110.** RCW 70.94.055 and 1995 c 135 s 6 are each amended to
33 read as follows:

34 (1) The legislative authority of any county may activate an air
35 pollution control authority following a public hearing on its own

1 motion, or upon a filing of a petition signed by one hundred property
2 owners within the county. If the county legislative authority
3 determines as a result of the public hearing that((+)

4 ~~(1))~~ air pollution exists or is likely to occur((+)) and
5 ~~((2))~~ the city or town ordinances, or county resolutions, or
6 their enforcement, are inadequate to prevent or control air pollution,
7 it may by resolution activate an air pollution control authority or
8 combine with a contiguous county or counties to form a multicounty air
9 pollution control authority.

10 (2)(a) The respective boards of county commissioners of two or more
11 contiguous counties may merge any combination of their several inactive
12 or activated authorities to form one activated multicounty authority.
13 Upon a determination that the purposes of this chapter will be served
14 by such a merger, each board of county commissioners may adopt the
15 resolution providing for a merger. The resolution becomes effective
16 only when a similar resolution is adopted by the other contiguous
17 county or counties comprising the proposed authority.

18 (b) The boundaries of the multicounty authority must be coextensive
19 with the boundaries of the counties within which it is located.

20 (c) The name of a multicounty authority organized under this
21 section must either bear the names of the counties making up the
22 multicounty authority or a name adopted by the board of such a
23 multicounty authority.

24 **Sec. 111.** RCW 70.94.069 and 1969 ex.s. c 168 s 4 are each amended
25 to read as follows:

26 (1) Whenever there occurs a merger of an inactive authority with an
27 activated authority or authorities, or of two activated authorities to
28 form a multicounty authority, the board of directors shall be
29 reorganized as provided in RCW 70.94.100(~~(, 70.94.110,)~~) and 70.94.120
30 (as recodified by this act).

31 (2) In the case of the merger of two or more activated authorities
32 the rules and regulations of each authority shall continue in effect
33 and shall be enforced within the jurisdiction of each until such time
34 as the board of directors adopts rules and regulations applicable to
35 the newly formed multicounty authority.

36 (3) In the case of the merger of an inactive authority with an
37 activated authority or authorities, upon approval of such merger by the

1 board or boards of county commissioners of the county or counties
2 comprising the existing activated authority or authorities, the rules
3 and regulations of the activated authority or authorities shall remain
4 in effect until superseded by the rules and regulations of the
5 multicounty authority as provided in RCW 70.94.230 (as recodified by
6 this act).

7 **Sec. 112.** RCW 70.94.070 and 1969 ex.s. c 168 s 5 are each amended
8 to read as follows:

9 (1) The resolution or resolutions activating an ~~((air pollution))~~
10 authority shall specify:

11 (a) The name of the authority and participating political bodies;

12 (b) The authority's principal place of business;

13 (c) The territory included within ~~((it))~~ the authority; and

14 (d) The effective date upon which ~~((such))~~ the authority shall
15 begin to transact business and exercise its powers.

16 (2) In addition, ~~((such))~~ a resolution or resolutions activating an
17 air pollution authority may specify:

18 (a) The amount of money to be contributed annually by each
19 political subdivision~~((7))~~i or

20 (b) A method of dividing expenses of the air pollution control
21 program.

22 (3) Upon the adoption of a resolution or resolutions calling for
23 the activation of an authority or the merger of an inactive or
24 activated authority or several activated authorities to form a
25 multicounty authority, the governing body of each shall ~~((cause))~~ file
26 a certified copy of each such ordinance or resolution ~~((to be filed~~
27 ~~in))~~ with the office of the secretary of state of the state of
28 Washington. From and after the date of filing with the secretary of
29 state a certified copy of each ~~((such))~~ resolution, or resolutions, or
30 the date specified in such resolution or resolutions, whichever is
31 later, the authority may begin to function and may exercise its powers.

32 (4) Any authority activated by the provisions of this chapter shall
33 ~~((cause))~~ file a certified copy of all information required by this
34 section ~~((to be filed in))~~ with the office of the secretary of state of
35 the state of Washington.

1 **Sec. 113.** RCW 70.94.081 and 1969 ex.s. c 168 s 6 are each amended
2 to read as follows:

3 (1) An activated authority shall:

4 (a) Be deemed a municipal corporation;

5 (b) Have right to perpetual succession; and

6 (c) Adopt and use a seal((+)).

7 (2) An activated authority may:

8 (a) Sue and be sued in the name of the authority in all courts and
9 in all proceedings; and((,-may))

10 (b) Receive, account for, and disburse funds, employ personnel, and
11 acquire or dispose of any interest in real or personal property within
12 or without the authority in the furtherance of its purposes.

13 (3) An authority may not be deemed to be a state agency.

14 **Sec. 114.** RCW 70.94.085 and 2003 c 70 s 5 are each amended to read
15 as follows:

16 (1) An authority may enter into a written cost-reimbursement
17 agreement with a permit applicant to recover from the applicant the
18 reasonable costs incurred by the authority in carrying out the
19 requirements of this chapter, as well as the requirements of other
20 relevant laws, as they relate to permit coordination, environmental
21 review, application review, technical studies, and permit processing.
22 The cost-reimbursement agreement shall identify the specific tasks,
23 costs, and schedule for work to be conducted under the agreement.

24 (2) The written cost-reimbursement agreement shall be negotiated
25 with the permit applicant. Under the provisions of a cost-
26 reimbursement agreement, funds from the applicant shall be used by the
27 ~~((air pollution control))~~ authority to contract with an independent
28 consultant to carry out the work covered by the cost-reimbursement
29 agreement. The ~~((air pollution control))~~ authority may also use funds
30 provided under a cost-reimbursement agreement to assign current staff
31 to review the work of the consultant, to provide necessary technical
32 assistance when an independent consultant with comparable technical
33 skills is unavailable, and to recover reasonable and necessary direct
34 and indirect costs that arise from processing the permit. The ~~((air~~
35 ~~pollution control))~~ authority shall, in developing the agreement,
36 ensure that final decisions that involve policy matters are made by the
37 agency and not by the consultant. The ~~((air pollution control))~~

1 authority shall make an estimate of the number of permanent staff hours
2 to process the permits, and shall contract with consultants to replace
3 the time and functions committed by these permanent staff to the
4 project. The billing process shall provide for accurate time and cost
5 accounting and may include a billing cycle that provides for progress
6 payments. Use of cost-reimbursement agreements shall not reduce the
7 current level of staff available to work on permits not covered by
8 cost-reimbursement agreements. The (~~air pollution control~~) authority
9 may not use any funds under a cost-reimbursement agreement to replace
10 or supplant existing funding.

11 (3) The provisions of chapter 42.52 RCW apply to any cost-
12 reimbursement agreement, and to any person hired as a result of a cost-
13 reimbursement agreement. Members of the (~~air pollution control~~)
14 authority's board of directors shall be considered as state officers,
15 and employees of the (~~air pollution control~~) authority shall be
16 considered as state employees, for the sole purpose of applying the
17 restrictions of chapter 42.52 RCW to this section.

18 (~~(3)~~) (4) An (~~air pollution control~~) authority may not enter
19 into any new cost-reimbursement agreements on or after July 1, 2007.
20 The authority may continue to administer any cost-reimbursement
21 agreement that was entered into before July 1, 2007, until the project
22 is completed.

23 **Sec. 115.** RCW 70.94.091 and 1973 1st ex.s. c 195 s 84 are each
24 amended to read as follows:

25 (1) An activated authority shall have the power to levy additional
26 taxes in excess of either the constitutional (~~and/or~~) or statutory
27 tax limitations, or both, for any of the authorized purposes of
28 (~~such~~) the activated authority, not in excess of twenty-five cents
29 per thousand dollars of assessed value a year when authorized so to do
30 by the electors of (~~such~~) the authority by a three-fifths majority of
31 those voting on the proposition at a special election, to be held in
32 the year in which the levy is made, in the manner set forth in Article
33 VII, section 2 (a) of the Constitution of this state, as amended by
34 Amendment 59 and as thereafter amended. The expense of all special
35 elections held under this section must be paid by the authority.

36 (2) It is the duty of the assessor of each component county to
37 certify annually to the board the aggregate assessed valuation of all

1 taxable property in all incorporated and unincorporated areas situated
2 in any activated authority, as the information appears from the last
3 assessment roll in the county.

4 (3) Nothing ((herein)) in this section shall be construed to
5 prevent holding the foregoing special election at the same time as that
6 fixed for a general election. ~~((The expense of all special elections~~
7 ~~held pursuant to this section shall be paid by the authority.))~~

8 **Sec. 116.** RCW 70.94.092 and 1991 c 199 s 703 are each amended to
9 read as follows:

10 ~~((Notwithstanding the provisions of RCW 1.16.030,))~~ (1) The budget
11 year of each activated authority shall be the fiscal year beginning
12 July 1st and ending on the following June 30th.

13 (2) On or before the fourth Monday in June of each year, each
14 activated authority shall adopt a budget for the following fiscal year.
15 The activated authority budget shall contain adequate funding and
16 provide for staff sufficient to carry out the provisions of all
17 applicable ordinances, resolutions, and local regulations related to
18 the reduction, prevention, and control of air pollution. ~~((The~~
19 ~~legislature acknowledges the need for the state to provide reasonable~~
20 ~~funding to local authorities to carry out the requirements of this~~
21 ~~chapter.))~~

22 (3) The budget shall contain an estimate of all revenues to be
23 collected during the following budget year, including any surplus funds
24 remaining unexpended from the preceding year. The remaining funds
25 required to meet budget expenditures, if any, shall be designated as
26 "supplemental income" and shall be obtained from the component cities,
27 towns, and counties in the manner provided in this chapter.

28 (4) The affirmative vote of three-fourths of all members of the
29 board ~~((shall be))~~ is required to authorize emergency expenditures.

30 (5) The legislature acknowledges the need for the state to provide
31 reasonable funding to local authorities to carry out the requirements
32 of this chapter.

33 **Sec. 117.** RCW 70.94.093 and 1969 ex.s. c 168 s 9 are each amended
34 to read as follows:

35 (1) Each component city or town shall pay ~~((such))~~ a proportion of
36 the supplemental income to the authority as determined by either one of

1 the following prescribed methods described in (a) and (b) of this
2 subsection or by a combination of fifty percent of ~~((one))~~ the method
3 described in (a) of this subsection and fifty percent of the ~~((other))~~
4 method described in (b) of this subsection, as provided in ~~((subsection~~
5 ~~(1))~~~~((section:))~~ subsection.

6 (a) Each component city or town shall pay ~~((such))~~ the proportion
7 of the supplemental income ~~((as))~~ that the assessed valuation of
8 property within ~~((its))~~ the limits of the city or town bears to the
9 total assessed valuation of taxable property within the activated
10 authority.

11 (b) Each component city or town shall pay ~~((such))~~ the proportion
12 of the supplemental income ~~((as))~~ that the total population of ~~((such))~~
13 the city or town bears to the total population of the activated
14 authority. The population of the city or town shall be determined by
15 the most recent census, estimate, or survey by the federal bureau of
16 census or any state board or commission authorized to make ~~((such))~~ a
17 census, estimate, or survey.

18 (c) Each component city or town shall pay a combination of the
19 methods prescribed in (a) and (b) of this subsection~~((:—PROVIDED, That~~
20 ~~such))~~. However, the combination ~~((shall))~~ must be of fifty percent of
21 the method prescribed in (a) of this subsection and fifty percent of
22 the method prescribed in (b) of this subsection.

23 (2) Each component county shall pay ~~((such))~~ a proportion of
24 ~~((such))~~ the supplemental income to the authority as determined by
25 either ~~((one of the following prescribed methods))~~ the method described
26 in (a) of this subsection, the method described in (b) of this
27 subsection, or by a combination of fifty percent of ((one)) the amount
28 calculated under (a) of this subsection and fifty percent of the
29 ~~((other))~~ amount calculated under (b) of this subsection as prescribed
30 in ~~((subsection (2))~~~~((section:))~~ subsection.

31 (a) Each component county shall pay ~~((such))~~ the proportion of
32 ~~((such))~~ the supplemental income ~~((as))~~ that the assessed valuation of
33 the property within the unincorporated area of ~~((such))~~ the county
34 lying within the activated authority bears to the total assessed
35 valuation of taxable property within the activated authority.

36 (b) Each component county shall pay ~~((such))~~ the proportion of the
37 supplemental income ~~((as))~~ that the total population of the
38 unincorporated area of ~~((such))~~ the county bears to the total

1 population of the activated authority. The population of the county
2 shall be determined by the most recent census, estimate, or survey by
3 the federal bureau of census or any state board or commission
4 authorized to make ((such)) a census, estimate, or survey.

5 (c) Each component county shall pay a combination of the methods
6 prescribed in (a) and (b) of this subsection~~((: PROVIDED, That such))~~.
7 However, the combination ((shall)) must be of fifty percent of the
8 method prescribed in (a) of this subsection and fifty percent of the
9 method prescribed in (b) of this subsection.

10 (3)(a) In making ((such)) a determination of the assessed valuation
11 of property in the component cities, towns, and counties, the board
12 shall use the last available assessed valuations.

13 (b) The board shall certify to each component city, town, and
14 county, prior to the fourth Monday in June of each year, the share of
15 the supplemental income to be paid by ((such)) the component city,
16 town, or county for the next calendar year. ~~((The latter shall then
17 include such amount in its budget for the ensuing calendar year, and
18 during such year shall pay to the activated authority, in equal
19 quarterly installments, the amount of its supplemental share.))~~

20 **Sec. 118.** RCW 70.94.094 and 1969 ex.s. c 168 s 10 are each amended
21 to read as follows:

22 (1) A component city, town, or county receiving a certified notice
23 from a board under RCW 70.94.093 (as recodified by this act) shall
24 include an amount equal to the amount certified by the board in its
25 budget for the ensuing calendar year, and during that calendar year
26 shall pay to the activated authority, in equal quarterly installments,
27 the amount of its supplemental share.

28 (2) The treasurer of each component city, town, or county shall
29 create a separate fund into which shall be paid all money collected
30 from taxes, or from any other available sources, levied by or obtained
31 for the activated authority on property, or on any other available
32 sources, located in ((such)) the city, town, or county ~~((and such))~~.
33 Any money collected in the separate fund shall be forwarded quarterly
34 by the treasurer of ~~((each such))~~ the city, town, or county to the
35 treasurer of the county designated by the board as the authority
36 treasurer.

1 (3) The treasurer of the county (~~(se)~~) designated to serve as the
2 treasurer of the authority shall establish and maintain (~~(such)~~) the
3 funds as (~~(may be)~~) authorized by the board. Money shall be disbursed
4 from (~~(such)~~) funds upon warrants drawn by the auditor of the county
5 designated by the board as the authority auditor as authorized by the
6 board.

7 (4) The respective county shall be reimbursed by the board for
8 services rendered by the treasurer and auditor of the (~~(respective)~~)
9 county in connection with the receipt and disbursement of (~~(such)~~)
10 funds under this chapter.

11 **Sec. 119.** RCW 70.94.096 and 1969 ex.s. c 168 s 12 are each amended
12 to read as follows:

13 (1) An activated authority (~~(shall have)~~) has the power, when
14 authorized by a majority of all members of the board, to borrow money
15 from any component city, town, or county (~~(and such)~~).

16 (2) Component cities, towns, and counties (~~(are hereby authorized~~
17 ~~to)~~) may make (~~(such)~~) loans or advances (~~(on such terms as may be~~
18 ~~mutually agreed upon by the board and the legislative bodies of any~~
19 ~~such component city, town or county)~~) to activated authorities in order
20 to provide funds to carry out the purposes of the activated authority.

21 (3) Any loans or advances made under this section must be made on
22 terms mutually agreed upon by the board of the borrowing authority and
23 the legislative body of the lending component city, town, or county.

24 **Sec. 120.** RCW 70.94.097 and 1975 1st ex.s. c 106 s 2 are each
25 amended to read as follows:

26 (1) In addition to paying its share of the supplemental income of
27 (~~(the)~~) an activated authority under RCW 70.94.093 (as recodified by
28 this act), each component city, town, or county (~~(shall have)~~) has the
29 power to contract with (~~(such)~~) an authority and expend funds (~~(for~~
30 ~~the)~~) to conduct (~~(of)~~) special studies, investigations, plans,
31 research, advice, or consultation relating to air pollution and its
32 causes, effects, prevention, abatement, and control (~~(as such may~~
33 ~~affect)~~) if the study involves the effects of air pollution on any area
34 within the boundaries of the component city, town, or county, and
35 (~~(which)~~) could not be performed by the authority with funds otherwise
36 available to it.

1 (2) Any component city, town, or county which contracts for (~~the~~
2 ~~conduct of such~~) special air pollution studies, investigations, plans,
3 research, advice, or consultation with any entity other than (~~the~~) an
4 activated authority shall require that (~~such an~~) contracted entity
5 consult with the activated authority.

6 **Sec. 121.** RCW 70.94.100 and 2006 c 227 s 1 are each amended to
7 read as follows:

8 (1) The governing body of each authority shall be known as the
9 board of directors.

10 (2)(a) In the case of an authority comprised of one county(~~)~~
11 with a population of less than four hundred thousand people, the board
12 shall be comprised of two appointees of the city selection committee(~~)~~
13 ~~at least one of whom shall represent the city having the most~~
14 ~~population in the county,~~) established under RCW 70.94.120 (as
15 recodified by this act) and two representatives to be designated by the
16 board of county commissioners. At least one of the two appointees made
17 by the city selection committee must represent the city with the
18 largest population in the county.

19 (b) In the case of an authority comprised of one county(~~)~~ with
20 a population of equal to or greater than four hundred thousand people,
21 the board shall be comprised of three appointees of cities(~~, one each~~
22 ~~from the two cities with the most population in the county and one~~
23 ~~appointee of the city selection committee representing the other~~
24 ~~cities,~~) and one representative to be designated by the board of
25 county commissioners. Of the three city appointees, the two cities
26 with the highest population in the county must each be represented by
27 one appointee, and the third appointee must be selected by the city
28 selection committee established under RCW 70.94.120 (as recodified by
29 this act) to represent the other cities in the county.

30 (c) In the case of an authority comprised of two, three, four, or
31 five counties, the board shall be comprised of one appointee from each
32 county, who shall represent the city having the most population in
33 (~~such~~) the county(~~, to be designated by the mayor and city council~~
34 ~~of such city,~~) and one representative from each county (~~to be~~). The
35 county appointee must be designated by the board of county
36 commissioners of each component county (~~making up the authority~~) and

1 the appointees representing cities must be designated by the mayor and
2 city council of the city.

3 (d) In the case of an authority comprised of six or more counties,
4 the board shall be comprised of one representative from each county, to
5 be designated by the board of county commissioners of each component
6 county (~~making up the authority~~), and three appointees, one each from
7 the three largest cities within the local authority's jurisdiction, to
8 be appointed by the mayor and city council of (~~such~~) the city.

9 (3) If the board of an authority otherwise would consist of an even
10 number, the members selected as (~~above~~) provided by this section
11 shall agree upon and elect an additional member who shall be:

12 (a) In the case of an authority comprised of one county with a
13 population of equal to or greater than four hundred thousand people, a
14 citizen residing in the county who demonstrates significant
15 professional experience in the field of public health, air quality
16 protection, or meteorology; or

17 (b) In the case of an authority comprised of one county, with a
18 population less than four hundred thousand people, or of more than one
19 county, either a member of the governing body of one of the towns,
20 cities, or counties comprising the authority, or a private citizen
21 residing in the authority.

22 (4) The terms of office of board members shall be four years.

23 (~~(5) Wherever a member of a board has a potential conflict of~~
24 ~~interest in an action before the board, the member shall declare to the~~
25 ~~board the nature of the potential conflict prior to participating in~~
26 ~~the action review. The board shall, if the potential conflict of~~
27 ~~interest, in the judgment of a majority of the board, may prevent the~~
28 ~~member from a fair and objective review of the case, remove the member~~
29 ~~from participation in the action.))~~

30 **Sec. 122.** RCW 70.94.120 and 1995 c 261 s 2 are each amended to
31 read as follows:

32 (1) There shall be a separate and distinct city selection committee
33 for each county making up an authority. The membership of each
34 committee consists of the mayor of each incorporated city and town
35 within the county, except that the mayors of the cities with the most
36 population in a county, having already designated appointees to the
37 board of an authority comprised of a single county under RCW 70.94.100

1 (as recodified by this act), may not be members of the committee. A
2 majority of the members of each city selection committee constitutes a
3 quorum.

4 (2)(a) The city selection committee of each component county
5 ~~((which is included within an authority))~~ shall meet within one month
6 after the activation of ~~((such))~~ the authority for the purpose of
7 making ~~((its))~~ initial appointments to the board of ~~((such))~~ the
8 authority under RCW 70.94.100 (as recodified by this act) and
9 ~~((thereafter whenever))~~ at other times necessary for the purpose of
10 making succeeding appointments.

11 (b) All meetings ~~((shall be))~~ held ~~((upon))~~ under this section must
12 be announced with at least two weeks' written notice given by the
13 county auditor to each member of the city selection committee of each
14 county ~~((and he shall give such))~~. In addition, the county auditor
15 shall provide notice upon request of any member of ~~((such))~~ the
16 committee. A similar notice shall be given to the general public by
17 ~~((a))~~ the publication ~~((of such notice))~~ in a newspaper of general
18 circulation in ~~((such))~~ the authority. The county auditor shall act as
19 recording officer, maintain its records, and give appropriate notice of
20 its proceedings and actions.

21 ~~((+2))~~ (3) As an alternative to meeting in accordance with
22 subsection ~~((+1))~~ (2) of this section, the county auditor may mail
23 ballots by certified mail to the members of the city selection
24 committee, specifying a date by which to complete the ballot, and a
25 date by which to return the completed ballot. Each mayor who chooses
26 to participate in the balloting shall write in the choice for
27 appointment, sign the ballot, and return the ballot to the county
28 auditor. Each completed ballot shall be date-stamped upon receipt by
29 the mayor or staff of the mayor of the city or town. The timely return
30 of completed ballots by a majority of the members of each city
31 selection committee constitutes a quorum and the common choice by a
32 majority of the quorum constitutes a valid appointment.

33 ~~((+3))~~ (4) Balloting shall be preceded by at least two weeks'
34 written notice, given by the county auditor to each member of the city
35 selection committee. A similar notice shall be given to the general
36 public by publication in a newspaper of general circulation in the
37 authority.

1 **Sec. 123.** RCW 70.94.130 and 1998 c 342 s 1 are each amended to
2 read as follows:

3 ~~((The board shall exercise all powers of the authority except as~~
4 ~~otherwise provided.))~~ (1) The board shall conduct its ~~((first))~~
5 initial meeting within thirty days ~~((after all of its members have been~~
6 ~~appointed or))~~ of its member's appointments or as otherwise designated
7 as provided in RCW 70.94.100 (as recodified by this act).

8 (2) The board shall meet at least ten times per year~~((-))~~ with all
9 meetings ~~((shall be))~~ publicly announced prior to their occurrence~~((-~~
10 ~~All meetings shall be))~~ and open to the public. A majority of the
11 board shall constitute a quorum for the transaction of business and
12 shall be necessary for any action taken by the board.

13 (3) The board shall elect from its members a chair and ~~((such))~~
14 other officers as may be necessary.

15 (4) Any member of the board may designate a regular alternate to
16 serve on the board in his or her place with the same authority as the
17 member when he or she is unable to attend. However, in no event may a
18 regular alternate serve as the permanent chair.

19 (5) Each member of the board, or his or her representative, shall
20 receive from the authority compensation, not to exceed one thousand
21 dollars per year, consistent with ~~((such))~~ the authority's rates ~~((but~~
22 ~~not to exceed one thousand dollars per year))~~ for time spent in the
23 performance of duties under this chapter, plus the actual and necessary
24 expenses incurred by the member ~~((in such performance))~~. The board may
25 appoint a control officer, and any other personnel, and shall determine
26 their salaries~~((, and pay same,))~~. The board shall pay salaries
27 together with any other proper indebtedness, from authority funds.

28 **Sec. 124.** RCW 70.94.141 and 1991 c 199 s 706 are each amended to
29 read as follows:

30 Except as otherwise provided, the board of any activated authority,
31 in addition to any other powers vested in them by law, shall ~~((have))~~
32 exercise all powers of the authority, including but not limited to the
33 power to:

34 (1) Adopt, amend, and repeal its own rules and regulations,
35 implementing this chapter and consistent with it, after consideration
36 at a public hearing held in accordance with chapter 42.30 RCW. Rules
37 and regulations shall also be adopted in accordance with the notice and

1 adoption procedures set forth in RCW 34.05.320, those provisions of RCW
2 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the
3 procedures of RCW 34.05.340, (~~(34.05.355)~~) 34.05.360, 34.05.365 through
4 34.05.380, and with chapter 34.08 RCW, except that rules (~~(shall)~~) need
5 not be published in the Washington Administrative Code. Judicial
6 review of rules adopted by an authority shall be in accordance with
7 Part V of chapter 34.05 RCW(~~(. An air pollution control authority~~
8 ~~shall not be deemed to be a state agency.))~~);

9 (2) Hold hearings relating to any aspect of or matter in the
10 administration of this chapter not prohibited by the provisions of
11 chapter 62, Laws of 1970 ex. sess. (~~(and in connection therewith)~~)
12 When holding hearings the authority may issue subpoenas to compel the
13 attendance of witnesses and the production of evidence, administer
14 oaths, and take the testimony of any person under oath(~~(-)~~);

15 (3) Issue (~~(such)~~) orders (~~(as)~~) that may be necessary to
16 effectuate the purposes of this chapter and enforce (~~(the same)~~) this
17 chapter by all appropriate administrative and judicial proceedings
18 subject to the rights of appeal as provided in chapter 62, Laws of 1970
19 ex. sess.;

20 (4) Require access to records, books, files, and other information
21 specific to the control, recovery, or release of air contaminants into
22 the atmosphere(~~(-)~~);

23 (5) Secure necessary scientific, technical, administrative, and
24 operational services, including laboratory facilities, by contract or
25 otherwise(~~(-)~~);

26 (6) Prepare and develop a comprehensive plan or plans for the
27 prevention, abatement, and control of air pollution within (~~(its)~~) the
28 jurisdiction(~~(-)~~) of the authority;

29 (7) Encourage voluntary cooperation by persons or affected groups
30 to achieve the purposes of this chapter(~~(-)~~);

31 (8) Encourage and conduct studies, investigation, and research
32 relating to air pollution and its causes, effects, prevention,
33 abatement, and control(~~(-)~~);

34 (9) Collect and disseminate information and conduct educational and
35 training programs relating to air pollution(~~(-)~~);

36 (10) Advise, consult, cooperate, and contract with agencies and
37 departments and the educational institutions of the state, other

1 political subdivisions, industries, other states, interstate or
2 interlocal agencies, and the United States government, and with
3 interested persons or groups((-));

4 ~~(11) ((Consult, upon request, with any person proposing to
5 construct, install, or otherwise acquire an air contaminant source or
6 device or system for the control thereof, concerning the efficacy of
7 such device or system, or the air pollution problems which may be
8 related to the source, device or system. Nothing in any such
9 consultation shall be construed to relieve any person from compliance
10 with this chapter, ordinances, resolutions, rules and regulations in
11 force pursuant thereto, or any other provision of law.~~

12 ~~(12))~~ Accept, receive, disburse, and administer grants or other
13 funds or gifts from any source, including public and private agencies
14 and the United States government for the purpose of carrying out any of
15 the functions of this chapter.

16 **Sec. 125.** RCW 70.94.142 and 1987 c 109 s 35 are each amended to
17 read as follows:

18 In connection with the subpoena powers given in RCW 70.94.141(2)
19 (as recodified by this act):

20 (1) In any hearing held under RCW 70.94.181 ~~((and 70.94.221))~~ (as
21 recodified by this act), the board or the department, and their
22 authorized agents:

23 (a) Shall issue a subpoena upon the request of any party and, to
24 the extent required by rule or regulation, upon a statement or showing
25 of general relevance and reasonable scope of the evidence sought;

26 (b) May issue a subpoena upon their own motion.

27 (2) The subpoena powers given in RCW 70.94.141(2) (as recodified by
28 this act) shall be statewide in effect.

29 (3)(a) Witnesses appearing under the compulsion of a subpoena in a
30 hearing before the board or the department shall be paid the same fees
31 and mileage that are provided for witnesses in the courts of this
32 state. ~~((Such fees))~~

33 (b) Fees and mileage, and the cost of duplicating records required
34 to be produced by subpoena issued upon the motion of the board or
35 department, shall be paid by the board or department. ~~((Such))~~

36 (c) Fees and mileage, and the cost of producing records required to

1 be produced by subpoena issued upon the request of a party, shall be
2 paid by that party.

3 (4)(a) If an individual fails to obey ~~((the))~~ a subpoena issued
4 under this chapter, or obeys the subpoena but refuses to testify when
5 required concerning any matter under examination or investigation or
6 that is the subject of the hearing, the board or department shall file
7 its written report ~~((thereof))~~ and proof of service of its subpoena, in
8 any court of competent jurisdiction in the county where the
9 examination, hearing, or investigation is being conducted.
10 ~~((Thereupon, the))~~

11 (b) A court ~~((shall forthwith))~~ receiving a written report and
12 proof of service from a board or the department under this subsection
13 shall cause the individual to be brought before it and, upon being
14 satisfied that the subpoena is within the jurisdiction of the board or
15 department and otherwise in accordance with law, shall punish ~~((him as~~
16 ~~if the failure or refusal related to))~~ the subject of the subpoena in
17 the same manner as that court would punish an individual who fails or
18 refuses to abide by a subpoena ~~((from or testimony in))~~ issued by that
19 court.

20 (5) The department may ~~((make such))~~ adopt rules ~~((and~~
21 ~~regulations))~~ as to the issuance of its own subpoenas ~~((as))~~ that are
22 not inconsistent with the provisions of this chapter.

23 **Sec. 126.** RCW 70.94.151 and 2005 c 138 s 1 are each amended to
24 read as follows:

25 (1)(a) The board of any activated authority ~~((or))~~ and the
26 department~~((r))~~ may classify air contaminant sources, by ordinance,
27 resolution, rule, or regulation, which in ~~((its))~~ the judgment of the
28 board or department may cause or contribute to air pollution~~((r))~~.

29 (b) Classifications made pursuant to this section:

30 (i) Must be made according to levels and types of emissions and
31 other characteristics which cause or contribute to air pollution~~((r~~
32 ~~and))~~;

33 (ii) May require either registration or reporting, or both, for any
34 ~~((such))~~ class or classes~~((r. Classifications made pursuant to this~~
35 ~~section))~~;

36 (iii) May be for application to the area of jurisdiction of

1 ((such)) the authority, or the state as a whole, or to any designated
2 area within the jurisdiction((τ)); and ((shall))

3 (iv) Must be made with special reference to effects on health,
4 economic and social factors, and physical effects on property.

5 ~~(2) ((Except as provided in subsection (3) of this section, any
6 person operating or responsible for the operation of air contaminant
7 sources of any class for which the ordinances, resolutions, rules or
8 regulations of the department or board of the authority, require
9 registration and reporting shall register therewith and make reports
10 containing information as may be required by such department or board
11 concerning location, size and height of contaminant outlets, processes
12 employed, nature of the contaminant emission and such other information
13 as is relevant to air pollution and available or reasonably capable of
14 being assembled. The department or board may require that such
15 registration be accompanied by a fee and may determine the amount of
16 such fee for such class or classes: PROVIDED, That the amount of the
17 fee shall only be to compensate for the costs of administering such
18 registration program which shall be defined as initial registration and
19 annual or other periodic reports from the source owner providing
20 information directly related to air pollution registration, on-site
21 inspections necessary to verify compliance with registration
22 requirements, data storage and retrieval systems necessary for support
23 of the registration program, emission inventory reports and emission
24 reduction credits computed from information provided by sources
25 pursuant to registration program requirements, staff review, including
26 engineering analysis for accuracy and currentness, of information
27 provided by sources pursuant to registration program requirements,
28 clerical and other office support provided in direct furtherance of the
29 registration program, and administrative support provided in directly
30 carrying out the registration program: PROVIDED FURTHER, That any such
31 registration made with either the board or the department shall
32 preclude a further registration with any other board or the department.~~

33 ~~All registration program fees collected by the department shall be
34 deposited in the air pollution control account. All registration
35 program fees collected by the local air authorities shall be deposited
36 in their respective treasuries.~~

37 ~~(3) If a registration or report has been filed for a grain
38 warehouse or grain elevator as required under this section,~~

1 registration, reporting, or a registration program fee shall not, after
2 January 1, 1997, again be required under this section for the warehouse
3 or elevator unless the capacity of the warehouse or elevator as listed
4 as part of the license issued for the facility has been increased since
5 the date the registration or reporting was last made. If the capacity
6 of the warehouse or elevator listed as part of the license is
7 increased, any registration or reporting required for the warehouse or
8 elevator under this section must be made by the date the warehouse or
9 elevator receives grain from the first harvest season that occurs after
10 the increase in its capacity is listed in the license.

11 This subsection does not apply to a grain warehouse or grain
12 elevator if the warehouse or elevator handles more than ten million
13 bushels of grain annually.

14 (4) For the purposes of subsection (3) of this section:

15 (a) A "grain warehouse" or "grain elevator" is an establishment
16 classified in standard industrial classification (SIC) code 5153 for
17 wholesale trade for which a license is required and includes, but is
18 not limited to, such a licensed facility that also conducts cleaning
19 operations for grain;

20 (b) A "license" is a license issued by the department of
21 agriculture licensing a facility as a grain warehouse or grain elevator
22 under chapter 22.09 RCW or a license issued by the federal government
23 licensing a facility as a grain warehouse or grain elevator for
24 purposes similar to those of licensure for the facility under chapter
25 22.09 RCW; and

26 (c) "Grain" means a grain or a pulse)) This section does not apply
27 to any program permit source under RCW 70.94.161 (as recodified by this
28 act) after the effective date of the United States environmental
29 protection agency's approval of the state operating permit program.

30 **Sec. 127.** RCW 70.94.152 and 1996 c 67 s 1 and 1996 c 29 s 1 are
31 each reenacted and amended to read as follows:

32 (1) The department ((of ecology)) or board of any authority may
33 require notice of the establishment of any proposed new sources, except
34 for single family and duplex dwellings or de minimis new sources as
35 defined in rules adopted under subsection ((+11)) (9) of this section.

36 (2)(a) The department ((of ecology)) or board may require ((such))
37 notice under this section to be accompanied by a fee ((and determine)).

1 The amount of ~~((such))~~ the fee~~((: PROVIDED, That the amount of the~~
2 fee)) must be determined by the department or board consistent with
3 this section, but may not exceed the cost of reviewing the plans,
4 specifications, and other information and administering such a
5 notice~~((: PROVIDED FURTHER, That any such notice given or notice of~~
6 ~~construction application submitted to either the board or to the~~
7 ~~department of ecology shall preclude a further submittal of a duplicate~~
8 ~~application to any board or to the department of ecology))~~.

9 ~~((+2))~~ (b) The department shall, after opportunity for public
10 review and comment, adopt rules that establish a workload-driven
11 process for determination and review of the fee covering the direct and
12 indirect costs of processing a notice of construction application and
13 a methodology for tracking revenues and expenditures. All new source
14 fees collected by the delegated local air authorities from sources
15 shall be deposited in the dedicated accounts of their respective
16 treasuries.

17 (c) All new source fees collected by the department from sources
18 shall be deposited in the air pollution control account created in RCW
19 70.94.015 (as recodified by this act).

20 (3) Notice given or notice of construction application submitted to
21 either the board or to the department under this section precludes a
22 further submittal of a duplicate application to any board or to the
23 department.

24 (4)(a) Within thirty days of receipt of a notice of a construction
25 application under this section, the department ~~((of ecology))~~ or board
26 shall either notify the applicant in writing that the application is
27 complete or notify the applicant in writing of all additional
28 information necessary to complete the application. The department or
29 board may require, as a condition precedent to the establishment of the
30 new source or sources covered ~~((thereby))~~ by the notice, the submission
31 of plans, specifications, and ~~((such))~~ other information as ~~((it))~~ the
32 department or board deems necessary ~~((to determine))~~ in determining
33 whether the proposed new source will be in ~~((accord))~~ compliance with
34 the applicable rules and regulations ~~((in force))~~ adopted under this
35 chapter.

36 (b) If on the basis of plans, specifications, or other information
37 required under this section, the department ~~((of ecology))~~ or board
38 determines that the proposed new source will not be in ~~((accord))~~

1 compliance with this chapter or the applicable ordinances, resolutions,
2 rules, and regulations adopted under this chapter, ~~((it))~~ the
3 department or board shall issue an order denying permission to
4 establish the new source.

5 (c) If on the basis of plans, specifications, or other information
6 required under this section, the department ~~((of ecology))~~ or board
7 determines that the proposed new source will be in ~~((accord))~~
8 compliance with this chapter, and the applicable rules and regulations
9 adopted under this chapter, ~~((it))~~ the department or board shall issue
10 an order of approval for the establishment of the new source or
11 sources~~((, which))~~. An order of approval may provide ~~((such))~~
12 conditions ~~((as))~~ that are reasonably necessary to ~~((assure))~~ ensure
13 the maintenance of compliance with this chapter and the applicable
14 rules and regulations adopted under this chapter. Every order of
15 approval under this chapter must be reviewed prior to issuance by a
16 professional engineer or staff under the supervision of a professional
17 engineer in the employ of the department ~~((of ecology))~~ or board.

18 ~~((+4))~~ (d) Within sixty days of receipt of a complete application,
19 the department or board shall either (i) issue a final decision on the
20 application, or (ii) for those projects subject to public notice,
21 initiate notice and comment on a proposed decision, followed as
22 promptly as possible by a final decision. A person seeking approval to
23 construct or modify a source that requires an operating permit may
24 elect to integrate review of the operating permit application or
25 amendment required by RCW 70.94.161 (as recodified by this act) and the
26 notice of construction application required by this section. A notice
27 of construction application designated for integrated review must be
28 processed in accordance with operating permit program procedures and
29 deadlines.

30 (e) A notice of construction approval required under this
31 subsection must include a determination that the new source will
32 achieve best available control technology. If more stringent controls
33 are required under federal law, the notice of construction must include
34 a determination that the new source will achieve the more stringent
35 federal requirements. Nothing in this subsection is intended to
36 diminish other state authorities under this chapter.

37 (f) The determination required under this subsection ~~((+3))~~ ~~of this~~

1 section)) shall include a determination of whether the operation of the
2 new air contaminant source at the location proposed will cause any
3 ambient air quality standard to be exceeded.

4 (5) New source review of a modification shall be limited to the
5 emission unit or units proposed to be modified and the air contaminants
6 whose emissions would increase as a result of the modification.

7 (6) Nothing in this section shall be construed to authorize the
8 department (~~(of ecology)~~) or board to require the use of emission
9 control equipment or other equipment, machinery, or devices of any
10 particular type, from any particular supplier, or produced by any
11 particular manufacturer.

12 (7) Any features, machines, and devices constituting parts of or
13 called for by plans, specifications, or other information submitted
14 pursuant to subsection (1) or (~~((3))~~) (4) of this section shall be
15 maintained and operate in good working order.

16 (8) The absence of an ordinance, resolution, rule, or regulation,
17 or the failure to issue an order pursuant to this section shall not
18 relieve any person from his or her obligation to comply with applicable
19 emission control requirements or with any other provision of law.

20 (~~(Within thirty days of receipt of a notice of construction~~
21 ~~application the department of ecology or board shall either notify the~~
22 ~~applicant in writing that the application is complete or notify the~~
23 ~~applicant in writing of all additional information necessary to~~
24 ~~complete the application. Within sixty days of receipt of a complete~~
25 ~~application the department or board shall either (a) issue a final~~
26 ~~decision on the application, or (b) for those projects subject to~~
27 ~~public notice, initiate notice and comment on a proposed decision,~~
28 ~~followed as promptly as possible by a final decision. A person seeking~~
29 ~~approval to construct or modify a source that requires an operating~~
30 ~~permit may elect to integrate review of the operating permit~~
31 ~~application or amendment required by RCW 70.94.161 and the notice of~~
32 ~~construction application required by this section. A notice of~~
33 ~~construction application designated for integrated review shall be~~
34 ~~processed in accordance with operating permit program procedures and~~
35 ~~deadlines.~~

36 (~~(10) A notice of construction approval required under subsection~~
37 ~~(3) of this section shall include a determination that the new source~~
38 ~~will achieve best available control technology. If more stringent~~

1 ~~controls are required under federal law, the notice of construction~~
2 ~~shall include a determination that the new source will achieve the more~~
3 ~~stringent federal requirements. Nothing in this subsection is intended~~
4 ~~to diminish other state authorities under this chapter.~~

5 ~~(11))~~ No person is required to submit a notice of construction or
6 receive approval for a new source that is deemed by the department ~~((of~~
7 ~~ecology))~~ or board to have de minimis impact on air quality. The
8 department ~~((of ecology))~~ shall adopt and periodically update rules
9 identifying categories of de minimis new sources. The department ~~((of~~
10 ~~ecology))~~ may identify de minimis new sources by category, size, or
11 emission thresholds.

12 ~~((12) For purposes of this section, "de minimis new sources" means~~
13 ~~new sources with trivial levels of emissions that do not pose a threat~~
14 ~~to human health or the environment.))~~

15 **Sec. 128.** RCW 70.94.153 and 1991 c 199 s 303 are each amended to
16 read as follows:

17 (1) Any person proposing to replace or substantially alter the
18 emission control technology installed on an existing stationary source
19 emission unit shall file a notice of construction application with the
20 jurisdictional permitting authority. For projects not otherwise
21 reviewable under RCW 70.94.152 (as recodified by this act), the
22 permitting authority may ~~((1))~~:

23 (a) Require that the owner or operator employ reasonably available
24 control technology for the affected emission unit; and ~~((2) may))~~

25 (b) Prescribe reasonable operation and maintenance conditions for
26 the control equipment.

27 (2) Within thirty days of receipt of an application for notice of
28 construction under this section, the permitting authority shall either
29 notify the applicant in writing that the application is complete or
30 notify the applicant in writing of all additional information necessary
31 to complete the application.

32 (3) Within thirty days of receipt of a complete application the
33 permitting authority shall either issue an order of approval or a
34 proposed RACT determination for the proposed project. Construction
35 shall not commence on a project subject to review under this section
36 until the permitting authority issues a final order of approval.
37 However, any notice of construction application filed under this

1 section shall be deemed to be approved without conditions if the
2 permitting authority takes no action within thirty days of receipt of
3 a complete application for a notice of construction.

4 **Sec. 129.** RCW 70.94.154 and 1996 c 29 s 2 are each amended to read
5 as follows:

6 (1) RACT, as defined in RCW 70.94.030 (as recodified by this act),
7 is required for existing sources, except as otherwise provided in RCW
8 70.94.331(~~(+9)~~) (as recodified by this act).

9 (2) RACT is to be determined on a case-by-case basis for an
10 individual source or source category taking into account the impact of
11 the source upon air quality, the availability of additional controls,
12 the emission reduction to be achieved by additional controls, the
13 impact of additional controls on air quality, and the capital and
14 operating costs of the additional controls. RACT for each source
15 category containing three or more sources shall be determined by rule,
16 except as provided in subsection (3) of this section. RACT
17 requirements for a source or source category must be adopted only after
18 notice and opportunity for comment are afforded.

19 (3) Source-specific RACT determinations may be performed under any
20 of the following circumstances:

- 21 (a) As authorized by RCW 70.94.153 (as recodified by this act);
- 22 (b) When required by the federal clean air act;
- 23 (c) For sources in source categories containing fewer than three
24 sources;
- 25 (d) When an air quality problem, for which the source is a
26 contributor, justifies a source-specific RACT determination prior to
27 development of a categorical RACT rule; or
- 28 (e) When a source-specific RACT determination is needed to address
29 either specific air quality problems for which the source is a
30 significant contributor or source-specific economic concerns.

31 (4) (~~By January 1, 1994, ecology~~) (a) The department shall
32 (develop) maintain a list of sources and source categories requiring
33 RACT review and a schedule for conducting that review(~~(Ecology)~~) and
34 shall review the list and schedule within six months of receiving the
35 initial operating permit applications and at least once every five
36 years thereafter.

1 **(b)** In developing the list to determine the schedule of RACT
2 review, ~~((ecology))~~ the department shall consider:

3 **(i)** Emission reductions achievable through the use of new available
4 technologies and the impacts of those incremental reductions on air
5 quality~~((τ))~~;

6 **(ii)** The remaining useful life of previously installed control
7 equipment~~((τ))~~;

8 **(iii)** The impact of the source or source category on air
9 quality~~((τ))~~;

10 **(iv)** The number of years since the last BACT, RACT, or LAER
11 determination for that source; and

12 **(v)** Other relevant factors.

13 **(c)** Prior to finalizing the list and schedule, ~~((ecology))~~ the
14 department shall consult with local air authorities, the regulated
15 community, environmental groups, and other interested individuals and
16 organizations. ~~((The department and local authorities shall revise~~
17 ~~RACT requirements, as needed, based on the review conducted under this~~
18 ~~subsection.))~~

19 (5) In determining RACT, ~~((ecology))~~ the department and local
20 authorities shall utilize the factors set forth in ~~((RCW 70.94.030))~~
21 subsection (2) of this section and shall consider RACT determinations
22 and guidance made by the federal environmental protection agency, other
23 states and local authorities for similar sources, and other relevant
24 factors. In establishing or revising RACT requirements, ~~((ecology))~~
25 the department and local authorities shall address, where practicable,
26 all air contaminants deemed to be of concern for that source or source
27 category. The department and local authorities shall revise RACT
28 requirements, as needed, based on the review conducted under subsection
29 (4) of this section.

30 (6) Emission standards and other requirements contained in rules or
31 regulatory orders in effect at the time of operating permit issuance or
32 renewal shall be considered RACT for purposes of permit issuance or
33 renewal. RACT determinations under subsections (2) and (3) of this
34 section shall be incorporated into operating permits as provided in RCW
35 70.94.161 (as recodified by this act) and rules implementing that
36 section.

37 (7)**(a)** The department and local air authorities are authorized to
38 assess and collect a fee to cover the costs of developing,

1 establishing, or reviewing categorical or case-by-case RACT
2 requirements. The fee shall apply to determinations of RACT
3 requirements as defined under this section and RCW 70.94.331(~~(+9)~~) (as
4 recodified by this act).

5 (b) The amount of the fee may not exceed the direct and indirect
6 costs of establishing the requirement for the particular source or the
7 pro rata portion of the direct and indirect costs of establishing the
8 requirement for the relevant source category.

9 (c) The department shall, after opportunity for public review and
10 comment, adopt rules that establish a workload-driven process for
11 determination and review of the fee covering the direct and indirect
12 costs of its RACT determinations and a methodology for tracking
13 revenues and expenditures.

14 (d) All (~~such~~) RACT determination fees collected by the delegated
15 local air authorities from sources shall be deposited in the dedicated
16 accounts of their respective treasuries. All (~~such~~) RACT fees
17 collected by the department from sources shall be deposited in the air
18 pollution control account created in RCW 70.94.015 (as recodified by
19 this act).

20 **Sec. 130.** RCW 70.94.155 and 1991 c 199 s 305 are each amended to
21 read as follows:

22 ~~((1) As used in subsection (3) of this section, the term "bubble"~~
23 ~~means an air pollution control system which permits aggregate~~
24 ~~measurements of allowable emissions, for a single category of~~
25 ~~pollutant, for emissions points from a specified emissions-generating~~
26 ~~facility or facilities. Individual point source emissions levels from~~
27 ~~such specified facility or facilities may be modified provided that the~~
28 ~~aggregate limit for the specified sources is not exceeded.~~

29 ~~(2))~~ Whenever any regulation relating to emission standards or
30 other requirements for the control of emissions is adopted which
31 provides for compliance with (~~such~~) the standards or requirements no
32 later than a specified time after the date of adoption of the
33 regulation, the appropriate activated (~~air pollution control~~)
34 authority or, (~~if there be none~~) when applicable, the department (~~of~~
35 ~~ecology~~) shall, by permit or regulatory order, issue to air
36 contaminant sources subject to the standards or requirements, schedules
37 of compliance setting forth timetables for the achievement of

1 compliance as expeditiously as practicable, but in no case later than
2 the time specified in the regulation. Interim dates in ((such))
3 schedules for the completion of steps of progress toward compliance
4 shall be as enforceable as the final date for full compliance
5 ((therein.

6 ~~(3) Wherever requirements necessary for the attainment of air~~
7 ~~quality standards or, where such standards are not exceeded, for the~~
8 ~~maintenance of air quality can be achieved through the use of a control~~
9 ~~program involving the bubble concept, such program may be authorized by~~
10 ~~a regulatory order or orders or permit issued to the air contaminant~~
11 ~~source or sources involved. Such order or permit shall only be~~
12 ~~authorized after the control program involving the bubble concept is~~
13 ~~accepted by [the] United States environmental protection agency as part~~
14 ~~of an approved state implementation plan. Any such order or permit~~
15 ~~provision shall restrict total emissions within the bubble to no more~~
16 ~~than would otherwise be allowed in the aggregate for all emitting~~
17 ~~processes covered. The orders or permits provided for by this~~
18 ~~subsection shall be issued by the department or the authority with~~
19 ~~jurisdiction. If the bubble involves interjurisdictional approval,~~
20 ~~concurrence in the total program must be secured from each regulatory~~
21 ~~entity concerned)).~~

22 **Sec. 131.** RCW 70.94.157 and 1991 c 199 s 315 are each amended to
23 read as follows:

24 The department and local ((air pollution control)) authorities
25 shall preempt the application of chapter 9 of the uniform building code
26 and article 80 of the uniform fire code when implemented by other state
27 agencies and local governments for the purposes of controlling outdoor
28 air pollution from industrial and commercial sources, except where
29 authorized by chapter 199, Laws of 1991. Actions by other state
30 agencies and local governments under article 80 of the uniform fire
31 code to take immediate action in response to an emission that presents
32 a physical hazard or imminent health hazard are not preempted.

33 **Sec. 132.** RCW 70.94.161 and 1993 c 252 s 5 are each amended to
34 read as follows:

35 The department ((of ecology)), or board of an authority, shall

1 require renewable permits for the operation of air contaminant sources,
2 including sources operated by government agencies, subject to the
3 following conditions and limitations:

4 (1) Permits shall be issued for a term of five years. A permit may
5 be modified or amended during its term at the request of the permittee,
6 or for any reason allowed by the federal clean air act. ~~((The rules
7 adopted pursuant to subsection (2) of this section shall include rules
8 for permit amendments and modifications.))~~ The terms and conditions of
9 a permit shall remain in effect after the permit itself expires if the
10 permittee submits a timely and complete application for permit renewal.

11 (2)(a) Rules establishing the elements for a statewide operating
12 permit program and the process for permit application and renewal,
13 consistent with federal requirements, shall be established by the
14 department ~~((by January 1, 1993)). ((The))~~

15 (b) Rules ((shall)) adopted under this section must:

16 (i) Provide that every proposed permit must be reviewed prior to
17 issuance by a professional engineer or staff under the direct
18 supervision of a professional engineer in the employ of the permitting
19 authority;

20 (ii) Include rules for permit amendments and modifications;

21 (iii) Specify procedures for public notice and comment consistent
22 with this section; and

23 (iv) Not preclude a delegated local air authority from including in
24 a permit its own more stringent emission standards and operating
25 restrictions.

26 (c) The permit program established by ((these)) the rules adopted
27 under this section shall be administered by the department and
28 delegated local air authorities. ((Rules developed under this
29 subsection shall not preclude a delegated local air authority from
30 including in a permit its own more stringent emission standards and
31 operating restrictions.

32 ~~(b))~~ (3)(a) Except for the authority granted the energy facility
33 site evaluation council to issue permits for the new construction,
34 reconstruction, or enlargement or operation of new energy facilities
35 under chapter 80.50 RCW, the department may exercise the authority, as
36 delegated by the environmental protection agency, to administer Title
37 IV of the federal clean air act, as amended, and to delegate the

1 administration to local authorities as authorized by (b) of this
2 subsection.

3 (b)(i) The board of any (~~(local air pollution control)~~) authority
4 may apply to the department (~~(of ecology)~~) for a delegation order
5 authorizing the (~~(local)~~) authority to administer the operating permit
6 program for sources under that authority's jurisdiction. A delegation
7 request must include adequate information about the local authority's
8 resources to enable the department to make the findings required by
9 this subsection.

10 (ii) The department shall, by order, approve (~~(such)~~) a delegation
11 to an authority, if the department finds that the (~~(local)~~) authority
12 has the technical and financial resources(~~(r)~~) to discharge the
13 responsibilities of a permitting authority under the federal clean air
14 act. (~~(A delegation request shall include adequate information about~~
15 ~~the local authority's resources to enable the department to make the~~
16 ~~findings required by this subsection; provided,~~) Any delegation order
17 issued under this subsection shall take effect ninety days after the
18 environmental protection agency authorizes the local authority to issue
19 operating permits under the federal clean air act.

20 (~~(c) Except for the authority granted the energy facility site~~
21 ~~evaluation council to issue permits for the new construction,~~
22 ~~reconstruction, or enlargement or operation of new energy facilities~~
23 ~~under chapter 80.50 RCW, the department may exercise the authority, as~~
24 ~~delegated by the environmental protection agency, to administer Title~~
25 ~~IV of the federal clean air act as amended and to delegate such~~
26 ~~administration to local authorities as applicable pursuant to (b) of~~
27 ~~this subsection.~~

28 ~~(3))~~ (4) In establishing technical standards, (~~(defined in RCW~~
29 ~~70.94.030,~~) the permitting authority shall consider and, if found to
30 be appropriate, give credit for waste reduction within the process.

31 ~~(4))~~ (5)(a) Operating permits shall apply to all sources
32 ~~((a)):~~

33 (i) Where required by the federal clean air act(~~(r)~~)i and ~~((b) for~~
34 ~~any source))~~

35 (ii) That may cause or contribute to air pollution in (~~(such)~~) a
36 quantity (~~(as to create)~~) that creates a threat to the public health or
37 welfare. (~~(Subsection)~~)

1 (b) The provisions of (a)(ii) of this subsection ((is)) are not
2 intended to apply to small businesses, except when both of the
3 following limitations are satisfied:

4 (i) The source is in an area exceeding or threatening to exceed
5 federal or state air quality standards, as that term is defined in RCW
6 70.94.030 (as recodified by this act); and

7 (ii) The department provides a reasonable justification that
8 requiring a source to have a permit is necessary to meet a federal or
9 state air quality standard, or to prevent exceeding a standard in an
10 area threatening to exceed the standard. ((For purposes of this
11 subsection "areas threatening to exceed air quality standards" shall
12 mean areas projected by the department to exceed such standards within
13 five years.))

14 (c) Prior to identifying threatened areas the department shall hold
15 a public hearing or hearings within the proposed areas.

16 ((~~5) Sources operated by government agencies are not exempt under~~
17 ~~this section.))~~

18 (6) Within one hundred eighty days after the United States
19 environmental protection agency approves the state operating permit
20 program, a person required to have a permit shall submit to the
21 permitting authority a compliance plan and permit application, signed
22 by a responsible official, certifying the accuracy of the information
23 submitted. Until permits are issued, existing sources ((~~shall be~~)) are
24 allowed to operate under presently applicable standards and conditions
25 provided that ((~~such~~)) the sources submit complete and timely permit
26 applications.

27 (7) All draft permits ((~~shall be~~)) are subject to public notice and
28 comment. The rules adopted pursuant to ((~~subsection (2) of~~)) this
29 section shall specify procedures for public notice and comment.
30 ((~~Such~~)) The procedures shall provide the permitting agency with an
31 opportunity to respond to comments received from interested parties
32 prior to the time that the proposed permit is submitted to the
33 environmental protection agency for review pursuant to section 505(a)
34 of the federal clean air act. In the event that the environmental
35 protection agency objects to a proposed permit pursuant to section
36 505(b) of the federal clean air act, the permitting authority shall not
37 issue the permit, unless the permittee consents to the changes required
38 by the environmental protection agency.

1 (8) The procedures contained in chapter 43.21B RCW shall apply to
2 permit appeals. The pollution control hearings board may stay the
3 effectiveness of any permit issued under this section during the
4 pendency of an appeal filed by the permittee, if the permittee
5 demonstrates that compliance with the permit during the pendency of the
6 appeal would require significant expenditures that would not be
7 necessary in the event that the permittee prevailed on the merits of
8 the appeal.

9 (9) After the effective date of any permit program (~~(promulgated)~~)
10 adopted under this section, it (~~(shall be)~~) is unlawful for any person
11 to:

12 (a) Operate a permitted source in violation of any requirement of
13 a permit issued under this section; or

14 (b) Fail to submit a permit application at the time required by
15 rules adopted under (~~(subsection (2) of)~~) this section.

16 (10) Each air operating permit shall state the origin of and
17 specific legal authority for each requirement included (~~(therein)~~) in
18 the permit. Every requirement in an operating permit shall be based
19 upon the most stringent of the following requirements:

20 (a) The federal clean air act and rules implementing (~~(that)~~) the
21 federal clean air act, including provisions of the approved state
22 implementation plan;

23 (b) This chapter and rules adopted (~~(thereunder)~~) under this
24 chapter;

25 (c) In permits issued by a local (~~(air pollution control)~~)
26 authority, the requirements of any order or regulation adopted by that
27 authority;

28 (d) Chapter 70.98 RCW and rules adopted (~~(thereunder)~~) under
29 chapter 70.98 RCW; and

30 (e) Chapter 80.50 RCW and rules adopted (~~(thereunder)~~) under
31 chapter 80.50 RCW.

32 (11) Consistent with the provisions of the federal clean air act,
33 the permitting authority may issue general permits covering categories
34 of permitted sources, and temporary permits authorizing emissions from
35 similar operations at multiple temporary locations.

36 (12)(a) Except as otherwise provided by this subsection, permit
37 program sources within the territorial jurisdiction of an authority

1 delegated the operating permit program under this section shall file
2 their permit applications with that authority(~~(, except that)~~).

3 (b) Permit applications for sources regulated on a statewide basis
4 pursuant to RCW 70.94.395 (as recodified by this act), and permit
5 program sources outside the territorial jurisdiction of a delegated
6 authority shall be filed with the department. (~~(Permit program sources~~
7 ~~outside the territorial jurisdiction of a delegated authority shall~~
8 ~~file their applications with the department.)~~)

9 (c) Permit program sources subject to chapter 80.50 RCW shall,
10 irrespective of their location, file their applications with the energy
11 facility site evaluation council.

12 (13) When issuing operating permits to coal fired electric
13 generating plants, the permitting authority shall establish
14 requirements consistent with Title IV of the federal clean air act.

15 ~~(14)((a) The department and the local air authorities are~~
16 ~~authorized to assess and to collect, and each source emitting one~~
17 ~~hundred tons or more per year of a regulated pollutant shall pay an~~
18 ~~interim assessment to fund the development of the operating permit~~
19 ~~program during fiscal year 1994.~~

20 ~~(b) The department shall conduct a workload analysis and prepare an~~
21 ~~operating permit program development budget for fiscal year 1994. The~~
22 ~~department shall allocate among all sources emitting one hundred tons~~
23 ~~or more per year of a regulated pollutant during calendar year 1992 the~~
24 ~~costs identified in its program development budget according to a~~
25 ~~three tiered model, with each of the three tiers being equally~~
26 ~~weighted, based upon:~~

27 ~~(i) The number of sources;~~

28 ~~(ii) The complexity of sources; and~~

29 ~~(iii) The size of sources, as measured by the quantity of each~~
30 ~~regulated pollutant emitted by the source.~~

31 ~~(c) Each local authority and the department shall collect from~~
32 ~~sources under their respective jurisdictions the interim fee determined~~
33 ~~by the department and shall remit the fee to the department.~~

34 ~~(d) Each local authority may, in addition, allocate its fiscal year~~
35 ~~1994 operating permit program development costs among the sources under~~
36 ~~its jurisdiction emitting one hundred tons or more per year of a~~
37 ~~regulated pollutant during calendar year 1992 and may collect an~~

1 ~~interim fee from these sources. A fee assessed pursuant to this~~
2 ~~subsection (14)(d) shall be collected at the same time as the fee~~
3 ~~assessed pursuant to (c) of this subsection.~~

4 ~~(e) The fees assessed to a source under this subsection shall be~~
5 ~~limited to the first seven thousand five hundred tons for each~~
6 ~~regulated pollutant per year.~~

7 ~~(15) The department shall determine the persons liable for the fee~~
8 ~~imposed by subsection (14) of this section, compute the fee, and~~
9 ~~provide by November 1 of 1993 the identity of the fee payer with the~~
10 ~~computation of the fee to each local authority and to the department of~~
11 ~~revenue for collection. The department of revenue shall collect the~~
12 ~~fee computed by the department from the fee payers under the~~
13 ~~jurisdiction of the department. The administrative, collection, and~~
14 ~~penalty provisions of chapter 82.32 RCW shall apply to the collection~~
15 ~~of the fee by the department of revenue. The department shall provide~~
16 ~~technical assistance to the department of revenue for decisions made by~~
17 ~~the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All~~
18 ~~interim fees collected by the department of revenue on behalf of the~~
19 ~~department and all interim fees collected by local authorities on~~
20 ~~behalf of the department shall be deposited in the air operating permit~~
21 ~~account. The interim fees collected by the local air authorities to~~
22 ~~cover their permit program development costs under subsection (14)(d)~~
23 ~~of this section shall be deposited in the dedicated accounts of their~~
24 ~~respective treasuries.~~

25 ~~All fees identified in this section shall be due and payable on~~
26 ~~March 1 of 1994, except that the local air pollution control~~
27 ~~authorities may adopt by rule an earlier date on which fees are to be~~
28 ~~due and payable. The section 5, chapter 252, Laws of 1993 amendments~~
29 ~~to RCW 70.94.161 do not have the effect of terminating, or in any way~~
30 ~~modifying, any liability, civil or criminal, incurred pursuant to the~~
31 ~~provisions of RCW 70.94.161 (15) and (17) as they existed prior to July~~
32 ~~25, 1993.~~

33 ~~(16)) For sources or source categories not required to obtain~~
34 ~~permits under ((subsection (4) of)) this section, the department or~~
35 ~~((local)) authority may establish, by rule, control technology~~
36 ~~requirements. If control technology rule revisions are made by the~~
37 ~~department or local authority under this subsection, the department or~~
38 ~~local authority shall consider the remaining useful life of control~~

1 equipment previously installed on existing sources before requiring
2 technology changes. The department or any (~~local air~~) authority may
3 issue a general permit, as authorized under the federal clean air act,
4 for such sources.

5 ~~((17) RCW 70.94.151 shall not apply to any permit program source
6 after the effective date of United States environmental protection
7 agency approval of the state operating permit program.))~~

8 **Sec. 133.** RCW 70.94.162 and 1998 c 245 s 129 are each amended to
9 read as follows:

10 ~~((The department and delegated local air authorities are
11 authorized to determine, assess, and collect, and))~~ Each permit program
12 source, other than a source that receives its operating permit from the
13 United States environmental protection agency as the permitting
14 authority, shall pay(~~(7)~~) annual fees sufficient to cover the direct
15 and indirect costs of implementing a state operating permit program
16 approved by the United States environmental protection agency under the
17 federal clean air act. ~~((However, a source that receives its operating
18 permit from the United States environmental protection agency shall not
19 be considered a permit program source so long as the environmental
20 protection agency continues to act as the permitting authority for that
21 source.))~~

22 (2) The department and delegated authorities are authorized to
23 determine, assess, and collect fees required under this section. Each
24 permitting authority shall develop by rule a fee schedule consistent
25 with section 309 of this act allocating among its permit program
26 sources the costs of the operating permit program, and may, by rule,
27 establish a payment schedule ~~((whereby))~~ allowing periodic installments
28 of the annual fee ~~((are due and payable more frequently))~~. The
29 department shall establish, by rule, procedures for administrative
30 appeals to the department regarding the fee assessed under this
31 section.

32 (3) All operating permit program fees collected by the department
33 shall be deposited in the air operating permit account created in
34 section 301 of this act. All operating permit program fees collected
35 by the delegated local air authorities shall be deposited in their
36 respective air operating permit accounts or other accounts dedicated
37 exclusively to support of the operating permit program.

1 (4) The fees assessed under this ((subsection)) section shall first
2 be due not less than forty-five days after the United States
3 environmental protection agency delegates to the department the
4 authority to administer the operating permit program and then annually
5 thereafter.

6 ((The department shall establish, by rule, procedures for
7 administrative appeals to the department regarding the fee assessed
8 pursuant to this subsection.

9 (2) The fee schedule developed by each permitting authority shall
10 fully cover and not exceed both its permit administration costs and the
11 permitting authority's share of statewide program development and
12 oversight costs.

13 (a) Permit administration costs are those incurred by each
14 permitting authority, including the department, in administering and
15 enforcing the operating permit program with respect to sources under
16 its jurisdiction. Costs associated with the following activities are
17 fee eligible as these activities relate to the operating permit program
18 and to the sources permitted by a permitting authority, including,
19 where applicable, sources subject to a general permit:

20 (i) Preapplication assistance and review of an application and
21 proposed compliance plan for a permit, permit revision, or renewal;

22 (ii) Source inspections, testing, and other data gathering
23 activities necessary for the development of a permit, permit revision,
24 or renewal;

25 (iii) Acting on an application for a permit, permit revision, or
26 renewal, including the costs of developing an applicable requirement as
27 part of the processing of a permit, permit revision, or renewal,
28 preparing a draft permit and fact sheet, and preparing a final permit,
29 but excluding the costs of developing BACT, LAER, BART, or RACT
30 requirements for criteria and toxic air pollutants;

31 (iv) Notifying and soliciting, reviewing and responding to comment
32 from the public and contiguous states and tribes, conducting public
33 hearings regarding the issuance of a draft permit and other costs of
34 providing information to the public regarding operating permits and the
35 permit issuance process;

36 (v) Modeling necessary to establish permit limits or to determine
37 compliance with permit limits;

1 ~~(vi) Reviewing compliance certifications and emissions reports and~~
2 ~~conducting related compilation and reporting activities;~~

3 ~~(vii) Conducting compliance inspections, complaint investigations,~~
4 ~~and other activities necessary to ensure that a source is complying~~
5 ~~with permit conditions;~~

6 ~~(viii) Administrative enforcement activities and penalty~~
7 ~~assessment, excluding the costs of proceedings before the pollution~~
8 ~~control hearings board and all costs of judicial enforcement;~~

9 ~~(ix) The share attributable to permitted sources of the development~~
10 ~~and maintenance of emissions inventories;~~

11 ~~(x) The share attributable to permitted sources of ambient air~~
12 ~~quality monitoring and associated recording and reporting activities;~~

13 ~~(xi) Training for permit administration and enforcement;~~

14 ~~(xii) Fee determination, assessment, and collection, including the~~
15 ~~costs of necessary administrative dispute resolution and penalty~~
16 ~~collection;~~

17 ~~(xiii) Required fiscal audits, periodic performance audits, and~~
18 ~~reporting activities;~~

19 ~~(xiv) Tracking of time, revenues and expenditures, and accounting~~
20 ~~activities;~~

21 ~~(xv) Administering the permit program including the costs of~~
22 ~~clerical support, supervision, and management;~~

23 ~~(xvi) Provision of assistance to small businesses under the~~
24 ~~jurisdiction of the permitting authority as required under section 507~~
25 ~~of the federal clean air act; and~~

26 ~~(xvii) Other activities required by operating permit regulations~~
27 ~~issued by the United States environmental protection agency under the~~
28 ~~federal clean air act.~~

29 ~~(b) Development and oversight costs are those incurred by the~~
30 ~~department in developing and administering the state operating permit~~
31 ~~program, and in overseeing the administration of the program by the~~
32 ~~delegated local permitting authorities. Costs associated with the~~
33 ~~following activities are fee eligible as these activities relate to the~~
34 ~~operating permit program:~~

35 ~~(i) Review and determinations necessary for delegation of authority~~
36 ~~to administer and enforce a permit program to a local air authority~~
37 ~~under RCW 70.94.161(2) and 70.94.860;~~

1 ~~(ii) Conducting fiscal audits and periodic performance audits of~~
2 ~~delegated local authorities, and other oversight functions required by~~
3 ~~the operating permit program;~~

4 ~~(iii) Administrative enforcement actions taken by the department on~~
5 ~~behalf of a permitting authority, including those actions taken by the~~
6 ~~department under RCW 70.94.785, but excluding the costs of proceedings~~
7 ~~before the pollution control hearings board and all costs of judicial~~
8 ~~enforcement;~~

9 ~~(iv) Determination and assessment with respect to each permitting~~
10 ~~authority of the fees covering its share of the costs of development~~
11 ~~and oversight;~~

12 ~~(v) Training and assistance for permit program administration and~~
13 ~~oversight, including training and assistance regarding technical,~~
14 ~~administrative, and data management issues;~~

15 ~~(vi) Development of generally applicable regulations or guidance~~
16 ~~regarding the permit program or its implementation or enforcement;~~

17 ~~(vii) State codification of federal rules or standards for~~
18 ~~inclusion in operating permits;~~

19 ~~(viii) Preparation of delegation package and other activities~~
20 ~~associated with submittal of the state permit program to the United~~
21 ~~States environmental protection agency for approval, including ongoing~~
22 ~~coordination activities;~~

23 ~~(ix) General administration and coordination of the state permit~~
24 ~~program, related support activities, and other agency indirect costs,~~
25 ~~including necessary data management and quality assurance;~~

26 ~~(x) Required fiscal audits and periodic performance audits of the~~
27 ~~department, and reporting activities;~~

28 ~~(xi) Tracking of time, revenues and expenditures, and accounting~~
29 ~~activities;~~

30 ~~(xii) Public education and outreach related to the operating permit~~
31 ~~program, including the maintenance of a permit register;~~

32 ~~(xiii) The share attributable to permitted sources of compiling and~~
33 ~~maintaining emissions inventories;~~

34 ~~(xiv) The share attributable to permitted sources of ambient air~~
35 ~~quality monitoring, related technical support, and associated recording~~
36 ~~activities;~~

37 ~~(xv) The share attributable to permitted sources of modeling~~
38 ~~activities;~~

1 ~~(xvi) Provision of assistance to small business as required under~~
2 ~~section 507 of the federal clean air act as it exists on July 25, 1993,~~
3 ~~or its later enactment as adopted by reference by the director by rule;~~

4 ~~(xvii) Provision of services by the department of revenue and the~~
5 ~~office of the state attorney general and other state agencies in~~
6 ~~support of permit program administration;~~

7 ~~(xviii) A one time revision to the state implementation plan to~~
8 ~~make those administrative changes necessary to ensure coordination of~~
9 ~~the state implementation plan and the operating permit program; and~~

10 ~~(xix) Other activities required by operating permit regulations~~
11 ~~issued by the United States environmental protection agency under the~~
12 ~~federal clean air act.~~

13 ~~(3) The responsibility for operating permit fee determination,~~
14 ~~assessment, and collection is to be shared by the department and~~
15 ~~delegated local air authorities as follows:~~

16 ~~(a) Each permitting authority, including the department, acting in~~
17 ~~its capacity as a permitting authority, shall develop a fee schedule~~
18 ~~and mechanism for collecting fees from the permit program sources under~~
19 ~~its jurisdiction; the fees collected by each authority shall be~~
20 ~~sufficient to cover its costs of permit administration and its share of~~
21 ~~the department's costs of development and oversight. Each delegated~~
22 ~~local authority shall remit to the department its share of the~~
23 ~~department's development and oversight costs.~~

24 ~~(b) Only those local air authorities to whom the department has~~
25 ~~delegated the authority to administer the program pursuant to RCW~~
26 ~~70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to~~
27 ~~administer and collect operating permit fees. The department shall~~
28 ~~retain the authority to administer and collect such fees with respect~~
29 ~~to the sources within the jurisdiction of a local air authority until~~
30 ~~the effective date of program delegation to that air authority.~~

31 ~~(c) The department shall allocate its development and oversight~~
32 ~~costs among all permitting authorities, including the department, in~~
33 ~~proportion to the number of permit program sources under the~~
34 ~~jurisdiction of each authority, except that extraordinary costs or~~
35 ~~other costs readily attributable to a specific permitting authority may~~
36 ~~be assessed that authority. For purposes of this subsection, all~~
37 ~~sources covered by a single general permit shall be treated as one~~
38 ~~source.~~

1 ~~(4) The department and each delegated local air authority shall~~
2 ~~adopt by rule a general permit fee schedule for sources under their~~
3 ~~respective jurisdictions after such time as the department adopts~~
4 ~~provisions for general permit issuance. Within ninety days of the time~~
5 ~~that the department adopts a general permit fee schedule, the~~
6 ~~department shall report to the relevant standing committees of the~~
7 ~~legislature regarding the general permit fee schedules adopted by the~~
8 ~~department and by the delegated local air authorities. The permit~~
9 ~~administration costs of each general permit shall be allocated~~
10 ~~equitably among only those sources subject to that general permit. The~~
11 ~~share of development and oversight costs attributable to each general~~
12 ~~permit shall be determined pursuant to subsection (3)(c) of this~~
13 ~~section.~~

14 ~~(5) The fee schedule developed by the department shall allocate~~
15 ~~among the sources for whom the department acts as a permitting~~
16 ~~authority, other than sources subject to a general permit, those~~
17 ~~portions of the department's permit administration costs and the~~
18 ~~department's share of the development and oversight costs which the~~
19 ~~department does not plan to recover under its general permit fee~~
20 ~~schedule or schedules as follows:~~

21 ~~(a) The department shall allocate its permit administration costs~~
22 ~~and its share of the development and oversight costs not recovered~~
23 ~~through general permit fees according to a three-tiered model based~~
24 ~~upon:~~

25 ~~(i) The number of permit program sources under its jurisdiction;~~

26 ~~(ii) The complexity of permit program sources under its~~
27 ~~jurisdiction; and~~

28 ~~(iii) The size of permit program sources under its jurisdiction, as~~
29 ~~measured by the quantity of each regulated pollutant emitted by the~~
30 ~~source.~~

31 ~~(b) Each of the three tiers shall be equally weighted.~~

32 ~~(c) The department may, in addition, allocate activities-based~~
33 ~~costs readily attributable to a specific source to that source under~~
34 ~~RCW 70.94.152(1) and 70.94.154(7).~~

35 ~~The quantity of each regulated pollutant emitted by a source shall~~
36 ~~be determined based on the annual emissions during the most recent~~
37 ~~calendar year for which data is available.~~

1 ~~(6) The department shall, after opportunity for public review and~~
2 ~~comment, adopt rules that establish a process for development and~~
3 ~~review of its operating permit program fee schedule, a methodology for~~
4 ~~tracking program revenues and expenditures and, for both the department~~
5 ~~and the delegated local air authorities, a system of fiscal audits,~~
6 ~~reports, and periodic performance audits.~~

7 ~~(a) The fee schedule development and review process shall include~~
8 ~~the following:~~

9 ~~(i) The department shall conduct a biennial workload analysis. The~~
10 ~~department shall provide the opportunity for public review of and~~
11 ~~comment on the workload analysis. The department shall review and~~
12 ~~update its workload analysis during each biennial budget cycle, taking~~
13 ~~into account information gathered by tracking previous revenues, time,~~
14 ~~and expenditures and other information obtained through fiscal audits~~
15 ~~and performance audits.~~

16 ~~(ii) The department shall prepare a biennial budget based upon the~~
17 ~~resource requirements identified in the workload analysis for that~~
18 ~~biennium. In preparing the budget, the department shall take into~~
19 ~~account the projected operating permit account balance at the start of~~
20 ~~the biennium. The department shall provide the opportunity for public~~
21 ~~review of and comment on the proposed budget. The department shall~~
22 ~~review and update its budget each biennium.~~

23 ~~(iii) The department shall develop a fee schedule allocating the~~
24 ~~department's permit administration costs and its share of the~~
25 ~~development and oversight costs among the department's permit program~~
26 ~~sources using the methodology described in subsection (5) of this~~
27 ~~section. The department shall provide the opportunity for public~~
28 ~~review of and comment on the allocation methodology and fee schedule.~~
29 ~~The department shall provide procedures for administrative resolution~~
30 ~~of disputes regarding the source data on which allocation~~
31 ~~determinations are based; these procedures shall be designed such that~~
32 ~~resolution occurs prior to the completion of the allocation process.~~
33 ~~The department shall review and update its fee schedule annually.~~

34 ~~(b) The methodology for tracking revenues and expenditures shall~~
35 ~~include the following:~~

36 ~~(i) The department shall develop a system for tracking revenues and~~
37 ~~expenditures that provides the maximum practicable information. At a~~
38 ~~minimum, revenues from fees collected under the operating permit~~

1 ~~program shall be tracked on a source specific basis and time and~~
2 ~~expenditures required to administer the program shall be tracked on the~~
3 ~~basis of source categories and functional categories. Each general~~
4 ~~permit will be treated as a separate source category for tracking and~~
5 ~~accounting purposes.~~

6 ~~(ii) The department shall use the information obtained from~~
7 ~~tracking revenues, time, and expenditures to modify the workload~~
8 ~~analysis required in subsection (6)(a) of this section.~~

9 ~~(iii) The information obtained from tracking revenues, time, and~~
10 ~~expenditures shall not provide a basis for challenge to the amount of~~
11 ~~an individual source's fee.~~

12 ~~(c) The system of fiscal audits, reports, and periodic performance~~
13 ~~audits shall include the following:~~

14 ~~(i) The department and the delegated local air authorities shall~~
15 ~~prepare annual reports and shall submit the reports to, respectively,~~
16 ~~the appropriate standing committees of the legislature and the board of~~
17 ~~directors of the local air authority.~~

18 ~~(ii) The department shall arrange for fiscal audits and routine~~
19 ~~performance audits and for periodic intensive performance audits of~~
20 ~~each permitting authority and of the department.~~

21 ~~(7) Each local air authority requesting delegation shall, after~~
22 ~~opportunity for public review and comment, publish regulations which~~
23 ~~establish a process for development and review of its operating permit~~
24 ~~program fee schedule, and a methodology for tracking its revenues and~~
25 ~~expenditures. These regulations shall be submitted to the department~~
26 ~~for review and approval as part of the local authority's delegation~~
27 ~~request.~~

28 ~~(8) As used in this section and in RCW 70.94.161(14), "regulated~~
29 ~~pollutant" shall have the same meaning as defined in section 502(b) of~~
30 ~~the federal clean air act as it exists on July 25, 1993, or its later~~
31 ~~enactment as adopted by reference by the director by rule.~~

32 ~~(9) Fee structures as authorized under this section shall remain in~~
33 ~~effect until such time as the legislature authorizes an alternative~~
34 ~~structure following receipt of the report required by this~~
35 ~~subsection.))~~

36 **Sec. 134.** RCW 70.94.163 and 1991 c 199 s 304 are each amended to
37 read as follows:

1 The department shall prepare recommendations to reduce air
2 emissions for source categories not generally required to have a permit
3 under RCW 70.94.161 (as recodified by this act). ~~((Such))~~ The
4 recommendations shall not require any action by the owner or operator
5 of a source and shall be consistent with rules adopted under chapter
6 70.95C RCW. The recommendations shall include but not be limited to:
7 Process changes, product substitution, equipment modifications,
8 hazardous substance use reduction, recycling, and energy efficiency.

9 **Sec. 135.** RCW 70.94.165 and 1996 c 294 s 1 are each amended to
10 read as follows:

11 (1) A gasoline vapor recovery device that captures vapors during
12 vehicle fueling may only be required at a service station, or any other
13 gasoline dispensing facility supplying fuel to the general public, in
14 any of the following circumstances:

15 (a) The facility sells in excess of six hundred thousand gallons of
16 gasoline per year and is located in a county, any part of which is
17 designated as nonattainment for ozone under the federal clean air act,
18 42 U.S.C. Sec. 7407; or

19 (b) The facility sells in excess of six hundred thousand gallons of
20 gasoline per year and is located in a county where a maintenance plan
21 has been adopted by ~~((a local air pollution control))~~ an authority or
22 the department ~~((of ecology))~~ that includes gasoline vapor recovery
23 devices as a control strategy; or

24 ~~((From March 30, 1996, until December 31, 1998, in any facility
25 that sells in excess of one million two hundred thousand gallons of
26 gasoline per year and is located in an ozone contributing county. For
27 purposes of this section, an ozone contributing county means a county
28 in which the emissions have contributed to the formation of ozone in
29 any county where violations of federal ozone standards have been
30 measured, and includes: Cowlitz, Island, Kitsap, Lewis, Skagit,
31 Thurston, Wahkiakum, and Whatcom counties; or~~

32 ~~((d) After December 31, 1998, in any))~~ The facility that sells in
33 excess of eight hundred forty thousand gallons of gasoline per year and
34 is located in any county, no part of which is designated as
35 nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec.
36 7407, provided that the department ~~((of ecology))~~ determines by

1 December 31, 1997, that the use of gasoline vapor control devices in
2 the county is important to achieving or maintaining attainment status
3 in any other county.

4 (2) This section does not preclude the department (~~(of ecology)~~) or
5 any (~~(local air pollution)~~) authority from requiring a gasoline vapor
6 recovery device that captures vapors during vehicle refueling as part
7 of the regulation of sources as provided in RCW 70.94.152, 70.94.331,
8 or 70.94.141 (as recodified by this act) or where required under 42
9 U.S.C. Sec. 7412.

10 **Sec. 136.** RCW 70.94.170 and 1991 c 199 s 707 are each amended to
11 read as follows:

12 Any activated authority which has adopted an ordinance, resolution,
13 or valid rules and regulations as provided (~~(herein)~~) in this chapter
14 for the control and prevention of air pollution shall appoint a full-
15 time control officer(~~(, whose)~~). The sole responsibility (~~(shall be)~~)
16 of the control officer is to observe and enforce the provisions of this
17 chapter and all orders, ordinances, resolutions, or rules and
18 regulations of (~~(such)~~) the activated authority pertaining to the
19 control and prevention of air pollution.

20 **Sec. 137.** RCW 70.94.181 and 1991 c 199 s 306 are each amended to
21 read as follows:

22 (1) Any person who owns or is in control of any plant, building,
23 structure, establishment, process, or equipment may apply to the
24 department (~~(of ecology)~~) or appropriate local authority board for a
25 variance from rules or regulations governing the quality, nature,
26 duration, or extent of discharges of air contaminants. The application
27 shall be accompanied by (~~(such)~~) information and data as the department
28 (~~(of ecology)~~) or board may require. The department (~~(of ecology)~~) or
29 board may grant (~~(such)~~) a variance, provided that variances to state
30 rules shall require the department's approval prior to being issued by
31 a local authority board. The total time period for a variance (~~(and)~~)
32 or renewal of (~~(such)~~) a variance shall not exceed one year. Variances
33 may be issued by either the department or a local board (~~(but only)~~)
34 after a public hearing or other due notice, if the department or board
35 finds that:

1 (a) The emissions occurring or proposed to occur do not endanger
2 public health or safety or the environment; and

3 (b) Compliance with the rules or regulations from which variance is
4 sought would produce serious hardship without equal or greater benefits
5 to the public.

6 (2) No variance shall be granted pursuant to this section until the
7 department (~~(of ecology)~~) or board has considered the relative
8 interests of the applicant, other owners of property likely to be
9 affected by the discharges, and the general public.

10 (3) Any variance or renewal (~~(thereof)~~) of a variance shall be
11 granted within the requirements of subsection (1) of this section and
12 (~~(under)~~) consistent with the following conditions (~~(consistent with~~
13 ~~the reasons therefor,~~) and (~~(within the following)~~) limitations:

14 (a) If (~~(the)~~) a variance is granted (~~(on the ground that)~~) because
15 there is no practicable means known or available for the adequate
16 prevention, abatement, or control of the pollution involved, (~~(it shall~~
17 ~~be only until)~~) the variance expires when the necessary means for
18 prevention, abatement, or control become known and available(~~(, and)~~)
19 . In addition, the variance is subject to (~~(the taking of)~~) any
20 substitute or alternate measures that the department (~~(of ecology)~~) or
21 board may prescribe.

22 (b) If (~~(the)~~) a variance is granted (~~(on the ground that)~~) because
23 compliance with the particular requirement or requirements from which
24 variance is sought will require the taking of measures which, because
25 of their extent or cost, must be spread over a considerable period of
26 time, (~~(it)~~) the effective date of the variance shall be (~~(for)~~) a
27 period not to exceed such reasonable time as, in the view of the
28 department (~~(of ecology)~~) or board, is (~~(requisite)~~) required for the
29 taking of the necessary measures. A variance granted on (~~(the)~~) this
30 ground (~~(specified herein)~~) shall contain a timetable for the taking of
31 action in an expeditious manner and shall be conditioned on adherence
32 to (~~(such)~~) the timetable.

33 (c) If the variance is granted (~~(on the ground that)~~) because it is
34 justified to relieve or prevent hardship of a kind other than that
35 provided for in (a) and (b) of this subsection, (~~(it)~~) the effective
36 date of the variance shall (~~(be for)~~) not exceed more than one year.

37 (4) Any variance granted pursuant to this section may be renewed on
38 terms and conditions and for periods which would be appropriate on

1 initial granting of a variance. However, no renewal may be granted
2 without an application for renewal. Any renewal application must be
3 made at least sixty days prior to the expiration of the variance.
4 Immediately upon receipt of an application for renewal, the department
5 or board shall give public notice of the application in accordance with
6 rules of the department or board. If a complaint is made to the
7 department ((of ecology)) or board on account of the variance to be
8 renewed, ((no renewal thereof shall)) a renewal of the variance may not
9 be granted unless ((following a public hearing on the complaint on due
10 notice)) the department or board finds that a renewal of the variance
11 is justified after conducting a public hearing with due notice on the
12 complaint. ((No renewal shall be granted except on application
13 therefor. Any such application shall be made at least sixty days prior
14 to the expiration of the variance. Immediately upon receipt of an
15 application for renewal, the department of ecology or board shall give
16 public notice of such application in accordance with rules of the
17 department of ecology or board.))

18 (5) A variance or renewal shall not be a right of the applicant or
19 holder ((thereof)) but shall be granted at the discretion of the
20 department ((of ecology)) or board. However, any applicant adversely
21 affected by the denial or the terms and conditions of the granting of
22 an application for a variance or renewal of a variance by the
23 department ((of ecology)) or board may obtain judicial review
24 ((thereof)) of the denial or terms and conditions under the provisions
25 of chapter 34.05 RCW ((as now or hereafter amended)).

26 (6) Nothing in this section and no variance or renewal granted
27 pursuant ((hereto)) to this section shall be construed to prevent or
28 limit the application of the emergency provisions and procedures of RCW
29 70.94.710 through 70.94.730 (as recodified by this act) to any person
30 or his or her property.

31 (7) An application for a variance, or for the renewal ((thereof))
32 of a variance, submitted to the department ((of ecology)) or board
33 pursuant to this section shall be approved or disapproved by the
34 department or board within sixty-five days of receipt unless the
35 applicant and the department ((of ecology)) or board agree to a
36 continuance.

37 (8) Variances approved under this section shall not be included in
38 orders or permits provided for in RCW 70.94.161 or 70.94.152 (as

1 recodified by this act) until such time as the variance has been
2 accepted by the United States environmental protection agency as part
3 of an approved state implementation plan.

4 **Sec. 138.** RCW 70.94.200 and 1987 c 109 s 38 are each amended to
5 read as follows:

6 ~~((For the purpose of investigating conditions specific to the
7 control, recovery or release of air contaminants into the atmosphere,))~~

8 (1) A control officer, the department, or their duly authorized
9 representatives, ~~((shall))~~ have the power to enter at reasonable times
10 upon any private or public property, excepting nonmultiple unit private
11 dwelling housing two families or less, for the purpose of
12 investigating conditions specific to the control, recovery, or release
13 of air contaminants into the atmosphere.

14 (2) No person shall refuse entry or access to any control officer,
15 the department, or their duly authorized representatives, who requests
16 entry for the purpose of an inspection authorized under this section,
17 and who presents appropriate credentials~~((nor shall any))~~.

18 (3) A person may not obstruct, hamper, or interfere with any ~~((such~~
19 inspection)) control officer, the department, or their duly authorized
20 representatives, during an inspection authorized under this section.

21 **Sec. 139.** RCW 70.94.205 and 1991 c 199 s 307 are each amended to
22 read as follows:

23 ~~((Whenever))~~ (1) Any records or other information furnished to or
24 obtained by the department or the board of any authority under this
25 chapter, other than ambient air quality data or emission data,
26 ~~((furnished to or obtained by the department of ecology or the board of~~
27 ~~any authority under this chapter,))~~ must be held only for the
28 confidential use of the department or board if the information or
29 records are certified by the owner or operator of the associated
30 processes or production to (a) relate to processes or production unique
31 to the owner or operator~~((r))~~; or ~~((is))~~ (b) be likely to affect
32 adversely the competitive position of ~~((such))~~ the owner or operator if
33 released to the public or to a competitor~~((, and the owner or operator~~
34 of such processes or production so certifies, such records or
35 information shall be only for the confidential use of the department of
36 ecology or board)).

1 (2) Nothing (~~herein~~) in this section shall be construed to
2 prevent the use of records or information by the department (~~of~~
3 ~~ecology~~) or board in compiling or publishing analyses or summaries
4 relating to the general condition of the outdoor atmosphere(~~+~~
5 ~~PROVIDED, That such~~) as long as the analyses or summaries do not
6 reveal any information that is otherwise confidential under the
7 provisions of this section(~~+~~~~PROVIDED FURTHER,~~) and that emission
8 data furnished to or obtained by the department (~~of ecology~~) or board
9 (~~shall be~~) is correlated with applicable emission limitations and
10 other control measures and (~~shall be~~) is made available for public
11 inspection during normal business hours at offices of the department
12 (~~of ecology~~) or board.

13 **Sec. 140.** RCW 70.94.211 and 1991 c 199 s 309 are each amended to
14 read as follows:

15 (1) At least thirty days prior to the commencement of any formal
16 enforcement action under RCW 70.94.430 or 70.94.431 (~~a local air~~) as
17 recodified by this act an authority shall cause written notice to be
18 served upon the alleged violator or violators. The notice shall
19 specify the provision of this chapter or the rule or regulation alleged
20 to be violated, (~~and~~) the facts alleged to constitute a violation
21 (~~thereof~~), and may include an order directing that necessary
22 corrective action be taken within a reasonable time.

23 (2) In lieu of an order, the board or the control officer may
24 require that the alleged violator or violators appear before the board
25 for a hearing.

26 (3) Every notice of violation shall offer to the alleged violator
27 an opportunity to meet with the (~~local air~~) authority prior to the
28 commencement of enforcement action.

29 (4) Any order issued by the board or by the control officer becomes
30 final unless the order is appealed to the pollution control hearings
31 board as provided in chapter 43.21B RCW.

32 **Sec. 141.** RCW 70.94.230 and 1969 ex.s. c 168 s 28 are each amended
33 to read as follows:

34 (1) The rules and regulations (~~hereafter~~) adopted by an authority
35 under the provisions of this chapter shall supersede the existing
36 rules, regulations, resolutions, and ordinances of any of the component

1 (~~bodies~~) city, town, or county included within (~~said~~) the authority
2 in all matters relating to the control and enforcement of air pollution
3 as (~~contemplated~~) provided by this chapter(~~(:—PROVIDED, HOWEVER,~~
4 ~~That)~~).

5 (2) All existing rules, regulations, resolutions, and ordinances
6 adopted by a component city, town, county, or other applicable
7 authority shall remain in effect until (~~such~~) the rules, regulations,
8 resolutions, and ordinances are superseded as provided in this
9 section(~~(:—PROVIDED FURTHER, That nothing herein)~~).

10 (3) Nothing in this section shall be construed to allow the rules
11 and regulations adopted by an authority to supersede any local
12 county(~~(τ)~~) or city ordinances or resolutions, or any provision of the
13 statutory or common law pertaining to:

14 (a) Nuisance; (~~nor to affect~~)

15 (b) Any aspect of employer-employee relationship relating to
16 conditions in a place of work, including without limitation,
17 statutes(~~(τ)~~) and rules or regulations governing industrial health and
18 safety standards or performance standards incorporated in zoning
19 ordinances (~~or resolutions of the component bodies where such~~); and

20 (c) Standards relating to air pollution control or air quality
21 (~~containing requirements~~) that are not less stringent than those of
22 the authority.

23 **Sec. 142.** RCW 70.94.240 and 1991 c 199 s 709 are each amended to
24 read as follows:

25 (1) The board of any authority may appoint an air pollution control
26 advisory council to advise and consult with (~~such~~) the board(~~(τ)~~) and
27 the control officer appointed consistent with RCW 70.94.170 (as
28 recodified by this act) in effectuating the purposes of this chapter.

29 (2) The advisory council shall consist of at least five appointed
30 members who are residents of the authority and who are preferably
31 skilled and experienced in the field of air pollution control,
32 chemistry, meteorology, public health, or a related field(~~(τ)~~). At
33 least one (~~of whom~~) member of the advisory council shall serve as a
34 representative of industry and one (~~of whom~~) shall serve as a
35 representative of the environmental community.

36 (3) The chair of the board of (~~any such~~) the authority shall

1 serve as ex officio member of the advisory council and be ~~((its))~~ the
2 advisory council's chair.

3 (4) Each member of the advisory council shall receive from the
4 authority per diem and travel expenses in an amount not to exceed that
5 provided for the state board in this chapter ~~((but not to exceed))~~ or
6 one thousand dollars per year~~((+))~~, whichever is less, for each full
7 day spent in the performance of his or her duties under this chapter.

8 **Sec. 143.** RCW 70.94.260 and 1979 ex.s. c 30 s 12 are each amended
9 to read as follows:

10 (1) An ~~((air pollution control))~~ authority may be deactivated prior
11 to the term provided in the original or subsequent agreement by the
12 component county or counties ~~((comprising such authority upon))~~ by the
13 adoption by the board~~((, following a hearing held upon ten days notice,~~
14 ~~to said counties,))~~ of a resolution for dissolution or deactivation
15 ~~((and upon)).~~

16 (2) Prior to a board's adoption of a dissolution or deactivation
17 resolution, a hearing must be held on the proposed action and the
18 approval by the legislative authority of each component county
19 ~~((comprising the authority))~~ must be secured. Any hearing conducted
20 under this subsection must follow at least ten days of public notice.

21 (3) In ~~((such))~~ the event that a dissolution or deactivation
22 resolution is adopted by a board, the board shall proceed to wind up
23 the affairs of the authority and pay all indebtedness ~~((thereof))~~ of
24 the authority. Any surplus of funds shall be paid over to the
25 component counties ~~((comprising the authority))~~ in proportion to their
26 last contribution.

27 (4) Upon the completion of the process of closing the affairs of
28 the authority, the board shall, by resolution entered in its minutes,
29 declare the authority deactivated and file a certified copy of ~~((such))~~
30 the resolution ~~((shall be filed))~~ with the secretary of state and the
31 authority shall be deemed inactive.

32 **Sec. 144.** RCW 70.94.262 and 1991 c 125 s 2 are each amended to
33 read as follows:

34 (1) Any county that is part of a multicounty authority, pursuant to
35 RCW 70.94.053 (as recodified by this act), may withdraw from the

1 multicounty authority after January 1, 1992, if the county wishes to
2 provide for air quality protection and regulation by an alternate air
3 quality authority. A withdrawing county shall:

4 (a) Create its own single county authority;

5 (b) Join another existing multicounty authority with which its
6 boundaries are contiguous;

7 (c) Join with one or more contiguous inactive authorities to
8 operate as a new multicounty authority; or

9 (d) Become an inactive authority and subject to regulation by the
10 department (~~(of ecology)~~).

11 (2) In order to withdraw from an existing multicounty authority, a
12 county shall make arrangements, by interlocal agreement, for division
13 of assets and liabilities and the appropriate release of any and all
14 interest in assets of the multicounty authority.

15 (3) In order to effectuate any of the alternate arrangements in
16 subsection (1) of this section, the procedures of this chapter to
17 create an (~~(air pollution control)~~) authority shall be met and the
18 actions must be taken at least six months prior to the effective date
19 of withdrawal. The rules of the original multicounty authority shall
20 continue in force for the withdrawing county until such time as all
21 conditions to create an (~~(air pollution control)~~) authority have been
22 met.

23 (4) At the effective date of a county's withdrawal, the remaining
24 counties shall reorganize and reconstitute the legislative authority
25 pursuant to this chapter. The air pollution control regulations of the
26 existing multicounty authority shall remain in force and effect after
27 the reorganization.

28 (5) If a county elects to withdraw from an existing multicounty
29 authority, the air pollution control regulations shall remain in effect
30 for the withdrawing county until suspended by the adoption of rules,
31 regulations, or ordinances adopted under one of the alternatives of
32 subsection (1) of this section. A county shall initiate proceedings to
33 adopt such rules, regulations, or ordinances on or before the effective
34 date of the county's withdrawal.

35 **Sec. 145.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
36 read as follows:

1 (1) The department (~~((shall have))~~) has all the powers as provided in
2 RCW 70.94.141 (as recodified by this act).

3 (2) The department, in addition to any other powers vested in it by
4 law after consideration at a public hearing held in accordance with
5 chapters 42.30 and 34.05 RCW shall:

6 (a) Adopt rules establishing air quality objectives and air quality
7 standards;

8 (b) Adopt emission standards which shall constitute minimum
9 emission standards throughout the state. An authority may enact more
10 stringent emission standards, except for emission performance standards
11 for new wood stoves and opacity levels for residential solid fuel
12 burning devices which shall be statewide, but in no event may less
13 stringent standards be enacted by an authority without the prior
14 approval of the department after public hearing and due notice to
15 interested parties;

16 (c)(i) Adopt by rule air quality standards and emission standards
17 for the control or prohibition of emissions to the outdoor atmosphere
18 of radionuclides, dust, fumes, mist, smoke, other particulate matter,
19 vapor, gas, odorous substances, or any combination (~~((thereof))~~) of these
20 emissions. (~~((Such))~~) The requirements may be based upon a system of
21 classification by types of emissions or types of sources of emissions,
22 or combinations (~~((thereof))~~) of sources and types, which (~~((it))~~) the
23 department determines most feasible for the purposes of this chapter.
24 (~~((However,))~~)

25 (ii) An industry, or the (~~((air pollution control))~~) authority having
26 jurisdiction, can choose(~~((, subject to the submittal of appropriate~~
27 ~~data that the industry has quantified,))~~) to have any limit on the
28 opacity of emissions from a source whose emission standard is stated in
29 terms of a weight of particulate per unit volume of air (~~((e.g., grains~~
30 ~~per dry standard cubic foot))~~) be based on the applicable particulate
31 emission standard for that source, such that any violation of the
32 opacity limit accurately indicates a violation of the applicable
33 particulate emission standard. An industry choosing to apply the
34 emission standard must submit appropriate data to the department or
35 authority that has been quantified by the department. Any alternative
36 opacity limit provided by this section that would result in increasing
37 air contaminants emissions in any nonattainment area (~~((shall))~~) may only
38 be granted if equal or greater emission reductions are provided for by

1 the same source obtaining the revised opacity limit. A reasonable fee
2 may be assessed to the industry to which the alternate opacity standard
3 would apply. The fee shall cover only those costs to the ((air
4 ~~pollution control~~)) authority which are directly related to the
5 determination on the acceptability of the alternate opacity standard,
6 including testing, oversight, and review of data.

7 (3) Except for emission performance standards for new wood stoves
8 and opacity levels for residential solid fuel burning devices that must
9 apply statewide, the air quality standards and emission standards
10 adopted under this section may ((be for)) apply to the state as a whole
11 or may vary from area to area or source to source((, ~~except that~~
12 ~~emission performance standards for new wood stoves and opacity levels~~
13 ~~for residential solid fuel burning devices shall be statewide,~~)) as may
14 be appropriate to facilitate the accomplishment of the objectives of
15 this chapter and to take necessary or desirable account of varying
16 local conditions of population concentration, the existence of actual
17 or reasonably foreseeable air pollution, topographic and meteorologic
18 conditions, and other pertinent variables.

19 (4) ((~~The department is directed to cooperate with the appropriate~~
20 ~~agencies of the United States or other states or any interstate~~
21 ~~agencies or international agencies with respect to the control of air~~
22 ~~pollution and air contamination, or for the formulation for the~~
23 ~~submission to the legislature of interstate air pollution control~~
24 ~~compacts or agreements.~~

25 (+5)) The department is directed to conduct or cause to be
26 conducted a continuous surveillance program to monitor the quality of
27 the ambient atmosphere as to concentrations and movements of air
28 contaminants and conduct or cause to be conducted a program to
29 determine the quantity of emissions to the atmosphere.

30 ((~~(6) The department shall enforce the air quality standards and~~
31 ~~emission standards throughout the state except where a local authority~~
32 ~~is enforcing the state regulations or its own regulations which are~~
33 ~~more stringent than those of the state.~~

34 (+7)) (5) The department shall encourage local units of government
35 to handle air pollution problems within their respective jurisdictions;
36 and, on a cooperative basis provide technical and consultative
37 assistance ((therefor)).

1 ~~((8) The department shall have the power to require the addition~~
2 ~~to or deletion of a county or counties from an existing authority in~~
3 ~~order to carry out the purposes of this chapter. No such addition or~~
4 ~~deletion shall be made without the concurrence of any existing~~
5 ~~authority involved. Such action shall only be taken after a public~~
6 ~~hearing held pursuant to the provisions of chapter 34.05 RCW.~~

7 ~~(9) The department shall establish rules requiring sources or~~
8 ~~source categories to apply reasonable and available control methods.~~
9 ~~Such rules shall apply to those sources or source categories that~~
10 ~~individually or collectively contribute the majority of statewide air~~
11 ~~emissions of each regulated pollutant. The department shall review,~~
12 ~~and if necessary, update its rules every five years to ensure~~
13 ~~consistency with current reasonable and available control methods. The~~
14 ~~department shall have adopted rules required under this subsection for~~
15 ~~all sources by July 1, 1996.~~

16 ~~For the purposes of this section, "reasonable and available control~~
17 ~~methods" shall include but not be limited to, changes in technology,~~
18 ~~processes, or other control strategies.))~~

19 **Sec. 146.** RCW 70.94.332 and 1991 c 199 s 711 are each amended to
20 read as follows:

21 At least thirty days prior to the commencement of any formal
22 enforcement action under RCW 70.94.430 and 70.94.431 (as recodified by
23 this act), the department ~~((of ecology))~~ shall cause written notice to
24 be served upon the alleged violator or violators. The notice shall
25 specify the provision of this chapter or the rule or regulation alleged
26 to be violated, and the facts alleged to constitute a violation
27 ~~((thereof))~~, and may include an order that necessary corrective action
28 be taken within a reasonable time. In lieu of an order, the department
29 may require that the alleged violator or violators appear before it for
30 the purpose of providing the department information pertaining to the
31 violation or the charges ~~((complained of))~~. Every notice of violation
32 shall offer to the alleged violator an opportunity to meet with the
33 department prior to the commencement of enforcement action.

34 **Sec. 147.** RCW 70.94.335 and 1994 c 257 s 15 are each amended to
35 read as follows:

36 The procedural requirements of this chapter shall not apply to any

1 person conducting a remedial action at a facility pursuant to a consent
2 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
3 or to the department (~~(of ecology)~~) when it conducts a remedial action
4 under chapter 70.105D RCW. The department (~~(of ecology)~~) shall ensure
5 compliance with the substantive requirements of this chapter through
6 the consent decree, order, or agreed order issued pursuant to chapter
7 70.105D RCW, or during the department-conducted remedial action,
8 through the procedures developed by the department pursuant to RCW
9 70.105D.090.

10 **Sec. 148.** RCW 70.94.350 and 1987 c 109 s 40 are each amended to
11 read as follows:

12 The department is authorized to contract for or otherwise agree to
13 the use of personnel of municipal corporations or other agencies or
14 private persons(~~(+)~~) and (~~(the department is further authorized)~~) to
15 reimburse (~~(such)~~) the municipal corporations or agencies for the
16 employment of (~~(such)~~) personnel. Merit system regulations or
17 standards for the employment of personnel may be waived for personnel
18 hired under contract as provided for in this section. The department
19 shall provide, within available appropriations, for the scientific,
20 technical, legal, administrative, and other necessary services and
21 facilities for performing the functions under this chapter.

22 **Sec. 149.** RCW 70.94.370 and 1979 c 141 s 123 are each amended to
23 read as follows:

24 No provision of this chapter or any recommendation of the state
25 board or of any local or regional (~~(air pollution program)~~) authority
26 is a limitation:

27 (1) On the power of any city, town, or county to declare, prohibit,
28 and abate nuisances.

29 (2) On the power of the secretary of social and health services to
30 provide for the protection of the public health under any authority
31 presently vested in that office or which may be (~~(hereafter)~~)
32 prescribed by law.

33 (3) On the power of a state agency in the enforcement, or
34 administration of any provision of law which it is specifically
35 permitted or required to enforce or administer.

1 (4) On the right of any person to maintain at any time any
2 appropriate action for relief against any air pollution.

3 **Sec. 150.** RCW 70.94.380 and 1987 c 405 s 14 are each amended to
4 read as follows:

5 (1)(a) Except as otherwise provided in this section, every
6 activated authority operating an air pollution control program shall
7 have requirements for the control of emissions which are no less
8 stringent than those adopted by the department ((of ecology)) for the
9 geographic area in which ((such)) the air pollution control program is
10 located.

11 (b) Less stringent requirements than are compelled by this section
12 may be included in a local or regional air pollution control program
13 only after approval by the department ((of ecology)) following
14 demonstration to the satisfaction of the department ((of ecology)) that
15 the proposed requirements are consistent with the purposes of this
16 chapter((: PROVIDED, That such)). However, any approval shall be
17 preceded by public hearing, of which notice has been given in
18 accordance with chapter 42.30 RCW.

19 (c) The department ((of ecology)), upon receiving evidence that
20 conditions have changed or that additional information is relevant to
21 a decision with respect to the requirements for emission control, may,
22 after public hearing on due notice, withdraw any approval previously
23 given to a less stringent local or regional requirement.

24 (({(2)})) (2) Except for the emission performance standards for new
25 wood stoves and the opacity levels for residential solid fuel burning
26 devices provided in RCW 70.94.473 (as recodified by this act), which
27 are applicable statewide, nothing in this chapter shall be construed to
28 prevent a local or regional ((air pollution control)) authority from
29 adopting and enforcing more stringent emission control requirements
30 than those adopted by the department ((of ecology and)) that are
31 applicable within the jurisdiction of the local or regional ((air
32 pollution control)) authority((, except that the emission performance
33 standards for new wood stoves and the opacity levels for residential
34 solid fuel burning devices shall be statewide)).

35 **Sec. 151.** RCW 70.94.385 and 1991 c 199 s 712 are each amended to
36 read as follows:

1 (1)(a) Any authority exercising the powers and duties prescribed in
2 this chapter may make application for, receive, administer, and expend
3 any federal aid under federal legislation from any agency of the
4 federal government, for the prevention and control of air pollution or
5 the development and administration of programs related to air pollution
6 control and prevention, as permitted by RCW 70.94.141(11) (as
7 recodified by this act).

8 (b) Any application for federal aid submitted by an authority shall
9 be first submitted to and approved by the department. The department
10 shall adopt rules and regulations establishing standards for approval
11 and shall approve any application, if it is consistent with this
12 chapter, and any other applicable requirements of law.

13 (2) Any authority may apply to the department for state financial
14 aid.

15 (a) The department shall annually establish the amount of state
16 funds available for the local authorities taking into consideration
17 available federal and state funds. The establishment of funding
18 amounts shall be consistent with federal requirements and local
19 maintenance of effort necessary to carry out the provisions of this
20 chapter.

21 (b) Any ((such)) state aid shall be expended from the general fund
22 or from other appropriations as the legislature may provide for this
23 purpose(~~(: PROVIDED, That)~~). However, federal funds shall be utilized
24 to the maximum unless otherwise approved by the department(~~(: PROVIDED~~
25 FURTHER, That)).

26 (c) The amount of state funds provided to local authorities during
27 the previous year shall not be reduced without a public notice or
28 public hearing held by the department if requested by the affected
29 local authority, unless such changes are the direct result of a
30 reduction in the available federal funds for air pollution control
31 programs.

32 ((+2)) (d) Before any ((such)) application for state funding is
33 approved and financial aid is given or approved by the department, the
34 authority shall demonstrate to the satisfaction of the department that
35 it is fulfilling the requirements of this chapter. If the department
36 has not adopted ambient air quality standards and objectives as
37 permitted by RCW 70.94.331 (as recodified by this act), the authority
38 shall demonstrate to the satisfaction of the department that it is

1 acting in good faith and doing all that is possible and reasonable to
2 control and prevent air pollution within its jurisdictional boundaries
3 and to carry out the purposes of this chapter.

4 ~~((3))~~ (e) The department shall adopt rules requiring the
5 submission of ~~((such))~~ information by each authority, including the
6 submission of its proposed budget and a description of its program in
7 support of the application for state financial aid, as necessary to
8 enable the department to determine the need for state aid.

9 **Sec. 152.** RCW 70.94.390 and 1987 c 109 s 42 are each amended to
10 read as follows:

11 (1) The department may, at any time and on its own motion, hold a
12 hearing to determine if the activation of an authority is necessary for
13 the prevention, abatement, and control of air pollution which exists or
14 is likely to exist in any area of the state. Notice of ~~((such))~~ the
15 hearing shall be conducted in accordance with chapters 42.30 ~~((RCW))~~
16 and ~~((chapter))~~ 34.05 RCW.

17 (2) If, at ~~((such))~~ a hearing conducted under this section, the
18 department finds that air pollution exists or is likely to occur in a
19 particular area, and that the purposes of this chapter and the public
20 interest will be best served by the activation of an authority, it
21 shall designate the boundaries of ~~((such))~~ an area and set forth in a
22 report to the appropriate county or counties recommendations for the
23 activation of an authority ~~((:—PROVIDED, That))~~.

24 (3) If, at ~~((such))~~ a hearing conducted under this section, the
25 department determines that the activation of an authority is not
26 practical or feasible for the reason that a local or regional air
27 pollution control program cannot be successfully established or
28 operated due to unusual circumstances and conditions, but that either
29 the control ~~((and/or))~~ or prevention, or both, of air pollution is
30 necessary for the purposes of this chapter and the public interest, it
31 may declare and assume jurisdiction ~~((and so declare))~~ by order.
32 ~~((Such order))~~ Orders entered under this subsection shall designate the
33 geographic area ~~((in which))~~ assumed by the department, and the
34 effective date upon which ~~((r))~~ the department will exercise
35 jurisdiction for either the control ~~((and/or))~~ or prevention, or both,
36 of air pollution. The department shall exercise its powers and duties

1 in the same manner as if it had assumed authority under RCW 70.94.410
2 (as recodified by this act).

3 (4)(a) All expenses incurred by the department in the control and
4 prevention of air pollution in any county pursuant to the provisions of
5 RCW 70.94.390 and 70.94.410 (as recodified by this act) shall
6 constitute a claim against ~~((such))~~ the county. The department shall
7 certify the expenses to the auditor of the county, who promptly shall
8 issue his or her warrant on the county treasurer payable out of the
9 current expense fund of the county.

10 (b) In the event that the amount in the current expense fund of the
11 county is not adequate to meet the expenses incurred by the department,
12 the department shall certify to the state treasurer that they have a
13 prior claim on any money in the ~~((the))~~ liquor excise tax fund~~((the))~~ that
14 is to be apportioned to that county by the state treasurer as provided
15 in RCW 82.08.170. In the event that the amount in the ~~((the))~~ liquor
16 excise tax fund~~((the))~~ that is to be apportioned to that county by the
17 state treasurer is not adequate to meet the expenses incurred by the
18 department, the department shall certify to the state treasurer that
19 they have a prior claim on any excess funds from the liquor revolving
20 fund that are to be distributed to that county as provided in RCW
21 66.08.190 through 66.08.220.

22 (c) All moneys that are collected as provided in this section shall
23 be placed in the general fund in the account of the office of air
24 programs of the department.

25 **Sec. 153.** RCW 70.94.395 and 1991 c 199 s 713 are each amended to
26 read as follows:

27 (1) If the department finds, after public hearing upon due notice
28 to all interested parties, that the emissions from a particular type or
29 class of air contaminant source should be regulated on a statewide
30 basis in the public interest and for the protection of the welfare of
31 the citizens of the state, it may adopt and enforce rules to either
32 control ~~((and/or))~~ or prevent, or both, the emission of air
33 contaminants from ~~((such))~~ the source.

34 (2)(a) An authority may, after public hearing and a finding by the
35 board of a need for more stringent rules than those adopted by the
36 department under this section, propose the adoption of ~~((such))~~ rules

1 by the department for the control of emissions from the particular type
2 or class of air contaminant source within the geographical area of the
3 authority.

4 (b) The department shall hold a public hearing and shall adopt the
5 proposed rules within the area of the requesting authority, unless it
6 finds that the proposed rules are inconsistent with the rules adopted
7 by the department under this section.

8 (c) When ~~((such))~~ standards are adopted by the department ~~((it))~~,
9 the department shall delegate solely to the requesting authority all
10 powers necessary for their enforcement at the request of the authority.

11 (3) If after public hearing the department finds that the
12 regulation on a statewide basis of a particular type or class of air
13 contaminant source is no longer required for the public interest and
14 the protection of the welfare of the citizens of the state, the
15 department may relinquish exclusive jurisdiction over ~~((such))~~ the
16 source.

17 **Sec. 154.** RCW 70.94.400 and 1987 c 109 s 44 are each amended to
18 read as follows:

19 (1) If, at the end of ninety days after the department issues a
20 report as provided for in RCW 70.94.390 (as recodified by this act), to
21 the appropriate county or counties recommending the activation of an
22 authority ~~((such))~~, and the county or counties have not performed those
23 actions recommended by the department, and the department is still of
24 the opinion that the activation of an authority is necessary for the
25 prevention, abatement, and control of air pollution which exists or is
26 likely to exist, then the department may, at its discretion, issue an
27 order activating an authority. ~~((Such order))~~

28 (2) When the department issues an order under this section, a
29 certified copy of ~~((which shall))~~ the order must be filed with the
30 secretary of state ~~((, shall))~~. The order must specify the
31 participating county or counties and the effective date by which the
32 authority shall begin to function and exercise its powers.

33 (3) Any authority activated by order of the department under this
34 section shall choose the members of its board as provided in RCW
35 70.94.100 (as recodified by this act) and begin to function in the same
36 manner as if it had been activated by resolutions of the county or
37 counties included within its boundaries.

1 (4) The department may, upon due notice to all interested parties,
2 conduct a hearing in accordance with chapters 42.30 ((RCW)) and
3 ((chapter)) 34.05 RCW within six months after ((the)) an order under
4 this section was issued to review ((such)) the order and to ascertain
5 if ((such)) the order is being carried out in good faith. At such time
6 the department may amend any ((such)) order issued under this section,
7 or take the appropriate action as is provided in RCW 70.94.410 (as
8 recodified by this act), if it is determined by the department that
9 ((such)) the order is being carried out in bad faith ((~~or the~~
10 ~~department may take the appropriate action as is provided in RCW~~
11 ~~70.94.410~~)).

12 **Sec. 155.** RCW 70.94.405 and 1991 c 199 s 714 are each amended to
13 read as follows:

14 (1) At any time after an authority has been activated for no less
15 than one year, the department may, on its own motion, conduct a hearing
16 held in accordance with chapters 42.30 and 34.05 RCW, to determine
17 whether or not the air pollution prevention and control program of
18 ((such)) the authority is being carried out in good faith and is as
19 effective as possible.

20 (2) If ((~~at such hearing~~)) the department finds at a hearing held
21 under this section that ((such)) the authority is not carrying out its
22 air pollution control or prevention program in good faith, is not doing
23 all that is possible and reasonable to either control ((~~and/or~~)) or
24 prevent, or both, air pollution within the geographical area over which
25 it has jurisdiction, or is not carrying out the provisions of this
26 chapter, ((it)) the department shall set forth in a report or order to
27 the appropriate authority: ((+1)) (a) Its recommendations as to how
28 either air pollution prevention ((~~and/or~~)) or control, or both, might
29 be more effectively accomplished; and ((+2)) (b) guidelines which will
30 assist the authority in carrying out the recommendations of the
31 department.

32 **Sec. 156.** RCW 70.94.410 and 1991 c 199 s 715 are each amended to
33 read as follows:

34 (1) If, after thirty days from the time that the department issues
35 a report or order to an authority under RCW 70.94.400 and 70.94.405 (as
36 recodified by this act), ((such)) the authority has not taken action

1 which indicates that it is attempting in good faith to implement the
2 recommendations or actions of the department as set forth in the report
3 or order, the department may, by order, declare as null and void any or
4 all ordinances, resolutions, rules, or regulations of such authority
5 relating to either the control (~~(and/or)~~) or prevention, or both, of
6 air pollution(~~(, and at such time)~~).

7 (2) If the department declares an authority's actions as null and
8 void under this section, the department shall become the sole body with
9 authority to make and enforce rules and regulations for either the
10 control (~~(and/or)~~) or prevention, or both, of air pollution within the
11 geographical area of (~~(such)~~) the authority. If this occurs, the
12 department may assume all those powers which are given to it by law to
13 effectuate the purposes of this chapter.

14 (3) The department may, by order, continue in effect and enforce
15 provisions of the ordinances, resolutions, or rules of (~~(such)~~) the
16 authority which are not less stringent than those requirements which
17 the department may have found applicable to the area under RCW
18 70.94.331 (as recodified by this act), until such time as the
19 department adopts its own rules. Any rules (~~(promulgated)~~) adopted by
20 the department shall be subject to the provisions of chapter 34.05 RCW.
21 Any enforcement actions shall be subject to RCW 43.21B.300 or
22 43.21B.310.

23 ~~((+2))~~ (4) No provision of this chapter is intended to prohibit
24 any authority from reestablishing its air pollution control program
25 which meets with the approval of the department and which complies with
26 the purposes of this chapter and with applicable rules and orders of
27 the department.

28 ~~((+3))~~ (5)(a) Nothing in this chapter (~~(shall)~~) prevents the
29 department from withdrawing the exercise of its jurisdiction over an
30 authority upon its own motion if the department (~~(has found)~~) finds at
31 a hearing, held in accordance with chapters 42.30 and 34.05 RCW, that
32 the air pollution prevention and control program of (~~(such)~~) the
33 authority:

34 (i) Will be carried out in good faith(~~(τ)~~);

35 (ii) That (~~(such)~~) the program will do all that is possible and
36 reasonable to either control (~~(and/or)~~) or prevent, or both, air
37 pollution within the geographical area over which it has
38 jurisdiction(~~(τ)~~); and

1 (iii) That the program complies with the provisions of this
2 chapter.

3 (b) Upon the withdrawal of the department, the department shall
4 prescribe certain recommendations as to how either air pollution
5 prevention ~~((and/or))~~ or control, or both, is to be effectively
6 accomplished and guidelines which will assist the authority in carrying
7 out the recommendations of the department.

8 **Sec. 157.** RCW 70.94.420 and 1991 c 199 s 716 are each amended to
9 read as follows:

10 It is ~~((declared to be))~~ the intent of the legislature ~~((of the~~
11 ~~state of Washington))~~ that any state department or agency having
12 jurisdiction over any building, installation, other property, or other
13 activity creating or likely to create significant air pollution shall
14 cooperate with the department and with air pollution control agencies
15 in preventing ~~((and/or))~~ or controlling the pollution of the air in any
16 area ~~((insofar as))~~ if the discharge of air contaminants from or by
17 ~~((such))~~ the building, installation, other property, or activity may
18 cause or contribute to pollution of the air ~~((in such area))~~. ~~((Such))~~
19 Each state department or agency shall comply with the provisions of
20 this chapter and with any ordinance, resolution, rule, or regulation
21 issued ~~((hereunder))~~ under this chapter in the same manner as any other
22 person subject to ~~((such))~~ the laws or rules.

23 **Sec. 158.** RCW 70.94.422 and 1993 c 252 s 7 are each amended to
24 read as follows:

25 (1) The department of health ~~((shall have))~~ has all the enforcement
26 powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431
27 (1) through (7), and 70.94.435 (as recodified by this act) with respect
28 to emissions of radionuclides. This section does not preclude the
29 department ~~((of ecology))~~ from exercising its authority under this
30 chapter.

31 (2)(a) Permits for energy facilities subject to chapter 80.50 RCW
32 shall be issued by the energy facility site evaluation council.
33 However, the permits become effective only if the governor approves an
34 application for certification and executes a certification agreement
35 under chapter 80.50 RCW. The council ~~((shall have))~~ has all powers
36 necessary to administer an operating permits program pertaining to such

1 facilities, consistent with applicable air quality standards
2 established by the department or (~~local air pollution control~~)
3 authorities, or both, and to obtain the approval of the United States
4 environmental protection agency.

5 (b) The council's powers include, but are not limited to, all of
6 the enforcement powers provided in RCW 70.94.332, 70.94.425, 70.94.430,
7 70.94.431 (1) through (7), and 70.94.435 (as recodified by this act)
8 with respect to permit program sources required to obtain certification
9 from the council under chapter 80.50 RCW.

10 (c) To the extent not covered under RCW 80.50.071, the council may
11 collect fees as granted to delegated (~~local air~~) authorities under
12 RCW 70.94.152, (~~(70.94.161 (14) and (15)),~~) 70.94.162, and 70.94.154(7)
13 (as recodified by this act) with respect to permit program sources
14 required to obtain certification from the council under chapter 80.50
15 RCW.

16 (d) The council and the department shall each establish procedures
17 that provide maximum coordination and avoid duplication between the two
18 agencies in carrying out the requirements of this chapter.

19 **Sec. 159.** RCW 70.94.425 and 1987 c 109 s 48 are each amended to
20 read as follows:

21 Notwithstanding the existence or use of any other remedy, whenever
22 any person has engaged in, or is about to engage in, any acts or
23 practices which constitute or will constitute a violation of any
24 provision of this chapter, or any rule, regulation, or order issued
25 (~~thereunder~~) under this chapter, the governing body or board or the
26 department, after notice to (~~such~~) the person and an opportunity to
27 comply, may petition the superior court of the county (~~wherein~~) where
28 the violation is alleged to be occurring or to have occurred for a
29 restraining order or a temporary or permanent injunction or another
30 appropriate order.

31 **Sec. 160.** RCW 70.94.430 and 2003 c 53 s 355 are each amended to
32 read as follows:

33 (1) Any person who knowingly violates any of the provisions of this
34 chapter (~~(70.94)~~) or chapter 70.120 RCW, or any ordinance, resolution,
35 or regulation in force pursuant (~~thereto~~) to this chapter or chapter
36 70.120 RCW is guilty of a gross misdemeanor and, upon conviction

1 ((thereof)), shall be punished by a fine of not more than ten thousand
2 dollars, or by imprisonment in the county jail for not more than one
3 year, or by both for each separate violation.

4 (2) Any person who negligently releases into the ambient air any
5 substance listed by the department ((of ecology)) as a hazardous air
6 pollutant, other than in compliance with the terms of an applicable
7 permit or emission limit, and who at the time negligently places
8 another person in imminent danger of death or substantial bodily harm
9 is guilty of a gross misdemeanor and shall, upon conviction, be
10 punished by a fine of not more than ten thousand dollars, or by
11 imprisonment for not more than one year, or both.

12 (3) Any person who knowingly releases into the ambient air any
13 substance listed by the department ((of ecology)) as a hazardous air
14 pollutant, other than in compliance with the terms of an applicable
15 permit or emission limit, and who knows at the time that he or she
16 thereby places another person in imminent danger of death or
17 substantial bodily harm, is guilty of a class C felony and shall, upon
18 conviction, be punished by a fine of not less than fifty thousand
19 dollars, or by imprisonment for not more than five years, or both.

20 (4) Any person who knowingly fails to disclose a potential conflict
21 of interest under RCW 70.94.100 (as recodified by this act) is guilty
22 of a gross misdemeanor, and upon conviction thereof shall be punished
23 by a fine of not more than five thousand dollars.

24 **Sec. 161.** RCW 70.94.431 and 1995 c 403 s 630 are each amended to
25 read as follows:

26 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
27 43.05.150, and in addition to or as an alternate to any other penalty
28 provided by law, any person who violates any of the provisions of this
29 chapter ((70.94 RCW,)) or chapter 70.120 RCW, or any of the rules in
30 force under ((such)) this chapter((s)) or chapter 70.120 RCW may incur
31 a civil penalty in an amount not to exceed ten thousand dollars per day
32 for each violation. Each ((such)) violation ((shall be)) is a separate
33 and distinct offense, and in case of a continuing violation, each day's
34 continuance ((shall be)) is a separate and distinct violation.

35 (b) Any person who fails to take action as specified by an order
36 issued pursuant to this chapter ((shall be)) is liable for a civil

1 penalty of not more than ten thousand dollars for each day of continued
2 noncompliance.

3 (c) The maximum penalty amounts established in this section may be
4 increased annually to account for inflation as determined by the
5 Washington state economic and revenue forecast council.

6 (2) Penalties incurred under this section but not paid shall accrue
7 interest, beginning on the ninety-first day following the date that the
8 penalty becomes due and payable, at the highest rate allowed by RCW
9 19.52.020 on the date that the penalty becomes due and payable. If
10 violations or penalties are appealed, interest shall not begin to
11 accrue until the thirty-first day following final resolution of the
12 appeal.

13 ~~((The maximum penalty amounts established in this section may be~~
14 ~~increased annually to account for inflation as determined by the state~~
15 ~~office of the economic and revenue forecast council.))~~

16 (3) Each act of commission or omission which procures, aids, or
17 abets in the violation (~~shall be~~) is considered a violation under the
18 provisions of this section and subject to the same penalty. The
19 penalties provided in this section shall be imposed pursuant to RCW
20 43.21B.300.

21 (4) All penalties recovered under this section by the department
22 shall be paid into the state treasury and credited to the air pollution
23 control account established in RCW 70.94.015 (as recodified by this
24 act) or, if recovered by the authority, shall be paid into the treasury
25 of the authority and credited to its funds. If a prior penalty for the
26 same violation has been paid to a local authority, the penalty imposed
27 by the department under subsection (1) of this section shall be reduced
28 by the amount of the payment.

29 (5) To secure the penalty incurred under this section, the state or
30 the authority shall have a lien on any vessel used or operated in
31 violation of this chapter which shall be enforced as provided in RCW
32 60.36.050.

33 (6) Public or private entities that are recipients or potential
34 recipients of department grants, whether for air quality related
35 activities or not, may have such grants rescinded or withheld by the
36 department for failure to comply with provisions of this chapter.

37 (7) In addition to other penalties provided by this chapter,
38 persons knowingly under-reporting emissions or other information used

1 to set fees, or persons required to pay emission or permit fees who are
2 more than ninety days late with such payments may be subject to a
3 penalty equal to three times the amount of the original fee owed.

4 (8) By January 1, 1992, the department shall develop rules for
5 excusing excess emissions from enforcement action if ~~((such))~~ the
6 excess emissions are unavoidable. The rules shall specify the criteria
7 and procedures for the department and ~~((local-air))~~ authorities to
8 determine whether a period of excess emissions is excusable in
9 accordance with the state implementation plan.

10 **Sec. 162.** RCW 70.94.435 and 1967 c 238 s 62 are each amended to
11 read as follows:

12 As an additional means of enforcing this chapter, the governing
13 body or board may accept an assurance of discontinuance of any act or
14 practice deemed in violation of this chapter or of any ordinance,
15 resolution, rule, or regulation adopted pursuant ~~((hereto))~~ to this
16 chapter, from any person engaging in, or who has engaged in, such act
17 or practice. Any ~~((such))~~ assurance shall specify a time limit during
18 which such a discontinuance is to be accomplished. Failure to perform
19 the terms of any ~~((such))~~ assurance shall constitute prima facie proof
20 of a violation of this chapter or the ordinances, resolutions, rules,
21 or regulations, or order ~~((issued pursuant thereto))~~, which make the
22 alleged act or practice unlawful for the purpose of securing any
23 injunction or other relief from the superior court as provided in RCW
24 70.94.425.

25 **Sec. 163.** RCW 70.94.440 and 1967 c 238 s 63 are each amended to
26 read as follows:

27 This chapter may be known and cited as the "Washington clean air
28 act"~~((or))~~ or the "state clean air act."

29 **Sec. 164.** RCW 70.94.450 and 1987 c 405 s 1 are each amended to
30 read as follows:

31 In the interest of the public health and welfare and in keeping
32 with the objectives of RCW 70.94.011 (as recodified by this act), the
33 legislature declares it to be the public policy of the state to
34 control, reduce, and prevent air pollution caused by wood stove
35 emissions. It is the state's policy to reduce wood stove emissions by

1 encouraging the department (~~of ecology~~) to continue efforts to
2 educate the public about the effects of wood stove emissions, other
3 heating alternatives, and the desirability of achieving better emission
4 performance and heating efficiency from wood stoves. The legislature
5 further declares that: (1) The purchase of certified wood stoves will
6 not solve the problem of pollution caused by wood stove emissions; and
7 (2) the reduction of air pollution caused by wood stove emissions will
8 only occur when wood stove users adopt proper methods of wood burning.

9 **Sec. 165.** RCW 70.94.455 and 1991 c 199 s 503 are each amended to
10 read as follows:

11 (~~After January 1, 1992,~~) (1) No used solid fuel burning device
12 shall be installed in new or existing buildings unless such device is
13 certified by either the Oregon department of environmental quality as
14 phase II or the United States environmental protection agency
15 (certified) or a pellet stove either certified or exempt from
16 certification by the United States environmental protection agency.

17 (~~(1) By July 1, 1992,~~) (2) The state building code council shall
18 adopt rules requiring an adequate source of heat other than wood stoves
19 in all new and substantially remodeled, as that term is defined in RCW
20 70.94.030 (as recodified by this act), residential and commercial
21 construction. This rule (shall apply) applies:

22 (a) To areas designated by a county to be an urban growth area
23 under chapter 36.70A RCW; and

24 (b) To areas designated by the environmental protection agency as
25 being in nonattainment for particulate matter.

26 (~~(2) For purposes of this section, "substantially remodeled" means~~
27 ~~any alteration or restoration of a building exceeding sixty percent of~~
28 ~~the appraised value of such building within a twelve month period.))~~

29 **Sec. 166.** RCW 70.94.457 and 1995 c 205 s 3 are each amended to
30 read as follows:

31 (~~The department of ecology shall establish by rule under chapter~~
32 ~~34.05 RCW:~~

33 ~~(1) Statewide emission performance standards for new solid fuel~~
34 ~~burning devices. Notwithstanding any other provision of this chapter~~
35 ~~which allows an authority to adopt more stringent emission standards,~~

1 ~~no authority shall adopt any emission standard for new solid fuel~~
2 ~~burning devices other than the statewide standard adopted by the~~
3 ~~department under this section.~~

4 ~~(a) After January 1, 1995,))~~ (1) No solid fuel burning device shall
5 be offered for sale in this state to residents of this state that does
6 not meet the following particulate air contaminant emission standards
7 under the test methodology of the United States environmental
8 protection agency in effect on January 1, 1991, or an equivalent
9 standard under any test methodology adopted by the United States
10 environmental protection agency subsequent to ~~((such date))~~ January 1,
11 1991:

12 ~~((+i))~~ (a) Two and one-half grams per hour for catalytic wood
13 stoves; and

14 ~~((+ii))~~ (b) Four and one-half grams per hour for all other solid
15 fuel burning devices.

16 (2) For the purposes of this ~~((subsection))~~ section, "equivalent"
17 ~~((shall))~~ means the emissions limits specified in this ~~((subsection))~~
18 section multiplied by a statistically reliable conversion factor
19 determined by the department that compares the difference between the
20 emission test methodology established by the United States
21 environmental protection agency prior to May 15, 1991, with the test
22 methodology adopted subsequently by the agency. ~~((Subsection (a) of~~
23 ~~this subsection does not apply to fireplaces.~~

24 ~~(b) After January 1, 1997,))~~ (3)(a) No fireplace, except masonry
25 fireplaces, shall be offered for sale unless ~~((such))~~ the fireplace
26 meets the 1990 United States environmental protection agency standards
27 for wood stoves or an equivalent standard that may be established by
28 the state building code council by rule. ~~((Prior to January 1, 1997,))~~

29 (b) The state building code council shall establish by rule a
30 methodology for the testing of factory-built fireplaces. The
31 methodology shall be designed to achieve a particulate air emission
32 standard equivalent to the 1990 United States environmental protection
33 agency standard for wood stoves. ~~((In developing the rules, the~~
34 ~~council shall include on the technical advisory committee at least one~~
35 ~~representative from the masonry fireplace builders and at least one~~
36 ~~representative of the factory built fireplace manufacturers.~~

37 ~~(c) Prior to January 1, 1997,))~~ (c) The state building code council
38 shall establish by rule design standards for the construction of new

1 masonry fireplaces in Washington (~~state. In developing the rules, the~~
2 ~~council shall include on the technical advisory committee at least one~~
3 ~~representative from the masonry fireplace builders and at least one~~
4 ~~representative of the factory built fireplace manufacturers)). It~~
5 shall be the goal of the council to develop design standards that
6 generally achieve reductions in particulate air contaminant emissions
7 commensurate with the reductions being achieved by factory-built
8 fireplaces at the time the standard is established.

9 ~~((d) Actions of the department and local air pollution control~~
10 ~~authorities under this section shall preempt actions of other state~~
11 ~~agencies and local governments for the purposes of controlling air~~
12 ~~pollution from solid fuel burning devices, except where authorized by~~
13 ~~chapter 199, Laws of 1991.~~

14 ~~(e) Subsection (1)(a) of this section shall not apply to~~
15 ~~fireplaces.~~

16 ~~(f) Notwithstanding (a) of this subsection, the department is~~
17 ~~authorized to adopt, by rule, emission standards adopted by the United~~
18 ~~States environmental protection agency for new wood stoves sold at~~
19 ~~retail. For solid fuel burning devices for which the United States~~
20 ~~environmental protection agency has not established emission standards,~~
21 ~~the department may exempt or establish, by rule, statewide standards~~
22 ~~including emission levels and test procedures for such devices and such~~
23 ~~emission levels and test procedures shall be equivalent to emission~~
24 ~~levels per pound per hour burned for other new wood stoves and~~
25 ~~fireplaces regulated under this subsection.~~

26 ~~(2) A program to:~~

27 ~~(a) Determine whether a new solid fuel burning device complies with~~
28 ~~the statewide emission performance standards established in subsection~~
29 ~~(1) of this section; and~~

30 ~~(b) Approve the sale of devices that comply with the statewide~~
31 ~~emission performance standards.))~~

32 **Sec. 167.** RCW 70.94.460 and 1995 c 205 s 4 are each amended to
33 read as follows:

34 ~~((After July 1, 1988,)) (1) No person shall sell, offer to sell, or~~
35 ~~knowingly advertise to sell a new wood stove in this state to a~~
36 ~~resident of this state unless the wood stove has been approved by the~~

1 department under the program established under ((RCW 70.94.457))
2 section 317 of this act.

3 (2) Any person found in violation of this section is subject to the
4 penalties and enforcement actions provided under this chapter.

5 (3) Nothing in this section applies to a radio station, television
6 station, publisher, printer, or distributor of a newspaper, magazine,
7 billboard, or other advertising medium that accepts advertising in good
8 faith and without knowledge of its violation of this chapter.

9 **Sec. 168.** RCW 70.94.470 and 1991 c 199 s 502 are each amended to
10 read as follows:

11 (1) The department shall establish, by rule under chapter 34.05
12 RCW((~~7~~)):

13 (a) A statewide opacity level of twenty percent for residential
14 solid fuel burning devices for the purpose of enforcement on a
15 complaint basis; and

16 (b) A statewide opacity of ten percent for purposes of public
17 education.

18 (2) Notwithstanding any other provision of this chapter which may
19 allow an authority to adopt a more stringent opacity level, no
20 authority shall adopt or enforce an opacity level for solid fuel
21 burning devices other than established in this section.

22 (3) Actions of the department and ((~~local air pollution control~~))
23 authorities under this section shall preempt actions of other state
24 agencies and local governments for the purposes of controlling air
25 pollution from solid fuel burning devices, except where authorized by
26 chapter 199, Laws of 1991.

27 **Sec. 169.** RCW 70.94.473 and 2005 c 197 s 1 are each amended to
28 read as follows:

29 (1) Any person in a residence or commercial establishment which has
30 an adequate source of heat without burning wood shall:

31 (a) Not burn wood in any solid fuel burning device whenever the
32 department has determined under RCW 70.94.715 (as recodified by this
33 act) that any air pollution episode exists in that area;

34 (b) Not burn wood in any solid fuel burning device in the
35 geographical area and for the period of time that a first stage of

1 impaired air quality has been determined by the department or any
2 authority for that area under section 316 of this act, except ((those
3 which)) for:

4 (i) Solid fuel burning devices that are either certified by the
5 Oregon department of environmental quality as phase II or the United
6 States environmental protection agency ((certified or));

7 (ii) Solid fuel burning devices that are certified by the
8 department under RCW 70.94.457(1) (as recodified by this act); or ((a))

9 (iii) Pellet stoves either certified or issued an exemption by the
10 United States environmental protection agency in accordance with Title
11 40, Part 60 of the code of federal regulations((, in the geographical
12 area and for the period of time that a first stage of impaired air
13 quality has been determined, by the department or any authority, for
14 that area)). ((A first stage of impaired air quality is reached when:

15 (i) Fine particulates are at an ambient level of thirty five
16 micrograms per cubic meter measured on a twenty four hour average; and

17 (ii) Forecasted meteorological conditions are not expected to allow
18 levels of fine particulates to decline below thirty five micrograms per
19 cubic meter for a period of forty eight hours or more from the time
20 that the fine particulates are measured at the trigger level; and

21 (e)) (2) Any person in a residence or commercial establishment
22 that has an adequate source of heat without burning wood may not burn
23 wood in any solid fuel burning device in a geographical area and for
24 the period of time that a second stage of impaired air quality has been
25 determined by the department or any authority((,)) for that area under
26 section 316 of this act. ((A second stage of impaired air quality is
27 reached when:

28 (i) A first stage of impaired air quality has been in force and not
29 been sufficient to reduce the increasing fine particle [particulate]
30 pollution trend;

31 (ii) Fine particulates are at an ambient level of sixty micrograms
32 per cubic meter measured on a twenty four hour average; and

33 (iii) Forecasted meteorological conditions are not expected to
34 allow levels of fine particulates to decline below sixty micrograms per
35 cubic meter for a period of forty eight hours or more from the time
36 that the fine particulates are measured at the trigger level.

37 (2)) (3) Actions of the department and ((local air pollution
38 control)) authorities under this section shall preempt actions of other

1 state agencies and local governments for the purposes of controlling
2 air pollution from solid fuel burning devices, except where authorized
3 by chapter 199, Laws of 1991.

4 **Sec. 170.** RCW 70.94.475 and 1990 c 157 s 2 are each amended to
5 read as follows:

6 A condominium owners' association or an association formed by
7 residents of a multiple-family dwelling are not liable for violations
8 of RCW 70.94.473 (as recodified by this act) by a resident of a
9 condominium or multiple-family dwelling. The associations shall
10 cooperate with (~~local air pollution control~~) authorities to acquaint
11 residents with the provisions of this section.

12 **Sec. 171.** RCW 70.94.477 and 1995 c 205 s 2 are each amended to
13 read as follows:

14 ~~((1))~~ Unless allowed by rule, under chapter 34.05 RCW, a person
15 shall not cause or allow any of the following materials to be burned in
16 any residential solid fuel burning device:

- 17 ~~((a))~~ (1) Garbage;
- 18 ~~((b))~~ (2) Treated wood;
- 19 ~~((c))~~ (3) Plastics;
- 20 ~~((d))~~ (4) Rubber products;
- 21 ~~((e))~~ (5) Animals;
- 22 ~~((f))~~ (6) Asphaltic products;
- 23 ~~((g))~~ (7) Waste petroleum products;
- 24 ~~((h))~~ (8) Paints; or
- 25 ~~((i))~~ (9) Any substance, other than properly seasoned fuel wood,
26 which normally emits dense smoke or obnoxious odors.

27 ~~((2) For the sole purpose of a contingency measure to meet the
28 requirements of section 172(c)(9) of the federal clean air act, a local
29 authority or the department may prohibit the use of solid fuel burning
30 devices, except fireplaces as defined in RCW 70.94.453(3), wood stoves
31 meeting the standards set forth in RCW 70.94.457 or pellet stoves
32 either certified or issued an exemption by the United States
33 environmental protection agency in accordance with Title 40, Part 60 of
34 the code of federal regulations, if the United States environmental
35 protection agency, in consultation with the department and the local
36 authority makes written findings that:~~

1 ~~(a) The area has failed to make reasonable further progress or~~
2 ~~attain or maintain a national ambient air quality standard; and~~

3 ~~(b) Emissions from solid fuel burning devices from a particular~~
4 ~~geographic area are a contributing factor to such failure to make~~
5 ~~reasonable further progress or attain or maintain a national ambient~~
6 ~~air quality standard.~~

7 ~~A prohibition issued by a local authority or the department under~~
8 ~~this subsection shall not apply to a person in a residence or~~
9 ~~commercial establishment that does not have an adequate source of heat~~
10 ~~without burning wood.))~~

11 **Sec. 172.** RCW 70.94.480 and 1990 c 128 s 6 are each amended to
12 read as follows:

13 (1) The department ~~((of ecology))~~ shall establish a program to
14 educate wood stove dealers and the public about:

15 (a) The effects of wood stove emissions on health and air quality;

16 (b) Methods of achieving better efficiency and emission performance
17 from wood stoves;

18 (c) Wood stoves that have been approved by the department;

19 (d) The benefits of replacing inefficient wood stoves with stoves
20 approved under RCW 70.94.457 (as recodified by this act).

21 (2) Persons selling new wood stoves shall distribute and verbally
22 explain educational materials describing when a stove can and cannot be
23 legally used to customers purchasing new wood stoves.

24 **Sec. 173.** RCW 70.94.483 and 2003 1st sp.s. c 25 s 932 are each
25 amended to read as follows:

26 (1) The wood stove education and enforcement account is ~~((hereby))~~
27 created in the state treasury. Money placed in the account shall
28 include all money received under subsection (2) of this section and any
29 other money appropriated by the legislature. Money in the account
30 shall be spent for the purposes of the wood stove education program
31 established under RCW 70.94.480 (as recodified by this act) and for
32 enforcement of the wood stove program, and ~~((shall be))~~ is subject to
33 legislative appropriation. ~~((However, during the 2003-05 fiscal~~
34 ~~biennium, the legislature may transfer from the wood stove education~~
35 ~~and enforcement account to the air pollution control account such~~
36 ~~amounts as specified in the omnibus operating budget bill.))~~

1 (2)(a) The department (~~(of ecology)~~), with the advice of (~~(the)~~) an
2 advisory committee, shall set a flat fee of thirty dollars, on the
3 retail sale, as defined in RCW 82.04.050, of each solid fuel burning
4 device (~~(after January 1, 1992)~~). The fee shall be imposed upon the
5 consumer and shall not be subject to the retail sales tax provisions of
6 chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above
7 thirty dollars to account for inflation as determined by the state
8 office of the economic and revenue forecast council.

9 (b) The fee shall be collected by the department of revenue in
10 conjunction with the retail sales tax under chapter 82.08 RCW. If the
11 seller fails to collect the fee (~~(herein imposed)~~) or fails to remit
12 the fee to the department of revenue in the manner prescribed in
13 chapter 82.08 RCW, the seller shall be personally liable to the state
14 for the amount of the fee. The collection provisions of chapter 82.32
15 RCW shall apply.

16 (c) The department of revenue shall deposit fees collected under
17 this section in the wood stove education and enforcement account
18 created in this section.

19 **Sec. 174.** RCW 70.94.510 and 1987 c 109 s 49 are each amended to
20 read as follows:

21 (1) It is declared to be the policy of the state of Washington
22 through the department (~~(of ecology)~~) to cooperate with the federal
23 government in order to (~~(insure)~~) ensure the coordination of the
24 provisions of the federal and state clean air acts(~~(, and)~~).

25 (2) The department is authorized and directed to implement and
26 enforce the provisions of this chapter in carrying out this policy as
27 follows:

28 (~~(+1)~~) (a) To accept and administer grants from the federal
29 government for carrying out the provisions of this chapter(~~(-)~~);

30 (~~(+2)~~) (b) To take all action necessary to secure to the state the
31 benefits of the federal clean air act.

32 (3) The department may accept delegation of programs as provided
33 for in the federal clean air act. Subject to federal approval, the
34 department may, in turn, delegate the programs to the local authority
35 with jurisdiction in a given area.

36 (4) The department shall cooperate with the appropriate agencies of
37 the United States or other states or any interstate agencies or

1 international agencies with respect to the control of air pollution and
2 air contamination, or for the formulation for the submission to the
3 legislature of interstate air pollution control compacts or agreements.

4 **Sec. 175.** RCW 70.94.521 and 1997 c 250 s 1 are each amended to
5 read as follows:

6 (1) The legislature finds that automotive traffic in Washington's
7 metropolitan areas is the major source of emissions of air
8 contaminants. This air pollution causes significant harm to public
9 health, causes damage to trees, plants, structures, and materials and
10 degrades the quality of the environment.

11 (2) The legislature further finds that increasing automotive
12 traffic is also aggravating traffic congestion in Washington's
13 metropolitan areas. This traffic congestion imposes significant costs
14 on Washington's businesses, governmental agencies, and individuals in
15 terms of lost working hours and delays in the delivery of goods and
16 services. Traffic congestion worsens automobile-related air pollution,
17 increases the consumption of fuel, and degrades the habitability of
18 many of Washington's cities and suburban areas. The capital and
19 environmental costs of fully accommodating the existing and projected
20 automobile traffic on roads and highways are prohibitive. Decreasing
21 the demand for vehicle trips is significantly less costly and at least
22 as effective in reducing traffic congestion and its impacts as
23 constructing new transportation facilities such as roads and bridges,
24 to accommodate increased traffic volumes.

25 (3) The legislature ~~((also))~~ further finds that increasing
26 automotive transportation is a major factor in increasing consumption
27 of gasoline and, thereby, increasing reliance on imported sources of
28 petroleum. Moderating the growth in automotive travel is essential to
29 stabilizing and reducing dependence on imported petroleum and improving
30 the nation's energy security.

31 (4) The legislature further finds that reducing the number of
32 commute trips to work made via single-occupant cars and light trucks is
33 an effective way of reducing automobile-related air pollution, traffic
34 congestion, and energy use. Major employers have significant
35 opportunities to encourage and facilitate reducing single-occupant
36 vehicle commuting by employees. In addition, the legislature also
37 recognizes the importance of increasing individual citizens' awareness

1 of air quality, energy consumption, and traffic congestion, and the
2 contribution individual actions can make towards addressing these
3 issues.

4 (5) The intent of this chapter is to require local governments in
5 those counties experiencing the greatest automobile-related air
6 pollution and traffic congestion to develop and implement plans to
7 reduce single-occupant vehicle commute trips. ~~((Such))~~ These plans
8 shall require major employers and employers at major worksites to
9 implement programs to reduce single-occupant vehicle commuting by
10 employees at major worksites. Local governments in counties
11 experiencing significant but less severe automobile-related air
12 pollution and traffic congestion may also implement ~~((such))~~ these
13 plans. State agencies shall implement programs to reduce single-
14 occupant vehicle commuting at all major worksites throughout the state.

15 **Sec. 176.** RCW 70.94.527 and 2006 c 329 s 2 are each amended to
16 read as follows:

17 (1)(a) Each county containing an urban growth area, designated
18 pursuant to RCW 36.70A.110, and each city within an urban growth area
19 with a state highway segment exceeding the one hundred person hours of
20 delay threshold calculated by the department of transportation, as well
21 as those counties and cities located in any contiguous urban growth
22 areas, shall adopt a commute trip reduction plan and ordinance for
23 major employers in the affected urban growth area by a date specified
24 by the commute trip reduction board.

25 (b) Jurisdictions located within an urban growth area with a
26 population greater than seventy thousand that adopted a commute trip
27 reduction ordinance before the year 2000, as well as any jurisdiction
28 within contiguous urban growth areas, shall also adopt a commute trip
29 reduction plan and ordinance for major employers in the affected urban
30 growth area by a date specified by the commute trip reduction board.

31 (c) Jurisdictions containing a major employment installation in a
32 county with an affected growth area, designated pursuant to RCW
33 36.70A.110, shall adopt a commute trip reduction plan and ordinance for
34 major employers in the major employment installation by a date
35 specified by the commute trip reduction board.

36 ~~((The))~~ An ordinance adopted pursuant to this section shall
37 establish the requirements for major employers and provide an appeals

1 process by which major employers, who as a result of special
2 characteristics of their business or its locations would be unable to
3 meet the requirements of the ordinance, may obtain waiver or
4 modification of those requirements. The plan shall be designed to
5 achieve reductions in the proportion of single-occupant vehicle commute
6 trips and be consistent with the rules established by the department of
7 transportation. The county, city, or town shall submit its adopted
8 plan to the regional transportation planning organization. The county,
9 city, or town plan shall be included in the regional commute trip
10 reduction plan for regional transportation planning purposes,
11 consistent with the rules established by the department of
12 transportation in RCW 70.94.537 (as recodified by this act).

13 (2) All other counties, cities, and towns may adopt and implement
14 a commute trip reduction plan consistent with department of
15 transportation rules established under RCW 70.94.537 (as recodified by
16 this act). Tribal governments are encouraged to adopt a commute trip
17 reduction plan for their lands. State investment in voluntary commute
18 trip reduction plans shall be limited to those areas that meet criteria
19 developed by the commute trip reduction board.

20 (3) The department (~~(of ecology)~~) may, after consultation with the
21 department of transportation, as part of the state implementation plan
22 for areas that do not attain the national ambient air quality standards
23 for carbon monoxide or ozone, require municipalities other than those
24 identified in subsection (1) of this section to adopt and implement
25 commute trip reduction plans if the department determines that such
26 plans are necessary for attainment of (~~said~~) standards.

27 (4) A commute trip reduction plan shall be consistent with the
28 rules established under RCW 70.94.537 (as recodified by this act),
29 developed in consultation with local transit agencies, the applicable
30 regional transportation planning organization, major employers, and
31 other interested parties, and shall include but is not limited to:

32 (a) Goals for reductions in the proportion of single-occupant
33 vehicle commute trips consistent with the state goals established by
34 the commute trip reduction board under RCW 70.94.537 (as recodified by
35 this act) and the regional commute trip reduction plan goals
36 established in the regional commute trip reduction plan;

37 (b) A description of the requirements for major public and private
38 sector employers to implement commute trip reduction programs;

1 (c) A commute trip reduction program for employees of the county,
2 city, or town; and

3 (d) Means, consistent with rules established by the department of
4 transportation, for determining base year values and progress toward
5 meeting commute trip reduction plan goals. ~~((The plan shall be
6 developed in consultation with local transit agencies, the applicable
7 regional transportation planning organization, major employers, and
8 other interested parties.))~~

9 (5)(a) The commute trip reduction plans adopted by counties,
10 cities, and towns under this chapter shall be consistent with and may
11 be incorporated in applicable state or regional transportation plans
12 and local comprehensive plans and shall be coordinated, and consistent
13 with, the commute trip reduction plans of counties, cities, or towns
14 with which the county, city, or town has, in part, common borders or
15 related regional issues. ~~((Such))~~ Regional issues shall include
16 assuring consistency in the treatment of employers who have worksites
17 subject to the requirements of this chapter in more than one
18 jurisdiction.

19 (b) Counties, cities, and towns adopting commute trip reduction
20 plans may enter into agreements through the interlocal cooperation act
21 or by resolution or ordinance as appropriate with other jurisdictions,
22 local transit agencies, transportation management associations or other
23 private or nonprofit providers of transportation services, or regional
24 transportation planning organizations to coordinate the development and
25 implementation of such plans.

26 (c) Transit agencies shall work with counties, cities, and towns as
27 a part of their six-year transit development plan established in RCW
28 35.58.2795 to take into account the location of major employer
29 worksites when planning and prioritizing transit service changes or the
30 expansion of public transportation services, including rideshare
31 services.

32 (d) Counties, cities, or towns adopting a commute trip reduction
33 plan shall review it annually and revise it as necessary to be
34 consistent with applicable plans developed under RCW 36.70A.070.

35 (e) Regional transportation planning organizations shall review the
36 local commute trip reduction plans during the development and update of
37 the regional commute trip reduction plan.

1 (6) Each affected regional transportation planning organization
2 shall adopt a commute trip reduction plan for its region consistent
3 with the rules and deadline established by the department of
4 transportation under RCW 70.94.537 (as recodified by this act). The
5 plan shall include, but is not limited to:

6 (a) Regional program goals for commute trip reduction in urban
7 growth areas and all designated growth and transportation efficiency
8 centers;

9 (b) A description of strategies for achieving the goals;

10 (c) A sustainable financial plan describing projected revenues and
11 expenditures to meet the goals;

12 (d) A description of the way in which progress toward meeting the
13 goals will be measured; and

14 (e) Minimum criteria for growth and transportation efficiency
15 centers.

16 (i) Regional transportation planning organizations shall review
17 proposals from local jurisdictions to designate growth and
18 transportation efficiency centers and shall determine whether the
19 proposed growth and transportation efficiency center is consistent with
20 the criteria defined in the regional commute trip reduction plan.

21 (ii) Growth and transportation efficiency centers certified as
22 consistent with the minimum requirements by the regional transportation
23 planning organization shall be identified in subsequent updates of the
24 regional commute trip reduction plan. These plans shall be developed
25 in collaboration with all affected local jurisdictions, transit
26 agencies, and other interested parties within the region. The plan
27 will be reviewed and approved by (~~the~~) the commute trip reduction
28 board as established under RCW 70.94.537 (as recodified by this act).
29 Regions without an approved regional commute trip reduction plan shall
30 not be eligible for state commute trip reduction program funds.

31 (iii) The regional commute trip reduction plan shall be consistent
32 with and incorporated into transportation demand management components
33 in the regional transportation plan as required by RCW 47.80.030.

34 (7) Each regional transportation planning organization implementing
35 a regional commute trip reduction program shall, consistent with the
36 rules and deadline established by the department of transportation,
37 submit its plan as well as any related local commute trip reduction
38 plans and certified growth and transportation efficiency center

1 programs, to the commute trip reduction board established under RCW
2 70.94.537 (as recodified by this act). The commute trip reduction
3 board shall review the regional commute trip reduction plan and the
4 local commute trip reduction plans. The regional transportation
5 planning organization shall collaborate with the commute trip reduction
6 board to evaluate the consistency of local commute trip reduction plans
7 with the regional commute trip reduction plan. Local and regional
8 plans must be approved by the commute trip reduction board in order to
9 be eligible for state funding provided for the purposes of this
10 chapter.

11 (8) Each regional transportation planning organization implementing
12 a regional commute trip reduction program shall submit an annual
13 progress report to the commute trip reduction board established under
14 RCW 70.94.537 (as recodified by this act). The report shall be due at
15 the end of each state fiscal year for which the program has been
16 implemented. The report shall describe progress in attaining the
17 applicable commute trip reduction goals and shall highlight any
18 problems being encountered in achieving the goals. The information
19 shall be reported in a form established by the commute trip reduction
20 board.

21 (9) Any waivers or modifications of the requirements of a commute
22 trip reduction plan granted by a jurisdiction shall be submitted for
23 review to the commute trip reduction board established under RCW
24 70.94.537 (as recodified by this act). The commute trip reduction
25 board may not deny the granting of a waiver or modification of the
26 requirements of a commute trip reduction plan by a jurisdiction but
27 they may notify the jurisdiction of any comments or objections.

28 (10) Plans implemented under this section shall not apply to
29 commute trips for seasonal agricultural employees.

30 (11) Plans implemented under this section shall not apply to
31 construction worksites when the expected duration of the construction
32 project is less than two years.

33 (12) If an affected urban growth area has not previously
34 implemented a commute trip reduction program and the state has funded
35 solutions to state highway deficiencies to address the area's exceeding
36 the person hours of delay threshold, the affected urban growth area
37 shall be exempt from the duties of this section for a period not
38 exceeding two years.

1 **Sec. 177.** RCW 70.94.528 and 2006 c 329 s 4 are each amended to
2 read as follows:

3 (1) A county, city, or town may, as part of its commute trip
4 reduction plan implemented under this chapter, designate existing
5 activity centers listed in its comprehensive plan or new activity
6 centers as growth and transportation efficiency centers and establish
7 a transportation demand management program in the designated area.

8 (a) The transportation demand management program for the growth and
9 transportation efficiency center shall be developed in consultation
10 with local transit agencies, the applicable regional transportation
11 planning organization, major employers, and other interested parties.

12 (b) In order to be eligible for state funding provided for the
13 purposes of this section, designated growth and transportation
14 efficiency centers shall be certified by the applicable regional
15 transportation organization to: (i) Meet the minimum land use and
16 transportation criteria established in collaboration among local
17 jurisdictions, transit agencies, the regional transportation planning
18 organization, and other interested parties as part of the regional
19 commute trip reduction plan; and (ii) have established a transportation
20 demand management program that includes the elements identified in (c)
21 of this subsection and is consistent with the rules established by the
22 department of transportation in RCW 70.94.537(2) (as recodified by this
23 act). If a designated growth and transportation efficiency center is
24 denied certification, the local jurisdiction may appeal the decision to
25 the commute trip reduction board.

26 (c) Transportation demand management programs for growth and
27 transportation efficiency centers shall include, but are not limited
28 to: (i) Goals for reductions in the proportion of single-occupant
29 vehicle trips that are more aggressive than the state program goal
30 established by the commute trip reduction board; (ii) a sustainable
31 financial plan demonstrating how the program can be implemented to meet
32 state and regional trip reduction goals, indicating resources from
33 public and private sources that are reasonably expected to be made
34 available to carry out the plan, and recommending any innovative
35 financing techniques consistent with chapter 47.29 RCW, including
36 public/private partnerships, to finance needed facilities, services,
37 and programs; (iii) a proposed organizational structure for
38 implementing the program; (iv) a proposal to measure performance toward

1 the goal and implementation progress; and (v) an evaluation to which
2 local land use and transportation policies apply, including parking
3 policies and ordinances, to determine the extent that they complement
4 and support the trip reduction investments of major employers. Each of
5 these program elements shall be consistent with the rules established
6 under RCW 70.94.537 (as recodified by this act).

7 (d) A designated growth and transportation efficiency center shall
8 be consistent with the land use and transportation elements of the
9 local comprehensive plan.

10 (e) Transit agencies, local governments, and regional
11 transportation planning organizations shall identify certified growth
12 and transportation efficiency centers as priority areas for new service
13 and facility investments in their respective investment plans.

14 (2) A county, city, or town that has established a growth and
15 transportation efficiency center program shall support vehicle trip
16 reduction activities in the designated area. The implementing
17 jurisdiction shall adopt policies, ordinances, and funding strategies
18 that will lead to attainment of program goals in those areas.

19 **Sec. 178.** RCW 70.94.531 and 2006 c 329 s 5 are each amended to
20 read as follows:

21 (1) State agency worksites are subject to the same requirements
22 under this section and RCW 70.94.534 (as recodified by this act) as
23 private employers.

24 (2) Not more than ninety days after the adoption of a
25 jurisdiction's commute trip reduction plan, each major employer in that
26 jurisdiction shall perform a baseline measurement consistent with the
27 rules established by the department of transportation under RCW
28 70.94.537 (as recodified by this act). Not more than ninety days after
29 receiving the results of the baseline measurement, each major employer
30 shall develop a commute trip reduction program and shall submit a
31 description of that program to the jurisdiction for review. The
32 program shall be implemented not more than ninety days after approval
33 by the jurisdiction.

34 (3) A commute trip reduction program of a major employer shall
35 consist of, at a minimum:

36 (a) Designation of a transportation coordinator and the display of

1 the name, location, and telephone number of the coordinator in a
2 prominent manner at each affected worksite;

3 (b) Regular distribution of information to employees regarding
4 alternatives to single-occupant vehicle commuting;

5 (c) A regular review of employee commuting and reporting of
6 progress toward meeting the single-occupant vehicle reduction goals to
7 the county, city, or town consistent with the method established in the
8 commute trip reduction plan and the rules established by the department
9 of transportation under RCW 70.94.537 (as recodified by this act); and

10 (d) Implementation of a set of measures designed to achieve the
11 applicable commute trip reduction goals adopted by the jurisdiction.
12 Such measures may include but are not limited to:

13 (i) Provision of preferential parking or reduced parking charges,
14 or both, for high occupancy vehicles;

15 (ii) Instituting or increasing parking charges for single-occupant
16 vehicles;

17 (iii) Provision of commuter ride matching services to facilitate
18 employee ridesharing for commute trips;

19 (iv) Provision of subsidies for transit fares;

20 (v) Provision of vans for van pools;

21 (vi) Provision of subsidies for car pooling or van pooling;

22 (vii) Permitting the use of the employer's vehicles for car pooling
23 or van pooling;

24 (viii) Permitting flexible work schedules to facilitate employees'
25 use of transit, car pools, or van pools;

26 (ix) Cooperation with transportation providers to provide
27 additional regular or express service to the worksite;

28 (x) Construction of special loading and unloading facilities for
29 transit, car pool, and van pool users;

30 (xi) Provision of bicycle parking facilities, lockers, changing
31 areas, and showers for employees who bicycle or walk to work;

32 (xii) Provision of a program of parking incentives such as a rebate
33 for employees who do not use the parking facility;

34 (xiii) Establishment of a program to permit employees to work part
35 or full time at home or at an alternative worksite closer to their
36 homes;

37 (xiv) Establishment of a program of alternative work schedules such
38 as compressed work week schedules which reduce commuting; and

1 (xv) Implementation of other measures designed to facilitate the
2 use of high-occupancy vehicles such as on-site day care facilities and
3 emergency taxi services.

4 (4) Employers or owners of worksites may form or utilize existing
5 transportation management associations or other transportation-related
6 associations authorized by RCW 35.87A.010 to assist members in
7 developing and implementing commute trip reduction programs.

8 (5) Employers shall make a good faith effort towards achievement of
9 the goals identified in RCW 70.94.527(4)(d) (as recodified by this
10 act).

11 **Sec. 179.** RCW 70.94.534 and 2006 c 329 s 6 are each amended to
12 read as follows:

13 (1) Each jurisdiction implementing a commute trip reduction plan
14 under this chapter or as part of a plan or ordinance developed under
15 RCW 36.70A.070 shall review each employer's initial commute trip
16 reduction program to determine if the program is likely to meet the
17 applicable commute trip reduction goals. The employer shall be
18 notified by the jurisdiction of its findings. If the jurisdiction
19 finds that the program is not likely to meet the applicable commute
20 trip reduction goals, the jurisdiction will work with the employer to
21 modify the program as necessary. The jurisdiction shall complete
22 review of each employer's initial commute trip reduction program within
23 ninety days of receipt.

24 (2) Employers implementing commute trip reduction programs are
25 expected to undertake good faith efforts to achieve the goals outlined
26 in RCW 70.94.527(4) (as recodified by this act). Employers are
27 considered to be making a good faith effort if the following conditions
28 have been met:

29 (a) The employer has met the minimum requirements identified in RCW
30 70.94.531 (as recodified by this act);

31 (b) The employer has notified the jurisdiction of its intent to
32 substantially change or modify its program and has either received the
33 approval of the jurisdiction to do so or has acknowledged that its
34 program may not be approved without additional modifications;

35 (c) The employer has provided adequate information and
36 documentation of implementation when requested by the jurisdiction; and

1 (d) The employer is working collaboratively with its jurisdiction
2 to continue its existing program or is developing and implementing
3 program modifications likely to result in improvements to the program
4 over an agreed upon length of time.

5 (3) Each jurisdiction shall review at least once every two years
6 each employer's progress and good faith efforts toward meeting the
7 applicable commute trip reduction goals. If an employer makes a good
8 faith effort, as defined in this section, but is not likely to meet the
9 applicable commute trip reduction goals, the jurisdiction shall work
10 collaboratively with the employer to make modifications to the commute
11 trip reduction program. Failure of an employer to reach the applicable
12 commute trip reduction goals is not a violation of this chapter.

13 (4) If an employer fails to make a good faith effort and fails to
14 meet the applicable commute trip reduction goals, the jurisdiction
15 shall work collaboratively with the employer to propose modifications
16 to the program and shall direct the employer to revise its program
17 within thirty days to incorporate those modifications or modifications
18 which the jurisdiction determines to be equivalent.

19 (5) Each jurisdiction implementing a commute trip reduction plan
20 pursuant to this chapter may impose civil penalties, in the manner
21 provided in chapter 7.80 RCW, for failure by an employer to implement
22 a commute trip reduction program or to modify its commute trip
23 reduction program as required in subsection (4) of this section. No
24 major employer may be held liable for civil penalties for failure to
25 reach the applicable commute trip reduction goals. No major employer
26 shall be liable for civil penalties under this chapter if failure to
27 achieve a commute trip reduction program goal was the result of an
28 inability to reach agreement with a certified collective bargaining
29 agent under applicable laws where the issue was raised by the employer
30 and pursued in good faith.

31 (6) Jurisdictions shall notify major employers of the procedures
32 for applying for goal modification or exemption from the commute trip
33 reduction requirements based on the guidelines established by the
34 commute trip reduction board authorized under RCW 70.94.537 (as
35 recodified by this act).

36 **Sec. 180.** RCW 70.94.537 and 2006 c 329 s 7 are each amended to
37 read as follows:

1 (1) A sixteen member state commute trip reduction board is
2 established, with membership arranged as follows:

3 (a) The secretary of the department of transportation or the
4 secretary's designee who shall serve as chair;

5 (b) One representative from the office of the governor or the
6 governor's designee;

7 (c) The director or the director's designee of one of the following
8 agencies, to be determined by the governor:

9 (i) Department of general administration;

10 (ii) Department of ecology;

11 (iii) Department of community, trade, and economic development;

12 (d) Three representatives from cities and towns or counties
13 appointed by the governor for staggered four-year terms from a list
14 recommended by ~~((the))~~ a statewide association of ~~((Washington))~~ cities
15 or ~~((the Washington state association of))~~ counties;

16 (e) Two representatives from transit agencies appointed by the
17 governor for staggered four-year terms from a list recommended by the
18 ~~((Washington state))~~ statewide transit association;

19 (f) Two representatives from participating regional transportation
20 planning organizations appointed by the governor for staggered four-
21 year terms;

22 (g) Four representatives of employers at or owners of major
23 worksites in Washington, or transportation management associations,
24 business improvement areas, or other transportation organizations
25 representing employers, appointed by the governor for staggered four-
26 year terms; and

27 (h) Two citizens appointed by the governor for staggered four-year
28 terms.

29 (2) Members of the commute trip reduction board shall serve without
30 compensation but shall be reimbursed for travel expenses as provided in
31 RCW 43.03.050 and 43.03.060. Members appointed by the governor shall
32 be compensated in accordance with RCW 43.03.220. The board has all
33 powers necessary to carry out its duties as prescribed by this chapter.

34 ~~((+2))~~ (3) By March 1, 2007, the department of transportation
35 shall establish rules for commute trip reduction plans and
36 implementation procedures. The commute trip reduction board shall
37 advise the department on the content of the rules. The rules are
38 intended to ensure consistency in commute trip reduction plans and

1 goals among jurisdictions while fairly taking into account differences
2 in employment and housing density, employer size, existing and
3 anticipated levels of transit service, special employer circumstances,
4 and other factors the board determines to be relevant. The rules shall
5 include:

6 (a) Guidance criteria for growth and transportation efficiency
7 centers;

8 (b) Data measurement methods and procedures for determining the
9 efficacy of commute trip reduction activities and progress toward
10 meeting commute trip reduction plan goals;

11 (c) Model commute trip reduction ordinances;

12 (d) Methods for assuring consistency in the treatment of employers
13 who have worksites subject to the requirements of this chapter in more
14 than one jurisdiction;

15 (e) An appeals process by which major employers, who as a result of
16 special characteristics of their business or its locations would be
17 unable to meet the requirements of a commute trip reduction plan, may
18 obtain a waiver or modification of those requirements and criteria for
19 determining eligibility for waiver or modification;

20 (f) Establishment of a process for determining the state's affected
21 areas, including criteria and procedures for regional transportation
22 planning organizations in consultation with local jurisdictions to
23 propose to add or exempt urban growth areas;

24 (g) Listing of the affected areas of the program to be done every
25 four years as identified in subsection (~~(+5+)~~) (6) of this section;

26 (h) Establishment of a criteria and application process to
27 determine whether jurisdictions that voluntarily implement commute trip
28 reduction are eligible for state funding;

29 (i) Guidelines and deadlines for creating and updating local
30 commute trip reduction plans, including guidance to ensure consistency
31 between the local commute trip reduction plan and the transportation
32 demand management strategies identified in the transportation element
33 in the local comprehensive plan, as required by RCW 36.70A.070;

34 (j) Guidelines for creating and updating regional commute trip
35 reduction plans, including guidance to ensure the regional commute trip
36 reduction plan is consistent with and incorporated into transportation
37 demand management components in the regional transportation plan;

1 (k) Methods for regional transportation planning organizations to
2 evaluate and certify that designated growth and transportation
3 efficiency center programs meet the minimum requirements and are
4 eligible for funding;

5 (l) Guidelines for creating and updating growth and transportation
6 efficiency center programs; and

7 (m) Establishment of statewide program goals. The goals shall be
8 designed to achieve substantial reductions in the proportion of
9 single-occupant vehicle commute trips and the commute trip vehicle
10 miles traveled per employee, at a level that is projected to improve
11 the mobility of people and goods by increasing the efficiency of the
12 state highway system.

13 ~~((3))~~ (4)(a) The board shall create a state commute trip
14 reduction plan that shall be updated every four years as discussed in
15 subsection ~~((5))~~ (6) of this section.

16 (b) The state commute trip reduction plan shall include, but is not
17 limited to:

18 ~~((a))~~ (i) Statewide commute trip reduction program goals that are
19 designed to substantially improve the mobility of people and goods;

20 ~~((b))~~ (ii) Identification of strategies at the state and regional
21 levels to achieve the goals and recommendations for how transportation
22 demand management strategies can be targeted most effectively to
23 support commute trip reduction program goals;

24 ~~((c))~~ (iii) Performance measures for assessing the
25 cost-effectiveness of commute trip reduction strategies and the
26 benefits for the state transportation system; and

27 ~~((d))~~ (iv) A sustainable financial plan.

28 (c) The board shall review and approve regional commute trip
29 reduction plans, and work collaboratively with regional transportation
30 planning organizations in the establishment of the state commute trip
31 reduction plan.

32 ~~((4))~~ (5) The board shall work with affected jurisdictions, major
33 employers, and other parties to develop and implement a public
34 awareness campaign designed to increase the effectiveness of local
35 commute trip reduction programs and support achievement of the
36 objectives identified in this chapter.

37 ~~((5))~~ (6) The board shall evaluate and update the commute trip
38 reduction program plan and recommend changes to the rules every four

1 years, with the first assessment report due July 1, 2011, to ensure
2 that the latest data methodology used by the department of
3 transportation is incorporated into the program and to determine which
4 areas of the state should be affected by the program. The board shall
5 review the definition of a major employer provided in RCW 70.94.030 (as
6 recodified by this act) no later than December 1, 2009. The board
7 shall regularly identify urban growth areas that are projected to be
8 affected by chapter 329, Laws of 2006 in the next four-year period and
9 may provide advance planning support to the potentially affected
10 jurisdictions.

11 ~~((+6))~~ (7) The board shall review progress toward implementing
12 commute trip reduction plans and programs and the costs and benefits of
13 commute trip reduction plans and programs and shall make
14 recommendations to the legislature and the governor by December 1,
15 2009, and every two years thereafter. In assessing the costs and
16 benefits, the board shall consider the costs of not having implemented
17 commute trip reduction plans and programs ~~((with the assistance of the~~
18 ~~transportation performance audit board authorized under chapter 44.75~~
19 ~~RCW))~~. The board shall examine other transportation demand management
20 programs nationally and incorporate its findings into its
21 recommendations to the legislature. The recommendations shall address
22 the need for continuation, modification, or termination or any or all
23 requirements of this chapter.

24 ~~((+7))~~ (8) The board shall invite personnel with appropriate
25 expertise from state, regional, and local government, private, public,
26 and nonprofit providers of transportation services, and employers or
27 owners of major worksites in Washington to act as a technical advisory
28 group. The technical advisory group shall advise the board on the
29 implementation of local and regional commute trip reduction plans and
30 programs, program evaluation, program funding allocations, and state
31 rules and guidelines.

32 **Sec. 181.** RCW 70.94.541 and 2006 c 329 s 8 are each amended to
33 read as follows:

34 (1) The department of transportation shall provide staff support to
35 the commute trip reduction board in carrying out the requirements of
36 RCW 70.94.537 (as recodified by this act).

1 (2) The department of transportation shall provide technical
2 assistance to regional transportation planning organizations, counties,
3 cities, and towns, the department of general administration, other
4 state agencies, and other employers in developing and implementing
5 commute trip reduction plans and programs. The technical assistance
6 shall include: (a) Guidance in single measurement methodology and
7 practice to be used in determining progress in attaining plan goals;
8 (b) developing model plans and programs appropriate to different
9 situations; and (c) providing consistent training and informational
10 materials for the implementation of commute trip reduction programs.
11 Model plans and programs, training, and informational materials shall
12 be developed in cooperation with representatives of regional
13 transportation planning organizations, local governments, transit
14 agencies, and employers.

15 (3) In carrying out this section the department of transportation
16 may contract with statewide associations representing cities, towns,
17 and counties to assist cities, towns, and counties in implementing
18 commute trip reduction plans and programs.

19 **Sec. 182.** RCW 70.94.544 and 2006 c 329 s 9 are each amended to
20 read as follows:

21 A portion of the funds made available for the purposes of this
22 chapter shall be used to fund the commute trip reduction board in
23 carrying out the responsibilities of RCW 70.94.537 (as recodified by
24 this act), and the department of transportation, including the
25 activities authorized under RCW 70.94.541(2) (as recodified by this
26 act), and to assist regional transportation planning organizations,
27 counties, cities, and towns implementing commute trip reduction plans.
28 The commute trip reduction board created in RCW 70.94.537 (as
29 recodified by this act) shall determine the allocation of program funds
30 made available for the purposes of this chapter to regional
31 transportation planning organizations, counties, cities, and towns
32 implementing commute trip reduction plans. If state funds for the
33 purposes of this chapter are provided to those jurisdictions
34 implementing voluntary commute trip reduction plans, the funds shall be
35 disbursed based on criteria established by the commute trip reduction
36 board under RCW 70.94.537 (as recodified by this act).

1 **Sec. 183.** RCW 70.94.547 and 2006 c 329 s 10 are each amended to
2 read as follows:

3 The legislature (~~hereby~~) recognizes the state's crucial
4 leadership role in establishing and implementing effective commute trip
5 reduction programs. Therefore, it is the policy of the state that the
6 department of general administration and other state agencies,
7 including institutions of higher education, shall aggressively develop
8 substantive programs to reduce commute trips by state employees.
9 Implementation of these programs will reduce energy consumption,
10 congestion in urban areas, and air and water pollution associated with
11 automobile travel.

12 **Sec. 184.** RCW 70.94.551 and 2006 c 329 s 11 are each amended to
13 read as follows:

14 (1)(a) The director of the department of general administration may
15 coordinate an interagency board for the purpose of developing policies
16 or guidelines that promote consistency among state agency commute trip
17 reduction programs required by RCW 70.94.527 and 70.94.531 (as
18 recodified by this act).

19 (b) The interagency board shall include representatives of the
20 department, departments of transportation(~~(, ecology,)~~) and community,
21 trade, and economic development, and (~~such~~) other departments and
22 interested groups as the director of the department of general
23 administration determines to be necessary.

24 (c) Policies and guidelines (~~shall be~~) for the interagency board
25 are applicable to all state agencies including but not limited to
26 policies and guidelines regarding parking and parking charges, employee
27 incentives for commuting by other than single-occupant automobiles,
28 flexible and alternative work schedules, alternative worksites, and the
29 use of state-owned vehicles for car and van pools and guaranteed rides
30 home. The policies and guidelines shall also consider the costs and
31 benefits to state agencies of achieving commute trip reductions and
32 consider mechanisms for funding state agency commute trip reduction
33 programs.

34 (2) State agencies sharing a common location in affected urban
35 growth areas where the total number of state employees is one hundred
36 or more shall, with assistance from the department of general

1 administration, develop and implement a joint commute trip reduction
2 program. The worksite shall be treated as specified in RCW 70.94.531
3 and 70.94.534 (as recodified by this act).

4 (3) The department of general administration shall review the
5 initial commute trip reduction program of each state agency subject to
6 the commute trip reduction plan for state agencies to determine if the
7 program is likely to meet the applicable commute trip reduction goals
8 and notify the agency of any deficiencies. If it is found that the
9 program is not likely to meet the applicable commute trip reduction
10 goals, the department of general administration will work with the
11 agency to modify the program as necessary.

12 (4) Each state agency implementing a commute trip reduction plan
13 shall report at least once per year to its agency director on the
14 performance of the agency's commute trip reduction program as part of
15 the agency's quality management, accountability, and performance system
16 as defined by RCW 43.17.385. The reports shall assess the performance
17 of the program, progress toward state goals established under RCW
18 70.94.537 (as recodified by this act), and recommendations for
19 improving the program.

20 (5) The department of general administration shall review the
21 agency performance reports defined in subsection (4) of this section
22 and submit a biennial report for state agencies subject to this chapter
23 to the governor and incorporate the report in the commute trip
24 reduction board report to the legislature as directed in RCW
25 70.94.537(6) (as recodified by this act). The report shall include,
26 but is not limited to, an evaluation of the most recent measurement
27 results, progress toward state goals established under RCW 70.94.537
28 (as recodified by this act), and recommendations for improving the
29 performance of state agency commute trip reduction programs. The
30 information shall be reported in a form established by the commute trip
31 reduction board.

32 **Sec. 185.** RCW 70.94.600 and 1979 ex.s. c 30 s 14 are each amended
33 to read as follows:

34 All authorities in the state shall submit quarterly reports to the
35 department (~~(of ecology)~~) detailing the current status of air pollution
36 control regulations in the authority and, by county, the progress made

1 toward bringing all sources in the authority into compliance with
2 authority standards.

3 **Sec. 186.** RCW 70.94.610 and 1991 c 319 s 311 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, a person
6 may not burn used oil as fuel in a land-based facility or in state
7 waters unless the used oil meets the following standards:

8 (a) Cadmium: 2 ppm maximum

9 (b) Chromium: 10 ppm maximum

10 (c) Lead: 100 ppm maximum

11 (d) Arsenic: 5 ppm maximum

12 (e) Total halogens: 1000 ppm maximum

13 (f) Polychlorinated biphenyls: 2 ppm maximum

14 (g) Ash: .1 percent maximum

15 (h) Sulfur: 1.0 percent maximum

16 (i) Flash point: 100 degrees Fahrenheit minimum.

17 (2) This section shall not apply to: (a) Used oil burned in space
18 heaters if the space heater has a maximum heat output of not greater
19 than 0.5 million btu's per hour or used oil burned in facilities
20 permitted by the department or (~~a local air pollution control~~) an
21 authority; or (b) ocean-going vessels.

22 (3) This section shall not apply to persons in the business of
23 collecting used oil from residences when under authorization by a city,
24 county, or the utilities and transportation commission.

25 **Sec. 187.** RCW 70.94.620 and 1994 c 232 s 18 are each amended to
26 read as follows:

27 If a metals mining and milling operation is issued a permit
28 pursuant to this chapter, then it will be subject to special inspection
29 requirements. The department (~~of ecology~~) shall inspect these mining
30 operations at least quarterly in order to ensure that the operation is
31 in compliance with the conditions of any permit issued to it pursuant
32 to this chapter. The department shall conduct additional inspections
33 during the construction phase of the mining and milling operation in
34 order to ensure compliance with this chapter.

1 **Sec. 188.** RCW 70.94.630 and 1997 c 368 s 10 are each amended to
2 read as follows:

3 (1) The sulfur dioxide abatement account is created. All receipts
4 from subsection (2) of this section must be deposited in the account.
5 Expenditures in the account may be used only for the purposes of
6 subsection (3) of this section. Only the director of revenue or the
7 director's designee may authorize expenditures from the account. The
8 account is subject to allotment procedures under chapter 43.88 RCW, but
9 an appropriation is not required for expenditures.

10 (2)(a) Upon application by the owners of a generation facility, the
11 department (~~(of ecology)~~) shall make a determination of whether the
12 owners are making initial progress in the construction of air pollution
13 control facilities. Evidence of initial progress may include, but is
14 not limited to(~~(τ)~~):

15 (i) Engineering work(~~(τ)~~);

16 (ii) Agreements to proceed with construction(~~(τ)~~);

17 (iii) Contracts to purchase(~~(τ)~~); or

18 (iv) Contracts for construction of air pollution control
19 facilities. (~~However τ~~)

20 (b) If the owners' progress is impeded due to actions caused by
21 regulatory delays or by defensive litigation, certification of initial
22 progress may not be withheld.

23 (c) Upon certification of initial progress by the department (~~(of~~
24 ~~ecology and after January 1, 1999)~~), an amount equal to all sales and
25 use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were
26 obtained from the sales of coal to, or use of coal by, a business for
27 use at a generation facility shall be deposited in the account under
28 RCW 82.32.392.

29 (d)(i) By June 1st of each year during construction of the air
30 pollution control facilities and during the verification period
31 required in RCW 82.08.811(2)(d) and 82.12.811(2)(d), the department
32 (~~(of ecology)~~) shall make an assessment regarding the continued
33 progress of the pollution control facilities.

34 (ii) Evidence of continued progress may include, but is not limited
35 to, acquisition of construction material, visible progress on
36 construction, or other actions that have occurred that would verify
37 progress under general construction time tables.

1 (iii) The treasurer shall continue to deposit an amount equal to
2 the tax revenues to the sulfur dioxide abatement account unless the
3 department (~~(of ecology)~~) fails to certify that reasonable progress has
4 been made during the previous year.

5 (iv) The operator of a generation facility shall file documentation
6 accompanying its combined monthly excise tax return that identifies all
7 sales and use tax payments made by the owners for coal used at the
8 generation facility during the reporting period.

9 (3) When a generation facility emits no more than ten thousand tons
10 of sulfur dioxide during a consecutive twelve-month period, the
11 department (~~(of ecology)~~) shall certify this to the department of
12 revenue and the state treasurer by the end of the following month.
13 Within thirty days of receipt of certification under this subsection,
14 the department of revenue shall approve the tax exemption application
15 and the director or the director's designee shall authorize the release
16 of any moneys in the sulfur dioxide abatement account to the operator
17 of the generation facility. The operator shall disburse the payment
18 among the owners of record according to the terms of their contractual
19 agreement.

20 (4)(a) If the department of revenue has not approved a tax
21 exemption under RCW 82.08.811 and 82.12.811 by March 1, 2005, any
22 moneys in the sulfur dioxide abatement account shall be transferred to
23 the general fund and the appropriate local governments in accordance
24 with chapter 82.14 RCW, and the sulfur dioxide abatement account shall
25 cease to exist after March 1, 2005.

26 (b) The dates in (a) of this subsection must be extended if the
27 owners of a generation facility have experienced difficulties in
28 complying with this section, or RCW 82.08.811, (~~(82.08.812)~~)
29 82.12.811, (~~(82.12.812)~~) and 82.32.392, due to actions caused by
30 regulatory delays or by defensive litigation.

31 (5) For the purposes of this section:

32 (a) "Air pollution control facilities" means any treatment works,
33 control devices and disposal systems, machinery, equipment, structure,
34 property, property improvements and accessories, that are installed or
35 acquired for the primary purpose of reducing, controlling, or disposing
36 of industrial waste that, if released to the outdoor atmosphere, could
37 cause air pollution, or that are required to meet regulatory

1 requirements applicable to their construction, installation, or
2 operation; and

3 (b) "Generation facility" means a coal-fired thermal electric
4 generation facility placed in operation after December 3, 1969, and
5 before July 1, 1975.

6 **Sec. 189.** RCW 70.94.640 and 2005 c 511 s 4 are each amended to
7 read as follows:

8 (1) Odors or fugitive dust caused by agricultural activity
9 consistent with good agricultural practices on agricultural land are
10 exempt from the requirements of this chapter unless they have a
11 substantial adverse effect on public health. In determining whether
12 agricultural activity is consistent with good agricultural practices,
13 the department (~~of ecology~~) or board of any authority shall consult
14 with a recognized third-party expert in the activity prior to issuing
15 any notice of violation.

16 (2) Any notice of violation issued under this chapter pertaining to
17 odors or fugitive dust caused by agricultural activity shall include a
18 statement as to why the activity is inconsistent with good agricultural
19 practices, or a statement that the odors or fugitive dust have
20 substantial adverse effect on public health.

21 (3) In any appeal to the pollution control hearings board or any
22 judicial appeal, the agency issuing a final order pertaining to odors
23 or fugitive dust caused by agricultural activity shall prove the
24 activity is inconsistent with good agricultural practices or that the
25 odors or fugitive dust have a substantial adverse impact on public
26 health.

27 (4) If a person engaged in agricultural activity on a contiguous
28 piece of agricultural land sells or has sold a portion of that land for
29 residential purposes, the exemption of this section shall not apply.

30 (5) (~~As used in this section:~~
31 ~~(a) "Agricultural activity" means the growing, raising, or~~
32 ~~production of horticultural or viticultural crops, berries, poultry,~~
33 ~~livestock, shellfish, grain, mint, hay, and dairy products.~~
34 ~~(b) "Good agricultural practices" means economically feasible~~
35 ~~practices which are customary among or appropriate to farms and ranches~~
36 ~~of a similar nature in the local area.~~

1 ~~(c) "Agricultural land" means at least five acres of land devoted~~
2 ~~primarily to the commercial production of livestock, agricultural~~
3 ~~commodities, or cultured aquatic products.~~

4 ~~(d) "Fugitive dust" means a particulate emission made airborne by~~
5 ~~human activity, forces of wind, or both, and which do not pass through~~
6 ~~a stack, chimney, vent, or other functionally equivalent opening.~~

7 ~~(6))~~ The exemption for fugitive dust provided in subsection (1) of
8 this section does not apply to facilities subject to RCW 70.94.151 (as
9 recodified by this act) as specified in WAC 173-400-100 as of July 24,
10 2005, 70.94.152 (as recodified by this act), or 70.94.161 (as
11 recodified by this act).

12 **Sec. 190.** RCW 70.94.650 and 1998 c 43 s 1 are each amended to read
13 as follows:

14 (1) A permit from an authority, the department, or a local entity
15 delegated permitting authority under RCW 70.94.654 (as recodified by
16 this act) is required for any person who proposes to set fires in the
17 course of:

18 (a) Weed abatement;

19 (b) Instruction in methods of fire fighting, except training to
20 fight structural fires as provided in RCW 52.12.150 ~~((or))~~, training to
21 fight aircraft crash rescue fires as provided in ~~((subsection (5) of~~
22 ~~this section))~~ section 321 of this act, and ~~((except))~~ forest fire
23 training; or

24 (c) Agricultural activities~~((~~
25 ~~shall obtain a permit from an air pollution control authority, the~~
26 ~~department of ecology, or a local entity delegated permitting authority~~
27 ~~under RCW 70.94.654))~~.

28 (2) General ~~((permit))~~ criteria of statewide applicability for
29 permits required under this section shall be established by the
30 department, by rule, after consultation with the various ~~((air~~
31 ~~pollution control))~~ authorities.

32 (3) Permits ~~((shall be))~~ issued under this section must be based on
33 seasonal operations or by individual operations, or both. All permits
34 shall be conditioned to ~~((insure))~~ ensure that the public interest in
35 air, water, and land pollution and safety to life and property is fully
36 considered, and must be designed to minimize air pollution to the
37 degree practical.

1 (4) In addition to any other requirements established by the
2 department to protect air quality pursuant to other laws, applicants
3 for permits must show that the setting of fires as requested is the
4 most reasonable procedure to follow in safeguarding life or property
5 under all circumstances or is otherwise reasonably necessary to
6 successfully carry out the enterprise in which the applicant is
7 engaged, or both. ~~((All burning permits will be designed to minimize
8 air pollution insofar as practical. Nothing in this section shall
9 relieve the applicant from obtaining permits, licenses, or other
10 approvals required by any other law. An application for a permit to
11 set fires in the course of agricultural burning for controlling
12 diseases, insects, weed abatement or development of physiological
13 conditions conducive to increased crop yield, shall be acted upon
14 within seven days from the date such application is filed.))~~

15 (5)(a) The department ~~((of ecology))~~ and ~~((local air))~~ authorities
16 shall provide convenient methods for issuance and oversight of
17 agricultural burning permits. The department and ~~((local air))~~
18 authorities shall, through agreement, work with counties and cities to
19 provide convenient methods for granting permission for agricultural
20 burning, including telephone, facsimile transmission, issuance from
21 local city or county offices, or other methods. ~~((A local air))~~

22 **(b) An application for a permit to set fires in the course of**
23 **agricultural burning for controlling diseases, insects, weed abatement,**
24 **or development of physiological conditions conducive to increased crop**
25 **yield, must be acted upon within seven days from the date the**
26 **application is filed.**

27 (6) An authority administering the permit program under this
28 ~~((subsection (1)(c)))~~ section shall not limit the number of days of
29 allowable agricultural burning, but may consider the time of year,
30 meteorological conditions, and other criteria specified in rules
31 adopted by the department to implement ~~((this subsection (1)(c)))~~ the
32 permit program under this section.

33 ~~((2))~~ (7) Nothing in this section relieves the applicant from
34 obtaining permits, licenses, or other approvals required by any other
35 law.

36 (8)(a) Permit fees shall be assessed for burning under this section
37 and shall be collected by the department ~~((of ecology))~~, the

1 (~~appropriate local air~~) authority, or a local entity delegated
2 permitting authority pursuant to RCW 70.94.654 (as recodified by this
3 act) at the time the permit is issued.

4 (b) All fees collected under this section shall be deposited in the
5 air pollution control account created in RCW 70.94.015 (as recodified
6 by this act), except for that portion of the fee necessary to cover
7 local costs of administering a permit issued under this section.

8 (c) Permit fees shall be set by rule by the permitting agency at
9 the level determined by the task force created by (~~subsection (4) of~~
10 ~~this~~) section 323 of this act, but shall not exceed two dollars and
11 fifty cents per acre to be burned. After fees are established by rule,
12 any increases in such fees shall be limited to annual inflation
13 adjustments as determined by the state office of the economic and
14 revenue forecast council.

15 (~~(3) Conservation districts and the Washington State University~~
16 ~~agricultural extension program in conjunction with the department shall~~
17 ~~develop public education material for the agricultural community~~
18 ~~identifying the health and environmental effects of agricultural~~
19 ~~outdoor burning and providing technical assistance in alternatives to~~
20 ~~agricultural outdoor burning.~~

21 ~~(4) An agricultural burning practices and research task force shall~~
22 ~~be established under the direction of the department. The task force~~
23 ~~shall be composed of a representative from the department who shall~~
24 ~~serve as chair; one representative of eastern Washington local air~~
25 ~~authorities; three representatives of the agricultural community from~~
26 ~~different agricultural pursuits; one representative of the department~~
27 ~~of agriculture; two representatives from universities or colleges~~
28 ~~knowledgeable in agricultural issues; one representative of the public~~
29 ~~health or medical community; and one representative of the conservation~~
30 ~~districts. The task force shall identify best management practices for~~
31 ~~reducing air contaminant emissions from agricultural activities and~~
32 ~~provide such information to the department and local air authorities.~~
33 ~~The task force shall determine the level of fees to be assessed by the~~
34 ~~permitting agency pursuant to subsection (2) of this section, based~~
35 ~~upon the level necessary to cover the costs of administering and~~
36 ~~enforcing the permit programs, to provide funds for research into~~
37 ~~alternative methods to reduce emissions from such burning, and to the~~
38 ~~extent possible be consistent with fees charged for such burning~~

1 ~~permits in neighboring states. The fee level shall provide, to the~~
2 ~~extent possible, for lesser fees for permittees who use best management~~
3 ~~practices to minimize air contaminant emissions. The task force shall~~
4 ~~identify research needs related to minimizing emissions from~~
5 ~~agricultural burning and alternatives to such burning. Further, the~~
6 ~~task force shall make recommendations to the department on priorities~~
7 ~~for spending funds provided through this chapter for research into~~
8 ~~alternative methods to reduce emissions from agricultural burning.~~

9 ~~(5) A permit is not required under this section, or under RCW~~
10 ~~70.94.743 through 70.94.780, from an air pollution control authority,~~
11 ~~the department, or any local entity with delegated permit authority,~~
12 ~~for aircraft crash rescue fire training activities meeting the~~
13 ~~following conditions:~~

14 ~~(a) Fire fighters participating in the training fires must be~~
15 ~~limited to those who provide fire fighting support to an airport that~~
16 ~~is either certified by the federal aviation administration or operated~~
17 ~~in support of military or governmental activities;~~

18 ~~(b) The fire training may not be conducted during an air pollution~~
19 ~~episode or any stage of impaired air quality declared under RCW~~
20 ~~70.94.715 for the area where training is to be conducted;~~

21 ~~(c) The number of training fires allowed per year without a permit~~
22 ~~shall be the minimum number necessary to meet federal aviation~~
23 ~~administration or other federal safety requirements;~~

24 ~~(d) The facility shall use current technology and be operated in a~~
25 ~~manner that will minimize, to the extent possible, the air contaminants~~
26 ~~generated during operation; and~~

27 ~~(e) Prior to the commencement of the aircraft fire training, the~~
28 ~~organization conducting training shall notify both the: (i) Local fire~~
29 ~~district or fire department; and (ii) air pollution control authority,~~
30 ~~department of ecology, or local entity delegated permitting authority~~
31 ~~under RCW 70.94.654, having jurisdiction within the area where training~~
32 ~~is to be conducted.~~

33 ~~Written approval from the department or a local air pollution~~
34 ~~control authority shall be obtained prior to the initial operation of~~
35 ~~aircraft crash rescue fire training. Such approval will be granted to~~
36 ~~fire training activities meeting the conditions in this subsection.~~

37 ~~(6) Aircraft crash rescue fire training activities conducted in~~
38 ~~compliance with this subsection are not subject to the prohibition, in~~

1 ~~RCW 70.94.775(1), of outdoor fires containing petroleum products and~~
2 ~~are not considered outdoor burning under RCW 70.94.743 through~~
3 ~~70.94.780.~~

4 ~~(7) To provide for fire fighting instruction in instances not~~
5 ~~governed by subsection (6) of this section, or other actions to protect~~
6 ~~public health and safety, the department or a local air pollution~~
7 ~~control authority may issue permits that allow limited burning of~~
8 ~~prohibited materials listed in RCW 70.94.775(1).)~~

9 **Sec. 191.** RCW 70.94.651 and 1991 c 199 s 407 are each amended to
10 read as follows:

11 (1) Nothing contained in this chapter shall prohibit fires
12 necessary:

13 ~~((1))~~ (a) To promote the regeneration of rare and endangered
14 plants found within natural area preserves as identified under chapter
15 79.70 RCW; and

16 ~~((2))~~ (b) For Indian ceremonies or for the sending of smoke
17 signals if part of a religious ritual.

18 (2) Permits issued for burning under this section shall be drafted
19 to minimize emissions, including denial of permission to burn during
20 periods of adverse meteorological conditions.

21 **Sec. 192.** RCW 70.94.654 and 1993 c 353 s 2 are each amended to
22 read as follows:

23 Whenever an ~~((air pollution control))~~ authority, or the department
24 ~~((of ecology))~~ for areas outside the jurisdictional boundaries of an
25 activated ~~((air pollution control))~~ authority, ~~((shall))~~ finds that any
26 fire protection agency, county, or conservation district is willing to
27 and capable of effectively administering the issuance and enforcement
28 of burning permits ~~((for any or all of the kinds of burning))~~
29 identified in RCW 70.94.650 ~~((and desirous of doing so))~~ (as recodified
30 by this act), the authority or the department ~~((of ecology))~~, as
31 appropriate, may delegate the powers necessary for the issuance or
32 enforcement, or both, of burning permits ~~((for any or all of the kinds~~
33 ~~of burning))~~ to the fire protection agency, county, or conservation
34 district. ~~((Such))~~ Delegation of authority under this section may be
35 withdrawn by the authority or the department ~~((of ecology))~~ upon

1 finding that the fire protection agency, county, or conservation
2 district is not effectively administering the permit program.

3 **Sec. 193.** RCW 70.94.656 and 1998 c 245 s 130 are each amended to
4 read as follows:

5 (1) It is ~~((hereby declared to be))~~ the policy of this state that
6 strong efforts should be made to minimize adverse effects on air
7 quality from the open burning of field and turf grasses grown for seed.
8 ~~((To such end))~~ As such, this section is intended to promote the
9 development of economical and practical alternate agricultural
10 practices to ~~((such))~~ open burning, and to provide for interim
11 regulation of ~~((such))~~ burning until practical alternates are found.

12 ~~((1))~~ (2)(a) The department shall approve of a study or studies
13 for the exploration and identification of economical and practical
14 alternate agricultural practices to the open burning of field and turf
15 grasses grown for seed.

16 (b) Any study conducted pursuant to this section shall be conducted
17 by Washington State University. The university may not charge more
18 than eight percent for administrative overhead.

19 (3)(a) Prior to the issuance of any permit for such burning under
20 RCW 70.94.650 (as recodified by this act), there shall be collected a
21 fee not to exceed one dollar per acre of crop to be burned. Any
22 ~~((such))~~ fees received by any authority shall be transferred to the
23 department ~~((of ecology))~~. The department ~~((of ecology))~~ shall deposit
24 all ~~((such))~~ acreage fees in a special grass seed burning research
25 account, hereby created, in the state treasury. ~~((2))~~ The department
26 shall allocate moneys annually from this account for the support of any
27 approved study or studies as provided for in ~~((subsection (1) of))~~ this
28 section.

29 (b) Whenever the department ~~((of ecology shall))~~ concludes that
30 sufficient reasonably available alternates to open burning have been
31 developed, and ~~((at such time as))~~ once all costs of any studies have
32 been paid, the grass seed burning research account shall be dissolved,
33 and any money remaining ~~((therein))~~ shall revert to the general fund.
34 The fee collected under ~~((subsection (1) of))~~ this section shall
35 constitute the research portion of fees required under RCW 70.94.650
36 (as recodified by this act) for open burning of grass grown for seed.

1 ~~((3))~~ (4)(a) Whenever, on the basis of information available to
2 it, the department ~~((after public hearings have been conducted wherein
3 testimony will be received and considered from interested parties
4 wishing to testify shall))~~ concludes that any procedure, program,
5 technique, or device constitutes a practical alternate agricultural
6 practice to the open burning of field or turf grasses grown for seed,
7 the department shall, by order, certify approval of ~~((such))~~ the
8 alternate. ~~((Thereafter,))~~

9 (b) The department may not issue an order under this subsection
10 without first conducting public hearings where testimony from
11 interested parties willing to participate may be received and
12 considered.

13 (c) Once an order is issued under this subsection, in any case
14 which ~~((any such))~~ an approved alternate is reasonably available, the
15 open burning of field and turf grasses grown for seed shall be
16 disallowed and no permit shall issue ~~((therefor))~~.

17 ~~((4))~~ (5) Until approved alternates become available, the
18 department or the authority may limit the number of acres on a pro rata
19 basis among those affected for which permits to burn will be issued in
20 order to effectively control emissions from this source.

21 ~~((5))~~ (6) Permits issued for burning of field and turf grasses
22 may be conditioned to minimize emissions ~~((insofar as))~~ to the degree
23 practical, including the denial of permission to burn during periods of
24 adverse meteorological conditions.

25 ~~((6))~~ (7) By November 1, 1996, and every two years thereafter
26 until grass seed burning is prohibited, Washington State University may
27 prepare a brief report assessing the potential of the university's
28 research to result in economical and practical alternatives to grass
29 seed burning.

30 **Sec. 194.** RCW 70.94.660 and 1991 c 199 s 404 are each amended to
31 read as follows:

32 (1) Except as otherwise provided in this section, the department of
33 natural resources shall have the responsibility for issuing and
34 regulating burning permits, consistent with RCW 70.94.670 (as
35 recodified by this act), required by it relating to the following
36 activities for the protection of life or property and/or for the public
37 health, safety, and welfare:

- 1 (a) Abating a forest fire hazard;
- 2 (b) Prevention of a fire hazard;
- 3 (c) Instruction of public officials in methods of forest fire
- 4 fighting;
- 5 (d) Any silvicultural operation to improve the forest lands of the
- 6 state; and

7 (e) Silvicultural burning used to improve or maintain fire
8 dependent ecosystems for rare plants or animals within state, federal,
9 and private natural area preserves, natural resource conservation
10 areas, parks, and other wildlife areas.

11 ~~((The department of natural resources shall not retain such~~
12 ~~authority, but it shall be)) Permitting and regulating outdoor burning~~
13 ~~on lands where the department of natural resources does not have fire~~
14 ~~protection responsibility is~~ the responsibility of the appropriate fire
15 protection agency ~~((for permitting and regulating outdoor burning on~~
16 ~~lands where)) and not the department of natural resources ~~((does not~~
17 ~~have fire protection responsibility))~~.~~

18 (3)(a) Permit fees shall be assessed for silvicultural burning
19 under the jurisdiction of the department of natural resources and
20 collected by the department of natural resources as provided for in
21 this section.

22 (b) All fees shall be deposited in the air pollution control
23 account, created in RCW 70.94.015 (as recodified by this act). The
24 legislature shall appropriate to the department of natural resources
25 funds from the air pollution control account to enforce and administer
26 the program under RCW 70.94.665 ~~((and))~~, 70.94.660, 70.94.670, and
27 70.94.690 (as recodified by this act). Fees shall be set by rule by
28 the department of natural resources at the level necessary to cover the
29 costs of the program after receiving recommendations on ~~((such))~~ the
30 fees from the public and the forest fire advisory board established by
31 RCW 76.04.145.

32 **Sec. 195.** RCW 70.94.665 and 1995 c 143 s 1 are each amended to
33 read as follows:

34 (1)(a) Except as provided under section 319 of this act, the
35 department of natural resources shall administer a program to reduce
36 statewide emissions from silvicultural forest burning ~~((so as))~~ to
37 achieve ~~((the following minimum objectives:~~

1 ~~(a)) a twenty percent reduction by December 31, 1994 ((providing~~
2 ~~a ceiling for emissions until December 31, 2000;))~~, and
3 ~~((b)) a fifty percent reduction by December 31, 2000,~~ providing
4 a ceiling for emissions thereafter.

5 **(b) Reductions under this section** shall be calculated from the
6 average annual emissions level from calendar years 1985 to 1989, using
7 the same methodology for both reduction and base year calculations.

8 (2) The department of natural resources(~~(, within twelve months~~
9 ~~after May 15, 1991,)) shall ~~((develop))~~ maintain a plan(~~(,))~~ based upon
10 the existing smoke management agreement to carry out the programs as
11 described in this section in the most efficient, cost-effective manner
12 possible. The plan shall:~~

13 **(a) Be developed in consultation with the department ((of**
14 ~~ecology))~~, public and private landowners engaged in silvicultural
15 forest burning, and representatives of the public(~~(,))~~;

16 ~~((The plan shall))~~ **(b) Recognize the variations in silvicultural**
17 forest burning including, but not limited to, a landowner's
18 responsibility to abate an extreme fire hazard under chapter 76.04 RCW
19 and other objectives of burning, including abating and preventing a
20 fire hazard, geographic region, climate, elevation and slope, proximity
21 to populated areas, and diversity of land ownership(~~(, The plan~~
22 ~~shall))~~);

23 **(c) Establish priorities that the department of natural resources**
24 shall use to allocate allowable emissions, including but not limited
25 to, silvicultural burning used to improve or maintain fire dependent
26 ecosystems for rare plants or animals within state, federal, and
27 private natural area preserves, natural resource conservation areas,
28 parks, and other wildlife areas(~~(, The plan shall also))~~);

29 **(d) Include a tracking system designed to measure the degree of**
30 progress toward the emission reductions goals set in this section;

31 **(e) Recognize the real costs of the emissions program and recommend**
32 equitable fees to cover the costs of the program;

33 **(f) Include an annual report to the department and the legislature**
34 on the status of the plan, emission reductions, and progress toward
35 meeting the objectives specified in this section, and the goals of this
36 chapter and chapter 76.04 RCW.

37 (3) The emission reductions in this section are to apply to all
38 forest lands, including those owned and managed by the United States.

1 If the United States does not participate in implementing the plan, the
2 (~~departments~~) department and the department of natural resources
3 (~~and ecology~~) shall use all appropriate and available methods or
4 enforcement powers to ensure participation.

5 (~~The plan shall include a tracking system designed to measure the~~
6 ~~degree of progress toward the emission reductions goals set in this~~
7 ~~section. The department of natural resources shall report annually to~~
8 ~~the department of ecology and the legislature on the status of the~~
9 ~~plan, emission reductions and progress toward meeting the objectives~~
10 ~~specified in this section, and the goals of this chapter and chapter~~
11 ~~76.04 RCW.~~

12 ~~(3))~~ (4) If the December 31, 1994, emission reductions targets in
13 this section are not met, the department of natural resources, in
14 consultation with the department (~~of ecology~~), shall use its
15 authority granted in this chapter and chapter 76.04 RCW to immediately
16 limit emissions from (~~such~~) burning to the 1994 target levels and
17 limit silvicultural forest burning in subsequent years to achieve equal
18 annual incremental reductions so as to achieve the December 31, 2000,
19 target level. If, as a result of the program established in this
20 section, the emission reductions are met in 1994, but are not met by
21 December 31, 2000, the department of natural resources, in consultation
22 with the department (~~of ecology~~), shall immediately limit
23 silvicultural forest burning to reduce emissions from (~~such~~) burning
24 to the December 31, 2000, target level in all subsequent years.

25 (~~(4) Emissions from silvicultural burning in eastern Washington~~
26 ~~that is conducted for the purpose of restoring forest health or~~
27 ~~preventing the additional deterioration of forest health are exempt~~
28 ~~from the reduction targets and calculations in this section if the~~
29 ~~following conditions are met:~~

30 ~~(a) The landowner submits a written request to the department~~
31 ~~identifying the location of the proposed burning and the nature of the~~
32 ~~forest health problem to be corrected. The request shall include a~~
33 ~~brief description of alternatives to silvicultural burning and reasons~~
34 ~~why the landowner believes the alternatives not to be appropriate.~~

35 ~~(b) The department determines that the proposed silvicultural~~
36 ~~burning operation is being conducted to restore forest health or~~
37 ~~prevent additional deterioration to forest health; meets the~~
38 ~~requirements of the state smoke management plan to protect public~~

1 health, visibility, and the environment; and will not be conducted
2 during an air pollution episode or during periods of impaired air
3 quality in the vicinity of the proposed burn.

4 ~~(c) Upon approval of the request by the department and before~~
5 ~~burning, the landowner is encouraged to notify the public in the~~
6 ~~vicinity of the burn of the general location and approximate time of~~
7 ~~ignition.~~

8 ~~(5) The department of ecology may conduct a limited, seasonal~~
9 ~~ambient air quality monitoring program to measure the effects of forest~~
10 ~~health burning conducted under subsection (4) of this section. The~~
11 ~~monitoring program may be developed in consultation with the department~~
12 ~~of natural resources, private and public forest landowners, academic~~
13 ~~experts in forest health issues, and the general public.))~~

14 **Sec. 196.** RCW 70.94.670 and 1991 c 199 s 405 are each amended to
15 read as follows:

16 (1) The department of natural resources, in granting burning
17 permits for fires for the purposes set forth in RCW 70.94.660 (as
18 recodified by this act), shall condition the issuance and use of
19 ~~((such))~~ the permits to comply with air quality standards established
20 by the department ~~((of ecology))~~ after full consultation with the
21 department of natural resources. ~~((Such))~~

22 (2) Burning allowed by the department of natural resources shall
23 not cause the state air quality standards to be exceeded in the ambient
24 air up to two thousand feet above ground level over critical areas
25 designated by the department ~~((of ecology))~~, otherwise subject to air
26 pollution from other sources, and shall not cause damage to public
27 health or the environment.

28 (3) Air quality standards shall be established and published by the
29 department ~~((of ecology))~~ which shall also establish a procedure for
30 advising the department of natural resources when and where air
31 contaminant levels exceed or threaten to exceed the ambient air
32 standards over ~~((such))~~ the critical areas. The air quality shall be
33 quantitatively measured by the department ~~((of ecology))~~, or the
34 appropriate ~~((local air pollution control))~~ authority, at established
35 monitoring stations over ~~((such))~~ the designated areas. ~~((Further,~~
36 ~~such permitted burning shall not cause damage to public health or the~~
37 ~~environment.))~~

1 (4) The department of natural resources shall set forth smoke
2 dispersal objectives designed consistent with this section to minimize
3 any air pollution from permitted burning, and the procedures necessary
4 to meet those objectives.

5 (5) All permits issued under this section shall be subject to all
6 applicable fees, permitting, penalty, and enforcement provisions of
7 this chapter. ~~((The department of natural resources shall set forth~~
8 ~~smoke dispersal objectives designed consistent with this section to~~
9 ~~minimize any air pollution from such burning and the procedures~~
10 ~~necessary to meet those objectives.~~

11 ~~The department of natural resources shall encourage more intense~~
12 ~~utilization in logging and alternative silviculture practices to reduce~~
13 ~~the need for burning. The department of natural resources shall,~~
14 ~~whenever practical, encourage landowners to develop and use alternative~~
15 ~~acceptable disposal methods subject to the following priorities: (1)~~
16 ~~Slash production minimization, (2) slash utilization, (3) nonburning~~
17 ~~disposal, (4) silvicultural burning. Such alternative methods shall be~~
18 ~~evaluated as to the relative impact on air, water, and land pollution,~~
19 ~~public health, and their financial feasibility.)~~

20 (6) The department of natural resources shall not issue burning
21 permits and shall revoke previously issued permits at any time in any
22 area where the department ~~((of ecology))~~ or local board has declared a
23 stage of impaired air quality as defined in ~~((RCW 70.94.473))~~ section
24 316 of this act.

25 **Sec. 197.** RCW 70.94.690 and 1991 c 199 s 406 are each amended to
26 read as follows:

27 (1) In the regulation of outdoor burning not included in RCW
28 70.94.660 ~~((requiring))~~ (as recodified by this act), that requires
29 permits from the department of natural resources, ~~((said))~~ the
30 department of natural resources and the ~~((state,))~~ department or
31 local~~((, or regional air pollution control))~~ authorities will cooperate
32 in regulating ~~((such))~~ the burning so as to minimize ~~((insofar))~~,
33 as far as possible, duplicate inspections and separate permits while still
34 accomplishing the objectives and responsibilities of the respective
35 agencies.

36 (2) The department of natural resources shall include any local
37 authority's burning regulations with permits issued where applicable

1 pursuant to (~~RCW 70.94.740 through 70.94.775~~) this chapter. The
2 department shall develop agreements with all local authorities to
3 coordinate regulations.

4 (3) Permits shall be withheld by the department of natural
5 resources when so requested by the department (~~of ecology~~) if a
6 forecast, alert, warning, or emergency condition exists as defined in
7 the episode criteria of the department (~~of ecology~~).

8 **Sec. 198.** RCW 70.94.700 and 1971 ex.s. c 232 s 6 are each amended
9 to read as follows:

10 The department of natural resources and the department (~~of~~
11 ~~ecology~~) may adopt rules and regulations necessary to implement their
12 respective responsibilities under the provisions of RCW 70.94.650
13 (~~through 70.94.700~~), 70.94.651, 70.94.654, 70.94.660, 70.94.665,
14 70.94.670, and 70.94.690 (as recodified by this act) and sections 319
15 through 323 of this act.

16 **Sec. 199.** RCW 70.94.710 and 1971 ex.s. c 194 s 1 are each amended
17 to read as follows:

18 (1) The legislature finds that whenever meteorological conditions
19 occur which reduce the effective volume of air into which air
20 contaminants are introduced, there is a high danger that normal
21 operations at air contaminant sources in the area affected will be
22 detrimental to public health or safety. This condition is known as an
23 air pollution episode. Whenever (~~such conditions, herein denominated~~
24 ~~as~~) air pollution episodes(~~(7)~~) are forecast, there is a need for
25 rapid short-term emission reduction in order to avoid adverse health or
26 safety consequences.

27 (2) Therefore, it is declared to be the policy of this state that
28 an episode avoidance plan should be developed and implemented for the
29 temporary reduction of emissions during air pollution episodes.

30 (3) It is further declared that power should be vested in the
31 governor to issue emergency orders for the reduction or discontinuance
32 of emissions when (~~such~~) emissions and weather combine to create
33 conditions imminently dangerous to public health and safety.

34 **Sec. 200.** RCW 70.94.715 and 1990 c 128 s 4 are each amended to
35 read as follows:

1 (1) The department (~~(of ecology)~~) is (~~(hereby)~~) authorized to
2 develop an episode avoidance plan, consistent with section 315 of this
3 act, providing for the phased reduction of emissions wherever and
4 whenever an air pollution episode is forecast. (~~(Such an)~~) The episode
5 avoidance plan shall conform with any applicable federal standards and
6 shall be effective statewide. The episode avoidance plan may be
7 implemented on an area basis in accordance with the occurrence of air
8 pollution episodes in any given area.

9 (2) The department (~~(of ecology)~~) may delegate authority to adopt
10 source emission reduction plans and the authority to implement all
11 stages of occurrence up to and including the warning stage, and all
12 intermediate stages up to the warning stage, in any area of the state,
13 to the (~~(air pollution control)~~) authority with jurisdiction
14 (~~(therein)~~) over the area.

15 (~~The episode avoidance plan, which shall be established by~~
16 ~~regulation in accordance with chapter 34.05 RCW, shall include, but not~~
17 ~~be limited to the following:~~

18 ~~(1) The designation of episode criteria and stages, the occurrence~~
19 ~~of which will require the carrying out of preplanned episode avoidance~~
20 ~~procedures. The stages of occurrence shall be (a) forecast, (b) alert,~~
21 ~~(c) warning, (d) emergency, and such intermediate stages as the~~
22 ~~department shall designate. "Forecast" means the presence of~~
23 ~~meteorological conditions that are conducive to accumulation of air~~
24 ~~contaminants and is the first stage of an episode. The department~~
25 ~~shall not call a forecast episode prior to the department or an~~
26 ~~authority calling a first stage impaired air quality condition as~~
27 ~~provided by RCW 70.94.473(1)(b) or calling a single stage impaired air~~
28 ~~quality condition as provided by RCW 70.94.473(2). "Alert" means~~
29 ~~concentration of air contaminants at levels at which short term health~~
30 ~~effects may occur, and is the second stage of an episode. "Warning"~~
31 ~~means concentrations are continuing to degrade, contaminant~~
32 ~~concentrations have reached a level which, if maintained, can result in~~
33 ~~damage to health, and additional control actions are needed and is the~~
34 ~~third level of an episode. "Emergency" means the air quality is posing~~
35 ~~an imminent and substantial endangerment to public health and is the~~
36 ~~fourth level of an episode;~~

37 ~~(2) The requirement that persons responsible for the operation of~~
38 ~~air contaminant sources prepare and obtain approval from the director~~

1 of source emission reduction plans, consistent with good operating
2 practice and safe operating procedures, for reducing emissions during
3 designated episode stages;

4 ~~(3) Provision for the director of the department of ecology or his
5 authorized representative, or the air pollution control officer if
6 implementation has been delegated, on the satisfaction of applicable
7 criteria, to declare and terminate the forecast, alert, warning and all
8 intermediate stages, up to the warning episode stage, such declarations
9 constituting orders for action in accordance with applicable source
10 emission reduction plans;~~

11 ~~(4) Provision for the governor to declare and terminate the
12 emergency stage and all intermediate stages above the warning episode
13 stage, such declarations constituting orders in accordance with
14 applicable source emission reduction plans;~~

15 ~~(5) Provisions for enforcement by state and local police, personnel
16 of the departments of ecology and social and health services, and
17 personnel of local air pollution control agencies; and~~

18 ~~(6) Provisions for reduction or discontinuance of emissions
19 immediately, consistent with good operating practice and safe operating
20 procedures, under an air pollution emergency as provided in RCW
21 70.94.720.)~~

22 (3) Source emission reduction plans shall be considered orders of
23 the department and shall be subject to appeal to the pollution control
24 hearings board according to the procedure in chapter 43.21B RCW.

25 **Sec. 201.** RCW 70.94.720 and 1971 ex.s. c 194 s 3 are each amended
26 to read as follows:

27 ~~((Whenever))~~ If the governor or the governor's authorized
28 representative finds that emissions from the operation of one or more
29 air contaminant sources is causing imminent danger to public health or
30 safety, ~~((he))~~ the governor or the governor's authorized representative
31 may declare an air pollution emergency and may order the person or
32 persons responsible for the operation of ~~((such))~~ the air contaminant
33 source or sources to reduce or discontinue emissions consistent with
34 good operating practice, safe operating procedures, and source emission
35 reduction plans, if any, adopted by the department ~~((of ecology))~~ or
36 any ~~((local air pollution control))~~ authority ~~((to which the department
37 of ecology has delegated authority to adopt emission reduction plans))~~

1 under RCW 70.94.715 (as recodified by this act). Orders authorized by
2 this section shall be in writing and may be issued without prior notice
3 or hearing. ~~((In the absence of the governor, any findings,~~
4 ~~declarations and orders authorized by this section may be made and~~
5 ~~issued by his authorized representative.))~~

6 **Sec. 202.** RCW 70.94.725 and 1971 ex.s. c 194 s 4 are each amended
7 to read as follows:

8 (1) Whenever any order has been issued pursuant to RCW 70.94.710
9 ~~((through))~~, 70.94.715, 70.94.720, or 70.94.730 (as recodified by this
10 act), the attorney general, upon request from the governor, the
11 director ~~((of the department of ecology))~~, an authorized representative
12 of either, or the attorney for ~~((a local air pollution control))~~ an
13 authority upon request of the control officer, shall petition the
14 superior court of the county in which ~~((is located))~~ the air
15 contaminant source is located and for which ~~((such))~~ the order was
16 issued for a temporary restraining order requiring the immediate
17 reduction or discontinuance of emissions from ~~((such))~~ the source.

18 (2) Upon the request of the party to whom a temporary restraining
19 order requested under this section is directed, the court shall
20 schedule a hearing ~~((thereon))~~ at its earliest convenience, at which
21 time the court may withdraw the restraining order or grant ~~((such))~~ any
22 temporary injunction as is reasonably necessary to prevent injury to
23 the public health or safety.

24 **Sec. 203.** RCW 70.94.730 and 1971 ex.s. c 194 s 5 are each amended
25 to read as follows:

26 Orders issued to declare any stage of an air pollution episode
27 avoidance plan under RCW 70.94.715 (as recodified by this act), and to
28 declare an air pollution emergency, under RCW 70.94.720 (as recodified
29 by this act), and orders to persons responsible for the operation of an
30 air contaminant source to reduce or discontinue emissions, according to
31 RCW 70.94.715 and 70.94.720 (as recodified by this act) shall be
32 effective immediately and shall not be stayed pending completion of
33 review.

34 **Sec. 204.** RCW 70.94.743 and 2004 c 213 s 1 are each amended to
35 read as follows:

1 (1) Consistent with the policy of the state to reduce outdoor
2 burning, as that term is defined in RCW 70.94.030 (as recodified by
3 this act), to the greatest extent practical(~~((a))~~), and except as
4 otherwise provided in this section or section 321 of this act, outdoor
5 burning shall not be allowed in:

6 (a) Any area of the state where federal or state ambient air
7 quality standards are exceeded for pollutants emitted by outdoor
8 burning(~~((a))~~); and

9 (b) (~~Outdoor burning shall not be allowed in~~) Any urban growth
10 area, as defined by RCW 36.70A.030, or any city of the state (~~having~~
11 ~~a population greater than ten thousand people if such cities are~~
12 ~~threatened to exceed state or federal air quality standards, and~~
13 ~~alternative disposal practices consistent with good solid waste~~
14 ~~management are reasonably available or practices eliminating production~~
15 ~~of organic refuse are reasonably available. In no event shall such~~
16 ~~burning be allowed after December 31, 2000, except that within the~~
17 ~~urban growth areas for cities having a population of less than five~~
18 ~~thousand people, that are neither within nor contiguous with any~~
19 ~~nonattainment or maintenance area designated under the federal clean~~
20 ~~air act, in no event shall such burning be allowed after December 31,~~
21 ~~2006~~)).

22 (~~((c) Notwithstanding any other provision of this section,~~) (2)
23 Outdoor burning may be allowed for the exclusive purpose of managing
24 storm or flood-related debris. The decision to allow burning shall be
25 made by the entity with permitting jurisdiction as determined under RCW
26 70.94.660 or 70.94.755 (as recodified by this act). If outdoor burning
27 of storm or flood-related debris is allowed in areas subject to (~~((a)~~
28 ~~or (b) of this~~) subsection (1) of this section, a permit shall be
29 required, and a fee may be collected to cover the expenses of
30 administering and enforcing the permit. All conditions and
31 restrictions pursuant to RCW 70.94.750(1) and 70.94.775 (as recodified
32 by this act) apply to outdoor burning allowed under this section.

33 (~~((d)(i))~~) (3)(a) Outdoor burning that is normal, necessary, and
34 customary to ongoing agricultural activities, and that is consistent
35 with agricultural burning authorized under RCW 70.94.650 and 70.94.656
36 (as recodified by this act), is allowed within the urban growth area as
37 defined in (~~((b) of this subsection)~~) RCW 36.70A.030:

1 (i) If the burning is not conducted during air quality episodes(~~(~~
2 ~~or~~));

3 (ii) Where a determination of impaired air quality has been made as
4 provided in (~~RCW 70.94.473,~~) section 316 of this act; and

5 (iii) Where the agricultural activities preceded the designation as
6 an urban growth area.

7 (~~(iii)~~) (b) Outdoor burning of cultivated orchard trees, whether
8 or not agricultural crops will be replanted on the land, shall be
9 allowed as an ongoing agricultural activity under this section if a
10 local horticultural pest and disease board formed under chapter 15.09
11 RCW, an extension office agent with Washington State University that
12 has horticultural experience, or an entomologist employed by the
13 department of agriculture, has determined in writing that burning is an
14 appropriate method to prevent or control the spread of horticultural
15 pests or diseases.

16 (~~(2)~~) ~~"Outdoor burning" means the combustion of material of any~~
17 ~~type in an open fire or in an outdoor container without providing for~~
18 ~~the control of combustion or the control of emissions from the~~
19 ~~combustion.~~

20 ~~(3)~~) (4) This section shall not apply to silvicultural burning
21 used to improve or maintain fire dependent ecosystems for rare plants
22 or animals within state, federal, and private natural area preserves,
23 natural resource conservation areas, parks, and other wildlife areas.

24 **Sec. 205.** RCW 70.94.745 and 1995 c 206 s 1 are each amended to
25 read as follows:

26 (1) It (~~shall be~~) is the responsibility and duty of the
27 department, the department of natural resources, (~~department of~~
28 ~~ecology,~~) the department of agriculture, fire districts, and local
29 (~~air pollution control~~) authorities to establish, through
30 regulations, ordinances, or policy, a limited burning permit program.

31 (2) Except as otherwise provided in this section and section 321 of
32 this act, the permit program shall apply to residential and land
33 clearing burning in the (~~following areas:~~

34 ~~(a) In the nonurban areas of any county with an unincorporated~~
35 ~~population of greater than fifty thousand; and~~

36 ~~(b) In any city and urban growth area that is not otherwise~~
37 ~~prohibited from burning pursuant to RCW 70.94.743)) nonurban areas, as~~

1 that term is defined in RCW 70.94.030 (as recodified by this act), of
2 any county with an unincorporated population of less than fifty
3 thousand.

4 ~~(3) ((The permit program shall apply only to land clearing burning~~
5 ~~in the nonurban areas of any county with an unincorporated population~~
6 ~~of less than fifty thousand.~~

7 ~~(4))~~ The permit program may be limited to a general permit by
8 rule, or by verbal, written, or electronic approval by the permitting
9 entity.

10 ~~((5) Notwithstanding any other provision of this section,)~~ (4)
11 Within a county with a population of less than two hundred fifty
12 thousand, neither a permit nor the payment of a fee ~~((shall be))~~ is
13 required for outdoor burning for the purpose of disposal of tumbleweeds
14 blown by wind. ~~((Such))~~ This burning shall not be conducted during an
15 air pollution episode or any stage of impaired air quality declared
16 under RCW ~~((70.94.714. This subsection (5) shall only apply within~~
17 ~~counties with a population less than two hundred fifty thousand))~~
18 70.94.715 (as recodified by this act).

19 ~~((6))~~ (5) Burning ~~((shall be))~~ is prohibited in an area when an
20 alternate technology or method of disposing of the organic refuse is
21 available, reasonably economical, and less harmful to the environment.
22 It is the policy of this state to foster and encourage development of
23 alternate methods or technology for disposing of or reducing the amount
24 of organic refuse.

25 ~~((7))~~ (6) Incidental agricultural burning must be allowed without
26 applying for any permit and without the payment of any fee if:

27 (a) The burning is incidental to commercial agricultural
28 activities;

29 (b) The operator notifies the local fire department within the area
30 where the burning is to be conducted;

31 (c) The burning does not occur during an air pollution episode or
32 any stage of impaired air quality declared under RCW 70.94.715 (as
33 recodified by this act); and

34 (d) Only the following items are burned:

35 (i) Orchard prunings;

36 (ii) Organic debris along fence lines or irrigation or drainage
37 ditches; or

38 (iii) Organic debris blown by wind.

1 ~~((8)) As used in this section, "nonurban areas" are unincorporated~~
2 ~~areas within a county that is not designated as an urban growth area~~
3 ~~under chapter 36.70A RCW.~~

4 ~~(9))~~ (7) Nothing in this section ~~((shall))~~ requires fire districts
5 to enforce air quality requirements related to outdoor burning, unless
6 the fire district enters into an agreement with the department ~~((of~~
7 ~~ecology))~~, the department of natural resources, ~~((a local air pollution~~
8 ~~control))~~ an authority, or other appropriate entity to provide such
9 enforcement.

10 **Sec. 206.** RCW 70.94.750 and 1991 c 199 s 412 are each amended to
11 read as follows:

12 (1) The following outdoor fires described in this section may be
13 burned subject to the provisions of this chapter and also subject to
14 city ordinances, county resolutions, rules and laws of fire districts
15 ~~((and laws))~~, and rules enforced by the department of natural resources
16 if a permit has been issued by a fire protection agency, county, or
17 conservation district:

18 ~~((1))~~ (a) Fires consisting of leaves, clippings, prunings, and
19 other yard and gardening refuse originating on lands immediately
20 adjacent and in close proximity to a human dwelling and burned on
21 ~~((such))~~ the lands by the property owner or his or her designee~~((r))~~;

22 ~~((2))~~ (b) Fires consisting of residue of a natural character such
23 as trees, stumps, shrubbery, or other natural vegetation arising from
24 land clearing projects or agricultural pursuits for pest or disease
25 control~~((; provided))~~. However, the fires described in this subsection
26 (1)(b) may be prohibited in those areas having a general population
27 density of one thousand or more persons per square mile.

28 (2) As provided in section 321 of this act, the permit requirement
29 of this section does not apply to aircraft crash fire rescue training.

30 **Sec. 207.** RCW 70.94.755 and 1997 c 225 s 2 are each amended to
31 read as follows:

32 Each activated ~~((air pollution control))~~ authority, and the
33 department ~~((of ecology))~~ in those areas outside the jurisdictional
34 boundaries of an activated ~~((air pollution control))~~ authority, shall
35 establish, through regulations, ordinances, or policy, a program

1 implementing the limited burning policy authorized by RCW 70.94.743
2 (~~through~~), 70.94.745, 70.94.750, 70.94.760, and 70.94.765 (as
3 recodified by this act).

4 **Sec. 208.** RCW 70.94.760 and 1986 c 100 s 55 are each amended to
5 read as follows:

6 Unless expressly provided, nothing contained in (~~RCW 70.94.740~~
7 ~~through 70.94.765~~) this chapter is intended to alter or change the
8 provisions of RCW 70.94.660, 70.94.710 (~~through~~), 70.94.720,
9 70.94.725, 70.94.730 (as recodified by this act), and 76.04.205.

10 **Sec. 209.** RCW 70.94.765 and 1972 ex.s. c 136 s 6 are each amended
11 to read as follows:

12 Unless expressly provided, nothing in (~~RCW 70.94.740 through~~
13 ~~70.94.765~~) this chapter shall be construed as prohibiting (~~a local~~
14 ~~air pollution control~~) an authority or the department (~~of ecology~~)
15 in those areas outside the jurisdictional boundaries of an activated
16 (~~pollution control~~) authority from allowing the burning of outdoor
17 fires.

18 **Sec. 210.** RCW 70.94.775 and 1995 c 362 s 2 are each amended to
19 read as follows:

20 Except as provided in (~~RCW 70.94.650(5)~~) section 321 of this act,
21 no person shall cause or allow any outdoor fire:

22 (1) Containing garbage, dead animals, asphalt, petroleum products,
23 paints, rubber products, plastics, or any substance other than natural
24 vegetation that normally emits dense smoke or obnoxious odors.
25 Agricultural heating devices that otherwise meet the requirements of
26 this chapter shall not be considered outdoor fires under this section;

27 (2) During a forecast, alert, warning, or emergency condition as
28 defined in RCW 70.94.715 (as recodified by this act) or impaired air
29 quality condition as defined in (~~RCW 70.94.473~~) section 316 of this
30 act.

31 **Sec. 211.** RCW 70.94.780 and 1991 c 199 s 411 are each amended to
32 read as follows:

33 (1) In addition to any other powers granted to them by law, and
34 except as provided in section 321 of this act, the fire protection

1 agency, county, or conservation district issuing burning permits shall
2 regulate or prohibit outdoor burning as necessary to prevent or abate
3 the nuisances caused by (~~such~~) burning.

4 (2) No fire protection agency, county, or conservation district may
5 issue a burning permit in an area where the department or local board
6 has declared any stage of impaired air quality (~~per RCW 70.94.473~~)
7 under section 316 of this act or any stage of an air pollution episode.
8 All burning permits issued (~~shall be~~) are subject to all applicable
9 fee, permitting, penalty, and enforcement provisions of this chapter.
10 The permitted burning shall not cause damage to public health or the
11 environment.

12 (3) Any entity issuing a permit under this section may charge a fee
13 at the level necessary to recover the costs of administering and
14 enforcing the permit program.

15 **Sec. 212.** RCW 70.94.785 and 1973 1st ex.s. c 193 s 11 are each
16 amended to read as follows:

17 Notwithstanding any provision of the law to the contrary, and
18 except RCW 70.94.660 (~~through~~), 70.94.670, and 70.94.690 (as
19 recodified by this act), the department (~~of ecology~~), upon its
20 approval of any plan (~~(or part thereof)~~), or part of a plan, required
21 or permitted under the federal clean air act, (~~shall have~~) has the
22 authority to enforce all regulatory provisions within (~~such plan (or~~
23 ~~part thereof):~~ PROVIDED, That) the plan or part of the plan.
24 However, the departmental enforcement of any (~~such~~) provision which
25 is within the power of an activated authority to enforce shall be
26 initiated only, when with respect to any source, the authority is not
27 enforcing the provisions and then only after written notice is given
28 the authority.

29 **Sec. 213.** RCW 70.94.800 and 1985 c 456 s 1 are each amended to
30 read as follows:

31 (1) The legislature recognizes that:

32 (~~(1)~~) (a) Acid deposition resulting from commercial, industrial,
33 or other emissions of sulphur dioxide and nitrogen oxides pose a threat
34 to the delicate balance of the state's ecological systems, particularly
35 in alpine lakes that are known to be highly sensitive to acidification;

1 ((+2)) (b) Failure to act promptly and decisively to mitigate or
2 eliminate this danger may soon result in untold and irreparable damage
3 to the fish, forest, wildlife, agricultural, water, and recreational
4 resources of this state;

5 ((+3)) (c) There is a direct correlation between emissions of
6 sulphur dioxides and nitrogen oxides and increases in acid deposition;

7 ((+4)) (d) Acidification is cumulative; and

8 ((+5)) (e) Once an environment is acidified, it is difficult, if
9 not impossible, to restore the natural balance.

10 (2) It is therefore the intent of the legislature to provide for
11 early detection of acidification and the resulting environmental
12 degradation through continued monitoring of acid deposition levels and
13 trends, and major source changes, so that the legislature can take any
14 necessary action to prevent environmental degradation resulting from
15 acid deposition.

16 **Sec. 214.** RCW 70.94.820 and 1987 c 505 s 61 are each amended to
17 read as follows:

18 The department (~~(of ecology)~~) shall maintain a program of periodic
19 monitoring of acid rain deposition and lake, stream, and soil
20 acidification to ensure early detection of acidification and
21 environmental degradation.

22 **Sec. 215.** RCW 70.94.850 and 1984 c 164 s 1 are each amended to
23 read as follows:

24 (1) The department (~~(of ecology)~~) and the local boards may
25 implement an emission credits banking program. For the purposes of
26 this section, an emission credits banking program means a program
27 whereby an air contaminant source which reduces emissions of a given
28 air contaminant by an amount greater than that required by applicable
29 law, regulation, or order is granted credit for a given amount, which
30 credit shall be administered by a credit bank operated by the
31 appropriate agency.

32 (2) The amount of the credit shall be determined by the department
33 or local board with jurisdiction, but it shall be less than the amount
34 of the emissions reduction.

35 (3) The credit may be used, traded, sold, or otherwise expended for
36 purposes established by regulation of state or local agencies

1 consistent with the provisions of the prevention of significant
2 deterioration program under RCW ((70.94.860)) 70.94.510(3) (as
3 recodified by this act), the bubble program under RCW 70.94.155 (as
4 recodified by this act), and the new source review program under RCW
5 70.94.152 (as recodified by this act), if there will be no net adverse
6 impact on air quality.

7 **Sec. 216.** RCW 70.94.875 and 1991 c 199 s 313 are each amended to
8 read as follows:

9 The department ((of ecology)), in consultation with the appropriate
10 committees of the house of representatives and of the senate, shall:

11 (1) Continue evaluation of information and research on acid
12 deposition in the Pacific Northwest region;

13 (2) Establish critical levels of acid deposition and lake, stream,
14 and soil acidification; and

15 (3) Notify the legislature if acid deposition or lake, stream, and
16 soil acidification reaches the levels established under subsection (2)
17 of this section.

18 **Sec. 217.** RCW 70.94.880 and 1985 c 456 s 4 are each amended to
19 read as follows:

20 In establishing critical levels of acid deposition and lake,
21 stream, and soil acidification, the department ((of ecology)) shall
22 consider:

23 (1) Current acid deposition and lake, stream, and soil
24 acidification levels;

25 (2) Changes in acid deposition and lake, stream, and soil
26 acidification levels;

27 (3) Effects of acid deposition and lake, stream, and soil
28 acidification on the environment; and

29 (4) The need to prevent environmental degradation.

30 **Sec. 218.** RCW 70.94.892 and 2004 c 224 s 8 are each amended to
31 read as follows:

32 (1) For fossil-fueled electric generation facilities having more
33 than twenty-five thousand kilowatts station generating capability but
34 less than three hundred fifty thousand kilowatts station generation
35 capability, except for fossil-fueled floating thermal electric

1 generation facilities under the jurisdiction of the energy facility
2 site evaluation council pursuant to RCW 80.50.010, the department or
3 authority shall implement a carbon dioxide mitigation program
4 consistent with the requirements of chapter 80.70 RCW.

5 (2) For mitigation projects conducted directly by or under the
6 control of the applicant, the department or (~~local air~~) authority
7 shall approve or deny the mitigation plans, as part of its action to
8 approve or deny an application submitted under RCW 70.94.152 (as
9 recodified by this act) based upon whether or not the mitigation plan
10 is consistent with the requirements of chapter 80.70 RCW.

11 (3) The department or authority may determine, assess, and collect
12 fees sufficient to cover the costs to review and approve or deny the
13 carbon dioxide mitigation plan components of an order of approval
14 issued under RCW 70.94.152 (as recodified by this act). The department
15 or authority may also collect fees sufficient to cover its additional
16 costs to monitor conformance with the carbon dioxide mitigation plan
17 components of the registration and air operating permit programs
18 authorized in RCW 70.94.151 and 70.94.161 (as recodified by this act).
19 The department or authority shall track its costs related to review,
20 approval, and monitoring conformance with carbon dioxide mitigation
21 plans.

22 **Sec. 219.** RCW 70.94.901 and 1967 c 238 s 65 are each amended to
23 read as follows:

24 (~~This 1967 amendatory act shall~~) Chapter 238, Laws of 1967 may
25 not be construed to create in any way nor to enlarge, diminish, or
26 otherwise affect in any way any private rights in any civil action for
27 damages. Any determination that there has been a violation of the
28 provisions of (~~this 1967 amendatory act~~) chapter 238, Laws of 1967 or
29 of any ordinance, rule, regulation, or order issued pursuant
30 (~~thereto~~) to chapter 238, Laws of 1967, shall not create by reason
31 thereof any presumption or finding of fact or of law for use in any
32 lawsuit brought by a private citizen.

33 **Sec. 220.** RCW 70.94.960 and 1996 c 186 s 517 are each amended to
34 read as follows:

35 (1) The department may disburse matching grants from funds provided

1 by the legislature from the air pollution control account, created in
2 RCW 70.94.015 (as recodified by this act), to:

3 (a) Units of local government to partially offset the additional
4 cost of either purchasing "clean fuel" ((and/or)) or operating "clean-
5 fuel vehicles," ((provided that such)) or both, as long as the vehicles
6 are used for public transit((. Publicly owned school buses are
7 considered public transit for the purposes of this section. The
8 department may also disburse grants to));

9 (b) Vocational-technical institutes for the purpose of establishing
10 programs to certify clean-fuel vehicle mechanics((. The department may
11 also distribute grants to)); and

12 (c) Washington State University for the purpose of furthering the
13 establishment of clean fuel refueling infrastructure.

14 (2) Publicly owned school buses are considered public transit for
15 the purposes of this section.

16 **Sec. 221.** RCW 70.94.970 and 1991 c 199 s 602 are each amended to
17 read as follows:

18 ~~(1) ((Regulated refrigerant means a class I or class II substance~~
19 ~~as listed in Title VI of section 602 of the federal clean air act~~
20 ~~amendments of November 15, 1990.~~

21 ~~(2))~~ (a) A person who services or repairs or disposes of a motor
22 vehicle air conditioning system; commercial or industrial air
23 conditioning, heating, or refrigeration system; or consumer appliance
24 shall use refrigerant extraction equipment to recover regulated
25 refrigerant, as that term is defined in RCW 70.94.030 (as recodified by
26 this act), that would otherwise be released into the atmosphere. This
27 subsection does not apply to off-road commercial equipment.

28 ~~((3))~~ (b) The willful release of regulated refrigerant from a
29 source listed in this subsection is prohibited.

30 (2) No person may sell, offer for sale, or purchase any of the
31 following:

32 (a) A regulated refrigerant in a container designed for consumer
33 recharge of a motor vehicle air conditioning system or consumer
34 appliance during repair or service. This subsection does not apply to
35 a regulated refrigerant purchased for the recharge of the air
36 conditioning system of off-road commercial or agricultural equipment

1 and sold or offered for sale at an establishment that specializes in
2 the sale of off-road commercial or agricultural equipment or parts or
3 service for such equipment; and

4 (b) Nonessential consumer products that contain chlorofluorocarbons
5 or other ozone-depleting chemicals, and for which substitutes are
6 readily available. Products affected under this subsection include,
7 but are not limited to, party streamers, tire inflators, air horns,
8 noise makers, and chlorofluorocarbon-containing cleaning sprays
9 designed for noncommercial or nonindustrial cleaning of electronic or
10 photographic equipment.

11 (3)(a) The department shall adopt rules to implement this section.
12 The rules must include, but not be limited to, minimum performance
13 specifications for refrigerant extraction equipment, as well as
14 procedures for enforcing this section.

15 (b) Enforcement provisions adopted by the department under this
16 section may not include penalties or fines in areas where equipment to
17 collect or recycle regulated refrigerants is not readily available.

18 (4) Upon request, the department shall provide information and
19 assistance to persons interested in collecting, transporting, or
20 recycling regulated refrigerants.

21 ~~((4) The willful release of regulated refrigerant from a source~~
22 ~~listed in subsection (2) of this section is prohibited.))~~

23 **Sec. 222.** RCW 70.94.996 and 2004 c 229 s 501 are each amended to
24 read as follows:

25 (1) To the extent that funds are appropriated, the department of
26 transportation shall administer a performance-based grant program for
27 private employers, public agencies, nonprofit organizations,
28 developers, and property managers who provide financial incentives for
29 ride sharing in vehicles carrying two or more persons, for using public
30 transportation, for using car sharing, or for using nonmotorized
31 commuting, including telework, before July 1, 2013, to their own or
32 other employees.

33 (2) The amount of the grant will be determined based on the value
34 to the transportation system of the vehicle trips reduced. The commute
35 trip reduction ~~((task force))~~ board shall develop an award rate giving
36 priority to applications achieving the greatest reduction in trips and

1 commute miles per public dollar requested and considering the following
2 criteria:

- 3 (a) The local cost of providing new highway capacity(~~(τ)~~);
- 4 (b) Congestion levels(~~(τ)~~); and
- 5 (c) Geographic distribution.

6 (3) No private employer, public agency, nonprofit organization,
7 developer, or property manager is eligible for grants under this
8 section in excess of one hundred thousand dollars in any fiscal year.

9 (4) The total of grants provided under this section may not exceed
10 seven hundred fifty thousand dollars in any fiscal year. (~~However,~~
11 ~~this subsection does not apply during the 2003-2005 fiscal biennium.~~)

12 (5) The department of transportation shall report to the department
13 of revenue by the 15th day of each month the aggregate monetary amount
14 of grants provided under this section in the prior month and the
15 identity of the recipients of those grants.

16 (6) The source of funds for this grant program is the multimodal
17 transportation account created in RCW 47.66.070.

18 (7) This section expires January 1, 2014.

19 **Sec. 223.** RCW 1.16.030 and 1975-'76 2nd ex.s. c 118 s 21 are each
20 amended to read as follows:

21 Except as otherwise provided, August 31st shall end the fiscal year
22 of school districts and December 31st of all other taxing districts.

23 **Sec. 224.** RCW 28B.130.010 and 1993 c 447 s 2 are each amended to
24 read as follows:

25 (~~Unless the context clearly requires otherwise,~~) The definitions
26 in this section apply throughout this chapter unless the context
27 clearly requires otherwise.

28 (1) "Transportation fee" means the fee charged to employees and
29 students at institutions of higher education for the purposes provided
30 in RCW 28B.130.020.

31 (2) "Transportation demand management program" means the set of
32 strategies adopted by an institution of higher education to reduce the
33 number of single-occupant vehicles traveling to its campus. These
34 strategies may include but are not limited to those identified in RCW
35 70.94.531 (as recodified by this act).

1 **Sec. 225.** RCW 43.01.225 and 1995 c 215 s 2 are each amended to
2 read as follows:

3 There is hereby established an account in the state treasury to be
4 known as the "state vehicle parking account." All parking rental
5 income resulting from parking fees established by the department of
6 general administration under RCW 46.08.172 at state-owned or leased
7 property shall be deposited in the "state vehicle parking account."
8 Revenue deposited in the "state vehicle parking account" shall be first
9 applied to pledged purposes. Unpledged parking revenues deposited in
10 the "state vehicle parking account" may be used to:

11 (1) Pay costs incurred in the operation, maintenance, regulation,
12 and enforcement of vehicle parking and parking facilities;

13 (2) Support either the lease costs (~~(and/or)~~) or capital investment
14 costs, or both, of vehicle parking and parking facilities; and

15 (3) Support agency commute trip reduction programs under RCW
16 70.94.521 (~~(through)~~), 70.94.527, 70.94.528, 70.94.531, 70.94.534,
17 70.94.537, 70.94.541, 70.94.544, 70.94.547, and 70.94.551 (as
18 recodified by this act).

19 **Sec. 226.** RCW 43.01.230 and 1995 c 215 s 1 are each amended to
20 read as follows:

21 State agencies may, under the internal revenue code rules, use
22 public funds to financially assist agency-approved incentives for
23 alternative commute modes, including but not limited to carpools,
24 vanpools, purchase of transit and ferry passes, and guaranteed ride
25 home programs, if the financial assistance is an element of the
26 agency's commute trip reduction program as required under RCW 70.94.521
27 (~~(through)~~), 70.94.527, 70.94.528, 70.94.531, 70.94.534, 70.94.537,
28 70.94.541, 70.94.544, 70.94.547, and 70.94.551 (as recodified by this
29 act). This section does not permit any payment for the use of state-
30 owned vehicles for commuter ride sharing.

31 **Sec. 227.** RCW 43.01.240 and 1998 c 245 s 46 are each amended to
32 read as follows:

33 (1) There is (~~hereby~~) established an account in the state
34 treasury to be known as the state agency parking account. All parking
35 income collected from the fees imposed by state agencies on parking
36 spaces at state-owned or leased facilities, including the capitol

1 campus, shall be deposited in the state agency parking account. Only
2 the office of financial management may authorize expenditures from the
3 account. The account is subject to allotment procedures under chapter
4 43.88 RCW, but no appropriation is required for expenditures. No
5 agency may receive an allotment greater than the amount of revenue
6 deposited into the state agency parking account.

7 (2) An agency may, as an element of the agency's commute trip
8 reduction program to achieve the goals set forth in RCW 70.94.527 (as
9 recodified by this act), impose parking rental fees at state-owned and
10 leased properties. These fees will be deposited in the state agency
11 parking account. Each agency shall establish a committee to advise the
12 agency director on parking rental fees, taking into account the market
13 rate of comparable, privately owned rental parking in each region. The
14 agency shall solicit representation of the employee population
15 including, but not limited to, management, administrative staff,
16 production workers, and state employee bargaining units. Funds shall
17 be used by agencies to: (a) Support the agencies' commute trip
18 reduction program under RCW 70.94.521 (~~through~~), 70.94.527,
19 70.94.528, 70.94.531, 70.94.534, 70.94.537, 70.94.541, 70.94.544,
20 70.94.547, and 70.94.551 (as recodified by this act); (b) support the
21 agencies' parking program; or (c) support the lease or ownership costs
22 for the agencies' parking facilities.

23 (3) In order to reduce the state's subsidization of employee
24 parking, after July 1997 agencies shall not enter into leases for
25 employee parking in excess of building code requirements, except as
26 authorized by the director of general administration. In situations
27 where there are fewer parking spaces than employees at a worksite,
28 parking must be allocated equitably, with no special preference given
29 to managers.

30 **Sec. 228.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
31 read as follows:

32 (1) The hearings board shall only have jurisdiction to hear and
33 decide appeals from the following decisions of the department, the
34 director, local conservation districts, and the air pollution control
35 boards or authorities as established pursuant to chapter 70.94 RCW (as
36 recodified by this act), or local health departments:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431
2 (as recodified by this act), 70.105.080, 70.107.050, 88.46.090,
3 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 43.27A.190, 70.94.211 (as recodified by this act), 70.94.332 (as
6 recodified by this act), 70.105.095, 86.16.020, 88.46.070, 90.14.130,
7 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

37 (b) Hearings conducted by the department pursuant to RCW 70.94.332,

1 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410 (as recodified by
2 this act), 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 43.21L RCW.

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. 229.** RCW 43.21B.310 and 2004 c 204 s 5 are each amended to
13 read as follows:

14 (1) Except as provided in RCW 90.03.210(2), any order issued by the
15 department or local air authority pursuant to RCW 70.94.211 (as
16 recodified by this act), 70.94.332 (as recodified by this act),
17 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any
18 provision enacted after July 26, 1987, or any permit, certificate, or
19 license issued by the department may be appealed to the pollution
20 control hearings board if the appeal is filed with the board and served
21 on the department or authority within thirty days after the date of
22 receipt of the order. Except as provided under chapter 70.105D RCW and
23 RCW 90.03.210(2), this is the exclusive means of appeal of such an
24 order.

25 (2) The department or the authority in its discretion may stay the
26 effectiveness of an order during the pendency of such an appeal.

27 (3) At any time during the pendency of an appeal of such an order
28 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
29 hearings board for a stay of the order or for the removal thereof.

30 (4) Any appeal must contain the following in accordance with the
31 rules of the hearings board:

32 (a) The appellant's name and address;

33 (b) The date and docket number of the order, permit, or license
34 appealed;

35 (c) A description of the substance of the order, permit, or license
36 that is the subject of the appeal;

1 (d) A clear, separate, and concise statement of every error alleged
2 to have been committed;

3 (e) A clear and concise statement of facts upon which the requester
4 relies to sustain his or her statements of error; and

5 (f) A statement setting forth the relief sought.

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

13 (6) An appealable decision or order shall be identified as such and
14 shall contain a conspicuous notice to the recipient that it may be
15 appealed only by filing an appeal with the hearings board and serving
16 it on the department within thirty days of the date of receipt.

17 **Sec. 230.** RCW 43.21B.300 and 2004 c 204 s 4 are each amended to
18 read as follows:

19 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431 (as
20 recodified by this act), 70.105.080, 70.107.050, 88.46.090, 90.03.600,
21 90.48.144, 90.56.310, and 90.56.330 shall be imposed by a notice in
22 writing, either by certified mail with return receipt requested or by
23 personal service, to the person incurring the penalty from the
24 department or the local air authority, describing the violation with
25 reasonable particularity. Within thirty days after the notice is
26 received, the person incurring the penalty may apply in writing to the
27 department or the authority for the remission or mitigation of the
28 penalty. Upon receipt of the application, the department or authority
29 may remit or mitigate the penalty upon whatever terms the department or
30 the authority in its discretion deems proper. The department or the
31 authority may ascertain the facts regarding all such applications in
32 such reasonable manner and under such rules as it may deem proper and
33 shall remit or mitigate the penalty only upon a demonstration of
34 extraordinary circumstances such as the presence of information or
35 factors not considered in setting the original penalty.

36 (2) Any penalty imposed under this section may be appealed to the
37 pollution control hearings board in accordance with this chapter if the

1 appeal is filed with the hearings board and served on the department or
2 authority thirty days after the date of receipt by the person penalized
3 of the notice imposing the penalty or thirty days after the date of
4 receipt of the notice of disposition of the application for relief from
5 penalty.

6 (3) A penalty shall become due and payable on the later of:

7 (a) Thirty days after receipt of the notice imposing the penalty;

8 (b) Thirty days after receipt of the notice of disposition on
9 application for relief from penalty, if such an application is made; or

10 (c) Thirty days after receipt of the notice of decision of the
11 hearings board if the penalty is appealed.

12 (4) If the amount of any penalty is not paid to the department
13 within thirty days after it becomes due and payable, the attorney
14 general, upon request of the department, shall bring an action in the
15 name of the state of Washington in the superior court of Thurston
16 county, or of any county in which the violator does business, to
17 recover the penalty. If the amount of the penalty is not paid to the
18 authority within thirty days after it becomes due and payable, the
19 authority may bring an action to recover the penalty in the superior
20 court of the county of the authority's main office or of any county in
21 which the violator does business. In these actions, the procedures and
22 rules of evidence shall be the same as in an ordinary civil action.

23 (5) All penalties recovered shall be paid into the state treasury
24 and credited to the general fund except those penalties imposed
25 pursuant to RCW 18.104.155, which shall be credited to the reclamation
26 account as provided in RCW 18.104.155(7), RCW 70.94.431 (as recodified
27 by this act), the disposition of which shall be governed by that
28 provision, RCW 70.105.080, which shall be credited to the hazardous
29 waste control and elimination account, created by RCW 70.105.180, and
30 RCW 90.56.330, which shall be credited to the coastal protection fund
31 created by RCW 90.48.390.

32 **Sec. 231.** RCW 43.21C.0381 and 1995 c 172 s 1 are each amended to
33 read as follows:

34 Decisions pertaining to the issuance, renewal, reopening, or
35 revision of an air operating permit under RCW 70.94.161 (as recodified
36 by this act) are not subject to the requirements of RCW
37 43.21C.030(2)(c).

1 **Sec. 232.** RCW 43.21K.020 and 1997 c 381 s 3 are each amended to
2 read as follows:

3 An environmental excellence program agreement entered into under
4 this chapter must achieve more effective or efficient environmental
5 results than the results that would be otherwise achieved. The basis
6 for comparison shall be a reasonable estimate of the overall impact of
7 the participating facility on the environment in the absence of an
8 environmental excellence program agreement. More effective
9 environmental results are results that are better overall than those
10 that would be achieved under the legal requirements superseded or
11 replaced by the agreement. More efficient environmental results are
12 results that are achieved at reduced cost but do not decrease the
13 overall environmental results achieved by the participating facility.
14 An environmental excellence program agreement may not authorize either
15 (1) the release of water pollutants that will cause to be exceeded, at
16 points of compliance in the ambient environment established pursuant to
17 law, numeric surface water or ground water quality criteria or numeric
18 sediment quality criteria adopted as rules under chapter 90.48 RCW; or
19 (2) the emission of any air contaminants that will cause to be exceeded
20 any air quality standard as defined in RCW 70.94.030(3) (as recodified
21 by this act); or (3) a decrease in the overall environmental results
22 achieved by the participating facility compared with results achieved
23 over a representative period before the date on which the agreement is
24 proposed by the sponsor. However, an environmental excellence program
25 agreement may authorize reasonable increases in the release of
26 pollutants to permit increases in facility production or facility
27 expansion and modification.

28 **Sec. 233.** RCW 43.41.140 and 1993 c 394 s 3 are each amended to
29 read as follows:

30 Pursuant to policies and regulations promulgated by the office of
31 financial management, an elected state officer or delegate or a state
32 agency director or delegate may permit an employee to commute in a
33 state-owned or leased vehicle if such travel is on official business,
34 as determined in accordance with RCW 43.41.130, and is determined to be
35 economical and advantageous to the state, or as part of a commute trip
36 reduction program as required by RCW 70.94.551 (as recodified by this
37 act).

1 **Sec. 234.** RCW 43.42.070 and 2003 c 70 s 7 are each amended to read
2 as follows:

3 (1) The office may coordinate negotiation and implementation of a
4 written agreement among the project applicant, the office, and
5 participating permit agencies to recover from the project applicant the
6 reasonable costs incurred by the office in carrying out the provisions
7 of RCW 43.42.050(2) and 43.42.060(2) and by participating permit
8 agencies in carrying out permit processing tasks specified in the
9 agreement.

10 (2) The office may coordinate negotiation and implementation of a
11 written agreement among the project applicant, the office, and
12 participating permit agencies to recover from the project applicant the
13 reasonable costs incurred by outside independent consultants selected
14 by the office and participating permit agencies to perform permit
15 processing tasks.

16 (3) Outside independent consultants may only bill for the costs of
17 performing those permit processing tasks that are specified in a cost-
18 reimbursement agreement under this section. The billing process shall
19 provide for accurate time and cost accounting and may include a billing
20 cycle that provides for progress payments.

21 (4) The office shall adopt a policy to coordinate cost-
22 reimbursement agreements with outside independent consultants. Cost-
23 reimbursement agreements coordinated by the office under this section
24 must be based on competitive bids that are awarded for each agreement
25 from a prequalified consultant roster.

26 (5) Independent consultants hired under a cost-reimbursement
27 agreement shall report directly to the permit agency. The office shall
28 assure that final decisions are made by the permit agency and not by
29 the consultant.

30 (6) The office shall develop procedures for determining,
31 collecting, and distributing cost reimbursement for carrying out the
32 provisions of this chapter.

33 (7) For a cost-reimbursement agreement, the office and
34 participating permit agencies shall negotiate a work plan and schedule
35 for reimbursement. Prior to distributing scheduled reimbursement to
36 the agencies, the office shall verify that the agencies have met the
37 obligations contained in their work plan.

1 (8) Prior to commencing negotiations with the project applicant for
2 a cost-reimbursement agreement, the office shall request work load
3 analyses from each participating permitting agency. These analyses
4 shall be available to the public. The work load of a participating
5 permit agency may only be modified with the concurrence of the agency
6 and if there is both good cause to do so and no significant impact on
7 environmental review.

8 (9) The office shall develop guidance to ensure that, in developing
9 cost-reimbursement agreements, conflicts of interest are eliminated.

10 (10) For project permit processes that it coordinates, the office
11 shall coordinate the negotiation of all cost-reimbursement agreements
12 executed under RCW 43.21A.690, (~~(43.30.420)~~) 43.30.490, 43.70.630,
13 43.300.080, and 70.94.085 (as recodified by this act). The office and
14 the permit agencies shall be signatories to the agreements. Each
15 permit agency shall manage performance of its portion of the agreement.

16 (11) If a permit agency or the project applicant foresees, at any
17 time, that it will be unable to meet its obligations under the cost-
18 reimbursement agreement, it shall notify the office and state the
19 reasons. The office shall notify the participating permit agencies and
20 the project applicant and, upon agreement of all parties, adjust the
21 schedule, or, if necessary, coordinate revision of the work plan.

22 **Sec. 235.** RCW 46.08.172 and 1995 c 215 s 4 are each amended to
23 read as follows:

24 The director of the department of general administration shall
25 establish equitable and consistent parking rental fees for the capitol
26 campus and may, if requested by agencies, establish equitable and
27 consistent parking rental fees for agencies off the capitol campus, to
28 be charged to employees, visitors, clients, service providers, and
29 others, that reflect the legislature's intent to reduce state
30 subsidization of parking or to meet the commute trip reduction goals
31 established in RCW 70.94.527 (as recodified by this act). All fees
32 shall take into account the market rate of comparable privately owned
33 rental parking, as determined by the director. However, parking rental
34 fees are not to exceed the local market rate of comparable privately
35 owned rental parking.

36 The director may delegate the responsibility for the collection of
37 parking fees to other agencies of state government when cost-effective.

1 **Sec. 236.** RCW 46.68.020 and 2004 c 200 s 3 are each amended to
2 read as follows:

3 The director shall forward all fees for certificates of ownership
4 or other moneys accruing under the provisions of chapter 46.12 RCW to
5 the state treasurer, together with a proper identifying detailed
6 report. The state treasurer shall credit such moneys as follows:

7 (1) The fees collected under RCW 46.12.040(1) and 46.12.101(6)
8 shall be credited to the multimodal transportation account in RCW
9 47.66.070.

10 (2)(a) Beginning July 27, 2003, and until July 1, 2008, the fees
11 collected under RCW 46.12.080, 46.12.101(3), 46.12.170, and 46.12.181
12 shall be credited as follows:

13 (i) 58.12 percent shall be credited to a segregated subaccount of
14 the air pollution control account in RCW 70.94.015 (as recodified by
15 this act);

16 (ii) 16.60 percent shall be credited to the vessel response account
17 created in RCW 90.56.335; and

18 (iii) The remainder shall be credited into the transportation 2003
19 account (nickel account).

20 (b) Beginning July 1, 2008, and thereafter, the fees collected
21 under RCW 46.12.080, 46.12.101(3), 46.12.170, and 46.12.181 shall be
22 credited to the transportation 2003 account (nickel account).

23 (3) The fees collected under RCW 46.12.040(3) and 46.12.060 shall
24 be credited to the motor vehicle account.

25 **Sec. 237.** RCW 52.12.150 and 2000 c 199 s 1 are each amended to
26 read as follows:

27 Without obtaining a permit issued under RCW 70.94.650 (as
28 recodified by this act), fire protection district fire fighters may set
29 fire to structures located outside of urban growth areas in counties
30 that plan under the requirements of RCW 36.70A.040, and outside of any
31 city with a population of ten thousand or more in all other counties,
32 for instruction in methods of fire fighting, if all of the following
33 conditions are met:

34 (1) In consideration of prevailing air patterns, the fire is
35 unlikely to cause air pollution in areas of sensitivity downwind of the
36 proposed fire location;

1 (2) The fire is not located in an area that is declared to be in an
2 air pollution episode or any stage of an impaired air quality as
3 defined in RCW 70.94.715 (as recodified by this act) and ~~((70.94.473))~~
4 section 316 of this act;

5 (3) Nuisance laws are applicable to the fire, including nuisances
6 related to the unreasonable interference with the enjoyment of life and
7 property and the depositing of particulate matter or ash on other
8 property;

9 (4) Notice of the fire is provided to the owners of property
10 adjoining the property on which the fire will occur, to other persons
11 who potentially will be impacted by the fire, and to additional persons
12 in a broader manner as specifically requested by the local air
13 pollution control agency or the department of ecology;

14 (5) Each structure that is proposed to be set on fire must be
15 identified specifically as a structure to be set on fire. Each other
16 structure on the same parcel of property that is not proposed to be set
17 on fire must be identified specifically as a structure not to be set on
18 fire; and

19 (6) Before setting a structure on fire, a good-faith inspection is
20 conducted by the fire agency or fire protection district conducting the
21 training fire to determine if materials containing asbestos are
22 present, the inspection is documented in writing and forwarded to the
23 appropriate local air authority or the department of ecology if there
24 is no local air authority, and asbestos that is found is removed as
25 required by state and federal laws.

26 **PART 3**

27 **UPDATED PROVISIONS**

28 NEW SECTION. **Sec. 301.** The air operating permit account is
29 created in the custody of the state treasurer. All receipts collected
30 by or on behalf of the department from permit program sources under RCW
31 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) (as recodified by
32 this act) shall be deposited into the account. Expenditures from the
33 account may be used only for the activities described in RCW
34 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) (as recodified by
35 this act). Moneys in the account may be spent only after
36 appropriation.

1 NEW SECTION. **Sec. 302.** The department has the power to require
2 the addition to or deletion of a county or counties from an existing
3 authority in order to carry out the purposes of this chapter. No
4 addition or deletion may be made without the concurrence of any
5 existing authority involved. Such an action may only be taken after a
6 public hearing held pursuant to the provisions of chapter 34.05 RCW.

7 NEW SECTION. **Sec. 303.** When a member of a board has a potential
8 conflict of interest in an action before the board, the member shall
9 declare to the board the nature of the potential conflict prior to
10 participating in the action review. The board shall, if the potential
11 conflict of interest, in the judgment of a majority of the board, may
12 prevent the member from a fair and objective review of the case, remove
13 the member from participation in the action.

14 NEW SECTION. **Sec. 304.** (1) Except as provided in subsection (6)
15 of this section, any person operating or responsible for the operation
16 of air contaminant sources of any class that is required by the
17 department or the board of an authority to register and report must
18 complete the required registration and report information as required
19 by the department or board.

20 (2) Reporting required under this section must include location,
21 size and height of contaminant outlets, processes employed, nature of
22 the contaminant emission, and other information relevant to air
23 pollution and available or reasonably capable of being assembled.

24 (3) The department or board may require that registration under
25 this section be accompanied by a fee and may determine the amount of
26 the fee for each class or classes. Any required registration fee shall
27 be no more than is required to compensate for the costs to the board or
28 department of:

29 (a) Initial registration;

30 (b) Annual or other periodic reports from the source owner
31 providing information directly related to air pollution registration;

32 (c) On-site inspections necessary to verify compliance with
33 registration requirements;

34 (d) Data storage and retrieval systems necessary for support of the
35 registration program;

1 (e) Emission inventory reports and emission reduction credits
2 computed from information provided by sources pursuant to registration
3 program requirements;

4 (f) Staff review, including engineering analysis for accuracy and
5 currentness, of information provided by sources pursuant to
6 registration program requirements;

7 (g) Clerical and other office support provided in direct
8 furtherance of the registration program; and

9 (h) Administrative support provided in directly carrying out the
10 registration program.

11 (4) All registration program fees collected by the department under
12 this section shall be deposited in the air pollution control account
13 created in RCW 70.94.015 (as recodified by this act). All registration
14 program fees collected by the authorities under this section shall be
15 deposited in their respective treasuries.

16 (5) Any registration required under this section with either the
17 board or the department shall preclude a further registration with any
18 other board or the department.

19 (6) If a registration or report has been filed for a grain
20 warehouse or grain elevator that handles ten million bushels of grain
21 or less annually, as required under this section, registration,
22 reporting, or a registration program fee shall not again be required
23 under this section for the warehouse or elevator unless the capacity of
24 the warehouse or elevator as listed as part of the license issued for
25 the facility has been increased since the date the registration or
26 reporting was last made. If the capacity of the warehouse or elevator
27 listed as part of the license is increased, any registration or
28 reporting required for the warehouse or elevator under this section
29 must be made by the date the warehouse or elevator receives grain from
30 the first harvest season that occurs after the increase in its capacity
31 is listed in the license.

32 (7) This section does not apply to any program permit source under
33 RCW 70.94.161 (as recodified by this act) after the effective date of
34 the United States environmental protection agency's approval of the
35 state operating permit program.

36 NEW SECTION. **Sec. 305.** The department shall establish rules
37 requiring sources or source categories that individually or

1 collectively contribute the majority of statewide air emissions of each
2 regulated pollutant to apply reasonable and available control methods,
3 including, but not limited to, changes in technology, processes, or
4 other control strategies. The department shall review, and if
5 necessary, update its rules every five years to ensure consistency with
6 current reasonable and available control methods.

7 NEW SECTION. **Sec. 306.** In no event shall application of "best
8 available control technology" result in emissions of any pollutants
9 that will exceed the emissions allowed by any applicable standard under
10 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their
11 later enactments as adopted by reference by the director by rule.
12 Emissions from any source utilizing clean fuels, or any other means, to
13 comply with this section shall not be allowed to increase above levels
14 that would have been required under the definition of BACT as it
15 existed prior to enactment of the federal clean air act amendments of
16 1990.

17 NEW SECTION. **Sec. 307.** (1) When there are necessary requirements
18 for the attainment of air quality standards and the maintenance of air
19 quality can be achieved through the use of a control program involving
20 the bubble concept, as defined in RCW 70.94.030 (as recodified by this
21 act), a bubble concept program may be authorized by a regulatory order,
22 orders, or permit issued to the air contaminant source or sources
23 involved as long as air quality standards are not being exceeded. The
24 orders or permits issued under this section shall be issued by the
25 department or the authority with jurisdiction. If the bubble involves
26 interjurisdictional approval, concurrence in the total program must be
27 secured from each regulatory entity concerned.

28 (2) Any order or permit issued under this section shall only be
29 authorized after the control program involving the bubble concept is
30 accepted by the United States environmental protection agency as part
31 of an approved state implementation plan.

32 (3) Any order or permit issued under this section shall include a
33 provision restricting the total emissions within the bubble to no more
34 than would otherwise be allowed in the aggregate for all emitting
35 processes covered. Individual point source emissions levels from a

1 specified facility or facilities may be modified provided that the
2 aggregate limit for the specified sources is not exceeded.

3 NEW SECTION. **Sec. 308.** The responsibility for operating permit
4 fee determination, assessment, and collection under RCW 70.94.162 (as
5 recodified by this act) is to be shared by the department and delegated
6 authorities as follows:

7 (1) Each permitting authority, including the department, acting in
8 its capacity as a permitting authority, shall develop a fee schedule
9 and mechanism for collecting fees, consistent with section 309 of this
10 act, from the permit program sources under its jurisdiction. The fees
11 collected by each authority must be sufficient to cover the authority's
12 costs of permit administration and its share of the department's costs
13 of development and oversight. Each delegated authority shall remit to
14 the department its share of the department's development and oversight
15 costs.

16 (2) Only those authorities to whom the department has delegated the
17 authority to administer the program pursuant to RCW 70.94.161 and
18 70.94.510 (as recodified by this act) have the authority to administer
19 and collect operating permit fees under RCW 70.94.162 (as recodified by
20 this act). The department shall retain the authority to administer and
21 collect fees with respect to the sources within the jurisdiction of an
22 authority until the effective date of program delegation to that
23 authority.

24 (3) The department shall allocate its development and oversight
25 costs among all permitting authorities, including the department, in
26 proportion to the number of permit program sources under the
27 jurisdiction of each authority, except that extraordinary costs or
28 other costs readily attributable to a specific permitting authority may
29 be assessed to that authority. For purposes of this subsection, all
30 sources covered by a single general permit shall be treated as one
31 source.

32 NEW SECTION. **Sec. 309.** (1) The fee schedule developed by each
33 permitting authority under RCW 70.94.162 (as recodified by this act)
34 shall fully cover and not exceed both the authority's permit
35 administration costs, as defined in section 310 of this act, and the

1 permitting authority's share of statewide program development and
2 oversight costs, as defined in section 311 of this act.

3 (2)(a) The department and each delegated authority shall adopt by
4 rule a general permit fee schedule for sources under their respective
5 jurisdictions after the department adopts provisions for general permit
6 issuance.

7 (b) The permit administration costs of each general permit shall be
8 allocated equitably among only those sources subject to that general
9 permit. The share of development and oversight costs attributable to
10 each general permit shall be determined pursuant to section 308 of this
11 act.

12 (3)(a) The department shall, consistent with section 312 of this
13 act and after an opportunity for public review and comment, adopt rules
14 that establish a process for development and review of its operating
15 permit program fee schedule, a methodology for tracking program
16 revenues and expenditures consistent with section 313 of this act and,
17 for both the department and the delegated authorities, a system of
18 fiscal audits, reports, and periodic performance audits consistent with
19 section 314 of this act.

20 (b) The fee schedule developed by the department shall allocate
21 among the sources for whom the department acts as a permitting
22 authority, other than sources subject to a general permit, those
23 portions of the department's permit administration costs and the
24 department's share of the development and oversight costs that the
25 department does not plan to recover under its general permit fee
26 schedule or schedules as follows:

27 (i) The department shall allocate its permit administration costs
28 and its share of the development and oversight costs not recovered
29 through general permit fees according to a three-tiered model based
30 upon:

31 (A) The number of permit program sources under its jurisdiction;

32 (B) The complexity of permit program sources under its
33 jurisdiction; and

34 (C) The size of permit program sources under its jurisdiction, as
35 measured by the quantity of each regulated pollutant emitted by the
36 source.

37 (ii) Each of the three tiers shall be equally weighted.

1 (iii) The department may, in addition, allocate activities-based
2 costs readily attributable to a specific source to that source under
3 RCW 70.94.152(1) and 70.94.154(7) (as recodified by this act).

4 (iv) The quantity of each regulated pollutant emitted by a source
5 shall be determined based on the annual emissions during the most
6 recent calendar year for which data is available.

7 (4) Fee structures authorized under this section remain in effect
8 until the legislature authorizes an alternative structure.

9 (5) Each authority requesting delegation under RCW 70.94.510 (as
10 recodified by this act) shall, after opportunity for public review and
11 comment, publish regulations which establish a process for development
12 and review of its operating permit program fee schedule, and a
13 methodology for tracking its revenues and expenditures. These
14 regulations shall be submitted to the department for review and
15 approval as part of the authority's delegation request.

16 NEW SECTION. Sec. 310. (1) As used in section 309 of this act,
17 the term "permit administration costs" means those costs incurred by
18 each permitting authority, including the department, in administering
19 and enforcing the operating permit program with respect to sources
20 under its jurisdiction.

21 (2) Costs associated with the following activities are fee eligible
22 as these activities relate to the operating permit program and to the
23 sources permitted by a permitting authority, including, where
24 applicable, sources subject to a general permit:

25 (a) Preapplication assistance and review of an application and
26 proposed compliance plan for a permit, permit revision, or renewal;

27 (b) Source inspections, testing, and other data-gathering
28 activities necessary for the development of a permit, permit revision,
29 or renewal;

30 (c) Acting on an application for a permit, permit revision, or
31 renewal, including the costs of developing an applicable requirement as
32 part of the processing of a permit, permit revision, or renewal,
33 preparing a draft permit and fact sheet, and preparing a final permit,
34 but excluding the costs of developing BACT, LAER, BART, or RACT
35 requirements for criteria and toxic air pollutants;

36 (d) Notifying and soliciting, reviewing, and responding to comment
37 from the public and contiguous states and tribes, conducting public

1 hearings regarding the issuance of a draft permit and other costs of
2 providing information to the public regarding operating permits and the
3 permit issuance process;

4 (e) Modeling necessary to establish permit limits or to determine
5 compliance with permit limits;

6 (f) Reviewing compliance certifications and emissions reports and
7 conducting related compilation and reporting activities;

8 (g) Conducting compliance inspections, complaint investigations,
9 and other activities necessary to ensure that a source is complying
10 with permit conditions;

11 (h) Administrative enforcement activities and penalty assessment,
12 excluding the costs of proceedings before the pollution control
13 hearings board and all costs of judicial enforcement;

14 (i) The share attributable to permitted sources of the development
15 and maintenance of emissions inventories;

16 (j) The share attributable to permitted sources of ambient air
17 quality monitoring and associated recording and reporting activities;

18 (k) Training for permit administration and enforcement;

19 (l) Fee determination, assessment, and collection, including the
20 costs of necessary administrative dispute resolution and penalty
21 collection;

22 (m) Required fiscal audits, periodic performance audits, and
23 reporting activities;

24 (n) Tracking of time, revenues and expenditures, and accounting
25 activities;

26 (o) Administering the permit program including the costs of
27 clerical support, supervision, and management;

28 (p) Provision of assistance to small businesses under the
29 jurisdiction of the permitting authority as required under section 507
30 of the federal clean air act; and

31 (q) Other activities required by operating permit regulations
32 issued by the United States environmental protection agency under the
33 federal clean air act.

34 NEW SECTION. **Sec. 311.** (1) As used in section 309 of this act,
35 "development and oversight costs" means those costs incurred by the
36 department in developing and administering the state operating permit

1 program, and in overseeing the administration of the program by the
2 delegated local permitting authorities.

3 (2) Costs associated with the following activities are fee eligible
4 as these activities relate to the operating permit program:

5 (a) Review and determinations necessary for delegation of authority
6 to administer and enforce a permit program to a local air authority
7 under RCW 70.94.161(2) and 70.94.510 (as recodified by this act);

8 (b) Conducting fiscal audits and periodic performance audits of
9 delegated local authorities, and other oversight functions required by
10 the operating permit program;

11 (c) Administrative enforcement actions taken by the department on
12 behalf of a permitting authority, including those actions taken by the
13 department under RCW 70.94.785 (as recodified by this act), but
14 excluding the costs of proceedings before the pollution control
15 hearings board and all costs of judicial enforcement;

16 (d) Determination and assessment with respect to each permitting
17 authority of the fees covering its share of the costs of development
18 and oversight;

19 (e) Training and assistance for permit program administration and
20 oversight, including training and assistance regarding technical,
21 administrative, and data management issues;

22 (f) Development of generally applicable regulations or guidance
23 regarding the permit program or its implementation or enforcement;

24 (g) State codification of federal rules or standards for inclusion
25 in operating permits;

26 (h) Preparation of delegation package and other activities
27 associated with submittal of the state permit program to the United
28 States environmental protection agency for approval, including ongoing
29 coordination activities;

30 (i) General administration and coordination of the state permit
31 program, related support activities, and other agency indirect costs,
32 including necessary data management and quality assurance;

33 (j) Required fiscal audits and periodic performance audits of the
34 department, and reporting activities;

35 (k) Tracking of time, revenues and expenditures, and accounting
36 activities;

37 (l) Public education and outreach related to the operating permit
38 program, including the maintenance of a permit register;

1 (m) The share attributable to permitted sources of compiling and
2 maintaining emissions inventories;

3 (n) The share attributable to permitted sources of ambient air
4 quality monitoring, related technical support, and associated recording
5 activities;

6 (o) The share attributable to permitted sources of modeling
7 activities;

8 (p) Provision of assistance to small business as required under
9 section 507 of the federal clean air act as it exists on July 25, 1993,
10 or its later enactment as adopted by reference by the director by rule;

11 (q) Provision of services by the department of revenue and the
12 office of the state attorney general and other state agencies in
13 support of permit program administration;

14 (r) A one-time revision to the state implementation plan to make
15 those administrative changes necessary to ensure coordination of the
16 state implementation plan and the operating permit program; and

17 (s) Other activities required by operating permit regulations
18 issued by the United States environmental protection agency under the
19 federal clean air act.

20 NEW SECTION. **Sec. 312.** The fee schedule development and review
21 process required from the department under section 309 of this act
22 shall include the following:

23 (1) A biennial workload analysis, conducted by the department. In
24 preparing the workload analysis, the department shall provide an
25 opportunity for public review and comment. The department shall review
26 and update its workload analysis during each biennial budget cycle,
27 taking into account information gathered by tracking previous revenues,
28 time, and expenditures and other information obtained through fiscal
29 audits and performance audits;

30 (2) A biennial budget based upon the resource requirements
31 identified in the workload analysis for that biennium. In preparing
32 the budget, the department shall take into account the projected
33 operating permit account balance at the start of the biennium. The
34 department shall provide the opportunity for public review and comment
35 on the proposed budget. The department shall review and update its
36 budget each biennium;

1 (3) A fee schedule allocating the department's permit
2 administration costs and its share of the development and oversight
3 costs among the department's permit program sources using the
4 methodology described in RCW 70.94.162 (as recodified by this act);

5 (4) The opportunity for public review of and comment on the
6 allocation methodology and fee schedule;

7 (5) Procedures for administrative resolution of disputes regarding
8 the source data on which allocation determinations are based, which
9 shall be designed so that resolution occurs prior to the completion of
10 the allocation process;

11 (6) A review and update to the fee schedule annually.

12 NEW SECTION. **Sec. 313.** (1) The methodology for tracking revenues
13 and expenditures required under section 309 of this act shall include
14 the following:

15 (a) A system for tracking revenues and expenditures that provides
16 the maximum practicable information. At a minimum, revenues from fees
17 collected under the operating permit program shall be tracked on a
18 source-specific basis and time and expenditures required to administer
19 the program shall be tracked on the basis of source categories and
20 functional categories. Each general permit will be treated as a
21 separate source category for tracking and accounting purposes;

22 (b) Use by the department of the information obtained from tracking
23 revenues, time, and expenditures to modify the workload analysis
24 required in section 309 of this act.

25 (2) The information obtained from tracking revenues, time, and
26 expenditures shall not provide a basis for challenge to the amount of
27 an individual source's fee.

28 NEW SECTION. **Sec. 314.** The system of fiscal audits, reports, and
29 periodic performance audits required by section 309 of this act shall
30 include the following:

31 (1) Annual reports prepared and submitted by the department and the
32 delegated authorities to, respectively, the appropriate standing
33 committees of the legislature and the board; and

34 (2) Fiscal audits and routine performance audits arranged by the
35 department for periodic intensive performance audits of each permitting
36 authority and of the department.

1 NEW SECTION. **Sec. 315.** The episode avoidance plan required to be
2 developed by the department under RCW 70.94.715 (as recodified by this
3 act), shall be established by rule in accordance with chapter 34.05
4 RCW, and shall include, but not be limited to the following:

5 (1)(a) The designation of episode criteria and stages requiring the
6 carrying out of preplanned episode avoidance procedures. The stages of
7 occurrence are: Forecast, alert, warning, and emergency, and all
8 intermediate stages designated by the department.

9 (b) "Forecast" means the presence of meteorological conditions that
10 are conducive to accumulation of air contaminants and is the first
11 stage of an episode. The department shall not call a forecast episode
12 prior to the department or an authority calling a first stage impaired
13 air quality condition as provided by section 316 of this act.

14 (c) "Alert" means a concentration of air contaminants at levels at
15 which short-term health effects may occur, and is the second stage of
16 an episode.

17 (d) "Warning" means concentrations are continuing to degrade,
18 contaminant concentrations have reached a level that, if maintained,
19 can result in damage to health, and additional control actions are
20 needed and is the third level of an episode.

21 (e) "Emergency" means the air quality is posing an imminent and
22 substantial endangerment to public health and is the fourth level of an
23 episode;

24 (2) A requirement that persons responsible for the operation of air
25 contaminant sources prepare and obtain approval from the director of
26 source emission reduction plans, consistent with good operating
27 practice and safe operating procedures, for reducing emissions during
28 designated episode stages;

29 (3) A provision for the director, the director's authorized
30 representative, or, if implementation has been delegated, the control
31 officer to declare and terminate the episode stages described in this
32 section, up to the warning episode stage, if applicable criteria has
33 been satisfied. Any declarations made under this subsection constitute
34 an order for action in accordance with applicable source emission
35 reduction plans;

36 (4) A provision for the governor to declare and terminate the
37 emergency stage and all intermediate stages above the warning episode

1 stage. Any declaration made under this subsection constitutes an order
2 in accordance with applicable source emission reduction plans;

3 (5) Provisions for enforcement by state and local police, personnel
4 of the department and the department of social and health services, and
5 personnel of local air pollution control agencies;

6 (6) Provisions for the reduction or discontinuance of emissions
7 immediately, consistent with good operating practice and safe operating
8 procedures, under an air pollution emergency as provided in RCW
9 70.94.720 (as recodified by this act).

10 NEW SECTION. **Sec. 316.** (1) A first stage of impaired air quality
11 is determined by the department or an authority when:

12 (a) Fine particulates are at an ambient level of thirty-five
13 micrograms per cubic meter measured on a twenty-four-hour average; and

14 (b) Forecasted meteorological conditions are not expected to allow
15 levels of fine particulates to decline below thirty-five micrograms per
16 cubic meter for a period of forty-eight hours or more from the time
17 that the fine particulates are measured at the trigger level.

18 (2) A second stage of impaired air quality is determined by the
19 department or an authority when:

20 (a) A first stage of impaired air quality has been in force and not
21 been sufficient to reduce the increasing fine particulate pollution
22 trend;

23 (b) Fine particulates are at an ambient level of sixty micrograms
24 per cubic meter measured on a twenty-four-hour average; and

25 (c) Forecasted meteorological conditions are not expected to allow
26 levels of fine particulates to decline below sixty micrograms per cubic
27 meter for a period of forty-eight hours or more from the time that the
28 fine particulates are measured at the trigger level.

29 NEW SECTION. **Sec. 317.** (1) The department shall establish, by
30 rule under chapter 34.05 RCW:

31 (a) A statewide emission performance standard for new solid fuel
32 burning devices; and

33 (b) A program to:

34 (i) Determine whether a new solid fuel burning device complies with
35 the statewide emission performance standards established in this
36 section; and

1 (ii) Approve the sale of devices that comply with the statewide
2 emission performance standards.

3 (2)(a) Notwithstanding RCW 70.94.457(1) (as recodified by this
4 act), the department is authorized to adopt, by rule, emission
5 standards adopted by the United States environmental protection agency
6 for new wood stoves sold at retail.

7 (b) For solid fuel burning devices that the United States
8 environmental protection agency has not established emission standards,
9 the department may exempt or establish, by rule, statewide standards,
10 including emission levels and test procedures for the devices and the
11 emission levels. Test procedures shall be equivalent to emission
12 levels per pound per hour burned for other new wood stoves and
13 fireplaces regulated under RCW 70.94.457 (as recodified by this act).

14 (3) Actions of the department and authorities under this section
15 shall preempt actions of other state agencies and local governments for
16 the purposes of controlling air pollution from solid fuel burning
17 devices, except where authorized by chapter 199, Laws of 1991.

18 (4) No authority shall adopt any emission standard for new solid
19 fuel burning devices other than the statewide standard adopted by the
20 department under this section.

21 NEW SECTION. **Sec. 318.** (1) For the sole purpose of a contingency
22 measure to meet the requirements of section 172(c)(9) of the federal
23 clean air act, an authority or the department may prohibit the use of
24 solid fuel burning devices, except fireplaces as defined in RCW
25 70.94.030 (as recodified by this act), wood stoves meeting the
26 standards set forth in RCW 70.94.457 (as recodified by this act), or
27 pellet stoves either certified or issued an exemption by the United
28 States environmental protection agency in accordance with Title 40,
29 Part 60 of the code of federal regulations, if the United States
30 environmental protection agency, in consultation with the department
31 and the local authority, makes written findings that:

32 (a) The area has failed to make reasonable further progress or
33 attain or maintain a national ambient air quality standard; and

34 (b) Emissions from solid fuel burning devices from a particular
35 geographic area are a contributing factor to such failure to make
36 reasonable further progress or attain or maintain a national ambient
37 air quality standard.

1 (2) A prohibition issued by an authority or the department under
2 this section shall not apply to a person in a residence or commercial
3 establishment that does not have an adequate source of heat without
4 burning wood.

5 NEW SECTION. **Sec. 319.** (1) Emissions from silvicultural burning
6 in eastern Washington that is conducted for the purpose of restoring
7 forest health or preventing the additional deterioration of forest
8 health are exempt from the reduction targets and calculations of RCW
9 70.94.665 (as recodified by this act) if the following conditions are
10 met:

11 (a) The landowner submits a written request to the department
12 identifying the location of the proposed burning and the nature of the
13 forest health problem to be corrected. The request shall include a
14 brief description of alternatives to silvicultural burning and reasons
15 why the landowner believes the alternatives not to be appropriate.

16 (b) The department determines that the proposed silvicultural
17 burning operation:

18 (i) Is being conducted to restore forest health or prevent
19 additional deterioration to forest health;

20 (ii) Meets the requirements of the state smoke management plan to
21 protect public health, visibility, and the environment; and

22 (iii) Will not be conducted during an air pollution episode or
23 during periods of impaired air quality in the vicinity of the proposed
24 burn.

25 (c) Upon approval of the request by the department, and before
26 burning, the landowner is encouraged to notify the public in the
27 vicinity of the burn of the general location and approximate time of
28 ignition.

29 (2) The department may conduct a limited, seasonal ambient air
30 quality monitoring program to measure the effects of forest health
31 burning conducted under this section. The monitoring program may be
32 developed in consultation with the department of natural resources,
33 private and public forest landowners, academic experts in forest health
34 issues, and the general public.

35 NEW SECTION. **Sec. 320.** (1) The department of natural resources

1 shall encourage more intense utilization in logging and alternative
2 silviculture practices to reduce the need for burning.

3 (2) The department of natural resources shall, whenever practical,
4 encourage landowners to develop and use alternative acceptable disposal
5 methods subject to the following priorities:

- 6 (a) Slash production minimization;
- 7 (b) Slash utilization;
- 8 (c) Nonburning disposal; and
- 9 (d) Silvicultural burning.

10 (3) Alternative acceptable disposal methods shall be evaluated as
11 to the relative impact on air, water, and land pollution, public
12 health, and their financial feasibility.

13 NEW SECTION. **Sec. 321.** (1) A permit is not required under RCW
14 70.94.650, 70.94.743, 70.94.745, 70.94.750, or 70.94.780 (as recodified
15 by this act), from an authority, the department, or any local entity
16 with delegated permit authority, for aircraft crash rescue fire
17 training activities meeting the following conditions:

18 (a) Fire fighters participating in the training fires must be
19 limited to those who provide fire fighting support to an airport that
20 is either certified by the federal aviation administration or operated
21 in support of military or governmental activities;

22 (b) The fire training may not be conducted during an air pollution
23 episode or any stage of impaired air quality declared under RCW
24 70.94.715 (as recodified by this act) for the area where training is to
25 be conducted;

26 (c) The number of training fires allowed per year without a permit
27 shall be the minimum number necessary to meet federal aviation
28 administration or other federal safety requirements;

29 (d) The facility shall use current technology and be operated in a
30 manner that will minimize, to the extent possible, the air contaminants
31 generated during operation; and

32 (e) Prior to the commencement of the aircraft fire training, the
33 organization conducting training shall notify both:

- 34 (i) The local fire district or fire department; and
- 35 (ii) The authority, department, or local entity delegated
36 permitting authority under RCW 70.94.654 (as recodified by this act)
37 having jurisdiction within the area where training is to be conducted.

1 (2) Written approval from the department or an authority shall be
2 obtained prior to the initial operation of aircraft crash rescue fire
3 training. Approval under this subsection shall be granted to fire
4 training activities meeting the conditions in this section.

5 (3) Aircraft crash rescue fire training activities conducted in
6 compliance with this section are not subject to the prohibition, in RCW
7 70.94.775(1) (as recodified by this act), of outdoor fires containing
8 petroleum products and are not considered outdoor burning under RCW
9 70.94.743, 70.94.745, 70.94.750, 70.94.755, 70.94.760, 70.94.765,
10 70.94.775, and 70.94.780 (as recodified by this act).

11 (4) To provide for fire fighting instruction in instances not
12 governed by this section, or other actions to protect public health and
13 safety, the department or an authority may issue permits that allow
14 limited burning of prohibited materials listed in RCW 70.94.775(1) (as
15 recodified by this act).

16 NEW SECTION. **Sec. 322.** Conservation districts and the Washington
17 State University agricultural extension program, in conjunction with
18 the department, shall develop public education material for the
19 agricultural community identifying the health and environmental effects
20 of agricultural outdoor burning and providing technical assistance in
21 alternatives to agricultural outdoor burning.

22 NEW SECTION. **Sec. 323.** (1) An agricultural burning practices and
23 research task force shall be established under the direction of the
24 department.

25 (2) The task force shall be composed of:

26 (a) A representative from the department who shall serve as chair;

27 (b) One representative of eastern Washington authorities;

28 (c) Three representatives of the agricultural community from
29 different agricultural pursuits;

30 (d) One representative of the department of agriculture;

31 (e) Two representatives from universities or colleges knowledgeable
32 in agricultural issues;

33 (f) One representative of the public health or medical community;

34 and

35 (g) One representative of the conservation districts.

36 (3) The task force created under this section shall:

1 (a) Identify best management practices for reducing air contaminant
2 emissions from agricultural activities and provide the information to
3 the department and authorities;

4 (b) Determine the level of fees to be assessed by the permitting
5 agency pursuant to RCW 70.94.650 (as recodified by this act), based
6 upon the level necessary to cover the costs of administering and
7 enforcing the permit programs, to provide funds for research into
8 alternative methods to reduce emissions from such burning, and to the
9 extent possible be consistent with fees charged for similar burning
10 permits in neighboring states. The fee level shall provide, to the
11 extent possible, for lesser fees for permittees who use best management
12 practices to minimize air contaminant emissions;

13 (c) Identify research needs related to minimizing emissions from
14 agricultural burning and alternatives to agricultural burning;

15 (d) Make recommendations to the department on priorities for
16 spending funds provided through this chapter for research into
17 alternative methods to reduce emissions from agricultural burning.

18 NEW SECTION. **Sec. 324.** The department shall enforce the air
19 quality standards and emission standards throughout the state except
20 where a local authority is enforcing the state regulations or its own
21 regulations that are more stringent than those of the state.

22 NEW SECTION. **Sec. 325.** (1) The board of an activated authority
23 may consult, upon request, with any person proposing to construct,
24 install, or otherwise acquire an air contaminant source, device, or
25 system:

26 (a) For the control of the source, device, or system;

27 (b) Concerning the efficacy of the source, device, or system; or

28 (c) For the air pollution problems that may be related to the
29 source, device, or system.

30 (2) Nothing in any consultation provided by an authority shall be
31 construed to relieve any person from compliance with this chapter,
32 ordinances, resolutions, rules, and regulations in force pursuant to
33 this chapter, or any other provision of law.

34 NEW SECTION. **Sec. 326.** Sections 301 through 325 of this act are
35 each added to the new chapter created in section 401 of this act.

PART 4

CODIFICATION/RECODIFICATION/DECODIFICATION/REPEALED SECTIONS

NEW SECTION. **Sec. 401.** A new chapter is added to Title 70 RCW and is named "Washington Clean Air Act." The following sections are codified or recodified under the following subchapters:

(1) "General Provisions" as follows:

RCW 70.94.011;

RCW 70.94.030;

RCW 70.94.331;

RCW 70.94.040;

RCW 70.94.181;

RCW 70.94.035;

RCW 70.94.200;

RCW 70.94.205;

RCW 70.94.335;

RCW 70.94.157;

RCW 70.94.370;

RCW 70.94.420;

RCW 70.94.510;

RCW 70.94.033; and

RCW 70.94.440.

(2) "Accounts and Budgeting" as follows:

RCW 70.94.015;

Section 301 of this act;

RCW 70.94.017;

RCW 70.94.960;

RCW 70.94.630; and

RCW 70.94.544.

(3) "Pollution Control Authorities" as follows:

RCW 70.94.053;

RCW 70.94.081;

RCW 70.94.055;

RCW 70.94.390;

RCW 70.94.400;

Section 302 of this act;

RCW 70.94.069;

RCW 70.94.070;

RCW 70.94.120;

1 RCW 70.94.100;
2 RCW 70.94.141;
3 RCW 70.94.130;
4 Section 303 of this act;
5 RCW 70.94.142;
6 RCW 70.94.091;
7 RCW 70.94.092;
8 RCW 70.94.093;
9 RCW 70.94.094;
10 RCW 70.94.096;
11 RCW 70.94.385;
12 RCW 70.94.097;
13 RCW 70.94.380;
14 RCW 70.94.230;
15 RCW 70.94.170;
16 RCW 70.94.085;
17 RCW 70.94.240;
18 Section 325 of this act;
19 RCW 70.94.600;
20 RCW 70.94.405;
21 RCW 70.94.410;
22 RCW 70.94.262; and
23 RCW 70.94.260.
24 (4) "Air Contaminant Sources" as follows:
25 RCW 70.94.395;
26 RCW 70.94.151;
27 Section 304 of this act;
28 RCW 70.94.152;
29 RCW 70.94.153;
30 RCW 70.94.154;
31 Section 305 of this act;
32 Section 306 of this act;
33 RCW 70.94.155;
34 Section 307 of this act;
35 RCW 70.94.161;
36 RCW 70.94.162;
37 Section 308 of this act;
38 Section 309 of this act;

1 Section 310 of this act;
2 Section 311 of this act;
3 Section 312 of this act;
4 Section 313 of this act;
5 Section 314 of this act;
6 RCW 70.94.163;
7 RCW 70.94.850; and
8 RCW 70.94.892.
9 (5) "Air Pollution Episodes and Stages" as follows:
10 RCW 70.94.710;
11 RCW 70.94.715;
12 Section 315 of this act;
13 RCW 70.94.720;
14 RCW 70.94.725;
15 RCW 70.94.730; and
16 Section 316 of this act.
17 (6) "Solid Fuel Burning Devices" as follows:
18 RCW 70.94.450;
19 Section 317 of this act;
20 RCW 70.94.455;
21 RCW 70.94.457;
22 RCW 70.94.470;
23 Section 318 of this act;
24 RCW 70.94.460;
25 RCW 70.94.473;
26 RCW 70.94.477;
27 RCW 70.94.475;
28 RCW 70.94.041;
29 RCW 70.94.483; and
30 RCW 70.94.480.
31 (7) "Outdoor Burning" as follows:
32 RCW 70.94.650;
33 RCW 70.94.656;
34 RCW 70.94.660;
35 RCW 70.94.670;
36 RCW 70.94.690;
37 RCW 70.94.700;
38 RCW 70.94.665;

1 Section 319 of this act;

2 Section 320 of this act;

3 RCW 70.94.745;

4 RCW 70.94.755;

5 RCW 70.94.743;

6 RCW 70.94.780;

7 RCW 70.94.750;

8 RCW 70.94.765;

9 RCW 70.94.775;

10 RCW 70.94.651;

11 RCW 70.94.654;

12 Section 321 of this act;

13 Section 322 of this act; and

14 Section 323 of this act.

15 (8) "Acid Disposition" as follows:

16 RCW 70.94.800;

17 RCW 70.94.820;

18 RCW 70.94.875; and

19 RCW 70.94.880.

20 (9) "Transportation Sector" as follows:

21 RCW 70.94.521;

22 RCW 70.94.037;

23 RCW 70.94.527;

24 RCW 70.94.528;

25 RCW 70.94.531;

26 RCW 70.94.534;

27 RCW 70.94.537;

28 RCW 70.94.541;

29 RCW 70.94.547;

30 RCW 70.94.551;

31 RCW 70.94.555;

32 RCW 70.94.996;

33 RCW 70.94.165; and

34 RCW 70.94.970.

35 (10) "Administration, Enforcement, and Penalties" as follows:

36 RCW 70.94.350;

37 Section 324 of this act;

38 RCW 70.94.425;

1 RCW 70.94.430;
2 RCW 70.94.431;
3 RCW 70.94.435;
4 RCW 70.94.785;
5 RCW 70.94.211;
6 RCW 70.94.332; and
7 RCW 70.94.422.

8 (11) "Miscellaneous Provisions" as follows:
9 RCW 70.94.610;
10 RCW 70.94.620;
11 RCW 70.94.640;
12 RCW 70.94.645;
13 RCW 70.94.760; and
14 RCW 70.94.901.

15 NEW SECTION. **Sec. 402.** The following sections are each
16 decodified:

17 RCW 70.94.025;
18 RCW 70.94.445;
19 RCW 70.94.902;
20 RCW 70.94.904;
21 RCW 70.94.905;
22 RCW 70.94.906;
23 RCW 70.94.911; and
24 RCW 70.94.950.

25 NEW SECTION. **Sec. 403.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 70.94.860 (Department of ecology may accept delegation of
28 programs) and 1991 c 199 s 312 & 1984 c 164 s 2;

29 (2) RCW 70.94.057 (Multicounty authority may be formed by
30 contiguous counties--Name) and 1967 c 238 s 6;

31 (3) RCW 70.94.068 (Merger of active and inactive authorities to
32 form multicounty or regional authority--Procedure) and 1969 ex.s. c 168
33 s 3 & 1967 c 238 s 11;

34 (4) RCW 70.94.095 (Assessed valuation of taxable property,
35 certification by county assessors) and 1969 ex.s. c 168 s 11 & 1967 c
36 238 s 19;

- 1 (5) RCW 70.94.110 (City selection committees) and 2006 c 227 s 2,
2 1967 c 238 s 22, 1963 c 27 s 1, & 1957 c 232 s 11;
- 3 (6) RCW 70.94.143 (Federal aid) and 1987 c 109 s 36, 1969 ex.s. c
4 168 s 18, & 1967 c 238 s 27;
- 5 (7) RCW 70.94.221 (Order final unless appealed to pollution control
6 hearings board) and 1970 ex.s. c 62 s 58, 1969 ex.s. c 168 s 25, & 1967
7 c 238 s 35;
- 8 (8) RCW 70.94.231 (Air pollution control authority--Dissolution of
9 prior districts--Continuation of rules and regulations until
10 superseded) and 1991 c 199 s 708, 1969 ex.s. c 168 s 29, & 1967 c 238
11 s 39;
- 12 (9) RCW 70.94.453 (Wood stoves--Definitions) and 1987 c 405 s 2;
- 13 (10) RCW 70.94.463 (Sale of unapproved wood stoves--Penalty) and
14 1987 c 405 s 8;
- 15 (11) RCW 70.94.467 (Sale of unapproved wood stoves--Application of
16 law to advertising media) and 1987 c 405 s 12;
- 17 (12) RCW 70.94.805 (Definitions) and 1985 c 456 s 2 & 1984 c 277 s
18 2;
- 19 (13) RCW 70.94.524 (Transportation demand management--Definitions)
20 and 2006 c 329 s 1 & 1991 c 202 s 11;
- 21 (14) RCW 70.94.980 (Refrigerants--Unlawful acts) and 1991 c 199 s
22 603; and
- 23 (15) RCW 70.94.990 (Refrigerants--Rules--Enforcement provisions,
24 limitations) and 1991 c 199 s 604.

25 **PART 5**

26 **MISCELLANEOUS PROVISIONS**

27 NEW SECTION. **Sec. 501.** Part headings used in this act are not any
28 part of the law.

--- END ---