
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2510

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Reams, Brough, Dorn, Dunshee, Johanson, Pruitt, Shin, Zellinsky, Carlson, R. Johnson, J. Kohl, Karahalios, Basich, Jones, Bray, R. Fisher, Holm, Moak, Sheldon, Valle, Chappell, Eide, Wolfe, B. Thomas, Dyer, King, G. Fisher, L. Johnson, Dellwo, Ogden, Roland, Grant, Jacobsen, Quall, Rayburn, Morris, Romero, Rust, Kremen, Conway, Linville, Patterson, Forner, Long, Mielke, Springer, Cothorn, Kessler, H. Myers, Tate, Backlund, Cooke, Wood and Mastin; by request of Governor Lowry)

Read first time 02/08/94.

1 AN ACT Relating to implementation of the recommendations of the
2 governor's task force on regulatory reform; amending RCW 34.05.370,
3 34.05.350, 34.05.325, 34.05.330, 34.05.355, 19.85.020, 19.85.010,
4 34.05.640, 19.85.060, 34.05.660, 36.70A.270, 36.70A.290, 36.70A.300,
5 36.70A.030, 58.17.330, 35A.63.170, 43.21C.075, 35.63.130, 36.70.970,
6 70.105D.020, 70.105D.030, 70.105D.050, 70.105D.060, 34.12.020,
7 36.70A.110, 36.70A.210, 36.70A.250, 36.70A.260, 36.70A.280, 36.70A.310,
8 and 36.70A.345; reenacting and amending RCW 19.85.030 and 19.85.040;
9 adding new sections to chapter 34.05 RCW; adding a new section to
10 chapter 43.17 RCW; adding new sections to chapter 36.70A RCW; adding a
11 new section to chapter 70.105D RCW; adding a new section to chapter
12 70.94 RCW; adding a new section to chapter 70.95 RCW; adding a new
13 section to chapter 70.105 RCW; adding a new section to chapter 75.20
14 RCW; adding a new section to chapter 90.48 RCW; adding a new section to
15 chapter 90.58 RCW; adding a new section to chapter 43.21C RCW; creating
16 new sections; and providing an effective date.

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

18 **Sec. 1.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
19 read as follows:

1 (1) Each agency shall maintain an official rule-making file for
2 each rule that it (a) proposes by publication in the state register, or
3 (b) adopts. The file and materials incorporated by reference shall be
4 available for public inspection.

5 (2) The agency rule-making file shall contain all of the following:

6 (a) Copies of all publications in the state register with respect
7 to the rule or the proceeding upon which the rule is based;

8 (b) Copies of any portions of the agency's public rule-making
9 docket containing entries relating to the rule or the proceeding on
10 which the rule is based;

11 (c) All written petitions, requests, submissions, and comments
12 received by the agency and all other written material regarded by the
13 agency as important to adoption of the rule or the proceeding on which
14 the rule is based;

15 (d) Any official transcript of oral presentations made in the
16 proceeding on which the rule is based or, if not transcribed, any tape
17 recording or stenographic record of them, and any memorandum prepared
18 by a presiding official summarizing the contents of those
19 presentations;

20 (e) The concise explanatory statement required by RCW 34.05.355;

21 (f) All petitions for exceptions to, amendment of, or repeal or
22 suspension of, the rule; (~~and~~)

23 (g) Any other material placed in the file by the agency; and

24 (h) The written description of the agency's consideration of rule-
25 making criteria required by section 3 of this act.

26 (3) Internal agency documents are exempt from inclusion in the
27 rule-making file under subsection (2) of this section to the extent
28 they constitute preliminary drafts, notes, recommendations, and intra-
29 agency memoranda in which opinions are expressed or policies formulated
30 or recommended, except that a specific document is not exempt from
31 inclusion when it is publicly cited by an agency in connection with its
32 decision.

33 (4) Upon judicial review, the file required by this section
34 constitutes the official agency rule-making file with respect to that
35 rule. Unless otherwise required by another provision of law, the
36 official agency rule-making file need not be the exclusive basis for
37 agency action on that rule.

1 **Sec. 2.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read
2 as follows:

3 (1) If an agency for good cause finds:

4 (a) That immediate adoption, amendment, or repeal of a rule is
5 necessary for the preservation of the public health, safety, or general
6 welfare, and that observing the time requirements of notice and
7 opportunity to comment upon adoption of a permanent rule would be
8 contrary to the public interest; or

9 (b) That state or federal law or federal rule or a federal deadline
10 for state receipt of federal funds requires immediate adoption of a
11 rule,

12 the agency may dispense with those requirements and adopt, amend, or
13 repeal the rule on an emergency basis. The agency's finding and a
14 concise statement of the reasons for its finding shall be incorporated
15 in the order for adoption of the emergency rule or amendment filed with
16 the office of the code reviser under RCW 34.05.380 and with the rules
17 review committee.

18 (2) An emergency rule adopted under this section takes effect upon
19 filing with the code reviser, unless a later date is specified in the
20 order of adoption, and may not remain in effect for longer than one
21 hundred twenty days after filing. Identical or substantially similar
22 emergency rules may not be adopted in sequence unless conditions have
23 changed or the agency has filed notice of its intent to adopt the rule
24 as a permanent rule, and is actively undertaking the appropriate
25 procedures to adopt the rule as a permanent rule. This section does
26 not relieve any agency from compliance with any law requiring that its
27 permanent rules be approved by designated persons or bodies before they
28 become effective.

29 (3) The governor, in cooperation with the attorney general, shall
30 ensure compliance with emergency rule-making requirements of this
31 section.

32 (4) When adopting an emergency rule, an agency shall meet the
33 requirements of section 3(1) and (2) of this act or provide written
34 justification for its failure to provide the information.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 34.05 RCW
36 to read as follows:

37 (1) Before adopting a rule, an agency shall evaluate:

38 (a) The need for the rule;

1 (b) Whether the likely benefits of the rule justify its likely
2 costs;

3 (c) The economic and environmental consequences of adopting the
4 rule or failing to adopt the rule, including the agency's compliance
5 with chapters 19.85, 43.21C, and 43.21H RCW;

6 (d) Whether alternative rule language or alternatives to adopting
7 the rule, including the no action alternative, may achieve the same
8 purpose at less cost;

9 (e) Whether any conflict, overlap, or duplication with any other
10 provision of federal or state law is reasonably justified;

11 (f) Whether any differences between the proposed rule and rules
12 adopted by the federal government on the same subject are reasonably
13 justified, the costs and benefits that may result from such
14 differences, and the statutory authority for the rule; and

15 (g) Whether any differences in the applicability of the rule to
16 public and private entities are reasonably justified.

17 (2) The agency shall prepare a written description of the
18 evaluations required under subsection (1) of this section. The
19 description shall be part of the official rule-making file for the
20 rule.

21 (3) Within a reasonable period of time after adopting rules, an
22 agency shall have a plan to evaluate whether rules filed under each
23 adopting order achieve the purpose for which they were adopted.

24 (4) Agency evaluations under subsection (1) of this section and the
25 requirements of subsections (2) and (3) of this section are subject to
26 the full scope of judicial review authorized in RCW 34.05.570(2)(c).

27 **Sec. 4.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read
28 as follows:

29 (1) The agency shall make a good faith effort to insure that the
30 information on the proposed rule published pursuant to RCW 34.05.320
31 accurately reflects the rule to be presented and considered at the oral
32 hearing on the rule. Written comment about a proposed rule, including
33 supporting data, shall be accepted by an agency if received no later
34 than the time and date specified in the notice, or such later time and
35 date established at the rule-making hearing.

36 (2) The agency shall provide an opportunity for oral comment to be
37 received by the agency in a rule-making hearing.

1 (3) If the agency possesses equipment capable of receiving
2 telefacsimile transmissions or recorded telephonic communications, the
3 agency may provide in its notice of hearing filed under RCW 34.05.320
4 that interested parties may comment on proposed rules by these means.
5 If the agency chooses to receive comments by these means, the notice of
6 hearing shall provide instructions for making such comments, including,
7 but not limited to, appropriate telephone numbers to be used; the date
8 and time by which comments must be received; required methods to verify
9 the receipt and authenticity of the comments; and any limitations on
10 the number of pages for telefacsimile transmission comments and on the
11 minutes of tape recorded comments. The agency shall accept comments
12 received by these means for inclusion in the official record if the
13 comments are made in accordance with the agency's instructions.

14 (4) The agency head, a member of the agency head, or a presiding
15 officer designated by the agency head shall preside at the rule-making
16 hearing. Rule-making hearings shall be open to the public. The agency
17 shall cause a record to be made of the hearing by stenographic,
18 mechanical, or electronic means. Unless the agency head presides or is
19 present at substantially all the hearings, the presiding official shall
20 prepare a memorandum for consideration by the agency head, summarizing
21 the contents of the presentations made at the rule-making hearing. The
22 summarizing memorandum is a public document and shall be made available
23 to any person in accordance with chapter 42.17 RCW.

24 (5) Rule-making hearings are legislative in character and shall be
25 reasonably conducted by the presiding official to afford interested
26 persons the opportunity to present comment. Rule-making hearings may
27 be continued to a later time and place established on the record
28 without publication of further notice under RCW 34.05.320.

29 (6) Before the adoption of a final rule, an agency shall prepare a
30 written summary of all comments received regarding the proposed rule,
31 and a substantive response to the comments by category or subject
32 matter, indicating how the final rule reflects agency consideration of
33 the comments, or why it fails to do so. The agency shall provide the
34 written summary and response to any person upon request or from whom
35 the agency received comment.

36 **Sec. 5.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
37 read as follows:

1 (1) Any person may petition an agency requesting the adoption,
2 amendment, or repeal of any rule. Each agency may prescribe by rule
3 the form for such petitions and the procedure for their submission,
4 consideration, and disposition. Within sixty days after submission of
5 a petition, the agency shall (1) either deny the petition in writing,
6 stating its reasons for the denial, or (2) initiate rule-making
7 proceedings in accordance with this chapter.

8 (2) If an agency headed by a nonelected official denies a petition
9 to repeal or amend a rule under this section, the petitioner may,
10 within thirty days of the denial, appeal to the governor. Within sixty
11 days of receipt of the petition, the governor shall either reject the
12 appeal in writing, stating reasons for the rejection, or order the
13 agency to initiate rule-making proceedings in accordance with this
14 chapter.

15 **Sec. 6.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to
16 read as follows:

17 (~~(1)~~) At the time it files an adopted rule with the code reviser
18 or within thirty days thereafter, an agency shall place into the rule-
19 making file maintained under RCW 34.05.370 a concise explanatory
20 statement about the rule, identifying (~~(a)~~) (1) the agency's reasons
21 for adopting the rule, (~~and (b)~~) (2) a description of any difference
22 between the text of the proposed rule as published in the register and
23 the text of the rule as adopted, other than editing changes, stating
24 the reasons for change, and (3) a written summary of the agency's
25 substantive responses to comments or categories of comments received on
26 the proposed rule.

27 (~~(2) Upon the request of any interested person within thirty days~~
28 ~~after adoption of a rule, the agency shall issue a concise statement of~~
29 ~~the principal reasons for overruling the considerations urged against~~
30 ~~its adoption.))~~

31 **Sec. 7.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
32 each reenacted and amended to read as follows:

33 In the adoption of any rule pursuant to RCW 34.05.320 that will
34 have an economic impact on more than twenty percent of all industries,
35 or more than ten percent of any one industry, the adopting agency:

36 (1) Shall reduce the economic impact of the rule on small business
37 by doing one or more of the following when it is legal and feasible in

1 meeting the stated objective of the statutes which are the basis of the
2 proposed rule:

3 (a) Establish differing compliance or reporting requirements or
4 timetables for small businesses;

5 (b) Clarify, consolidate, or simplify the compliance and reporting
6 requirements under the rule for small businesses;

7 (c) Establish performance rather than design standards;

8 (d) Exempt small businesses from any or all requirements of the
9 rule; and

10 (e) Other mitigation techniques.

11 (2) Before filing notice of a proposed rule, shall prepare a small
12 business economic impact statement in accordance with RCW 19.85.040 and
13 file such statement with the code reviser along with the notice
14 required under RCW 34.05.320;

15 (3) May request assistance from the business assistance center in
16 the preparation of the small business economic impact statement.

17 **Sec. 8.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to read
18 as follows:

19 Unless the context clearly indicates otherwise, the definitions in
20 this section apply through this chapter.

21 (1) "Small business" means any business entity, including a sole
22 proprietorship, corporation, partnership, or other legal entity, that
23 is owned and operated independently from all other businesses, that has
24 the purpose of making a profit, and that has fifty or fewer employees.

25 (2) "Small business economic impact statement" means a statement
26 meeting the requirements of RCW 19.85.040 prepared by a state agency
27 pursuant to RCW 19.85.030.

28 (3) "Industry" means all of the businesses in this state in any one
29 (~~three-digit~~) four-digit standard industrial classification as
30 published by the United States department of commerce. However, if the
31 four-digit standard industrial classification would result in the
32 release of data that would violate state confidentiality provisions,
33 "industry" means all businesses in a three-digit standard industrial
34 classification.

35 **Sec. 9.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
36 each reenacted and amended to read as follows:

37 (1) A small business economic impact statement must include:

1 (a) A brief description of the reporting, recordkeeping, and other
2 compliance requirements of the rule, and the kinds of professional
3 services that a small business is likely to need in order to comply
4 with such requirements~~((. A small business economic impact statement~~
5 ~~shall analyze,))i~~

6 (b) An analysis based on existing data and any new data gathered by
7 the agency, of the costs of compliance for businesses required to
8 comply with the provisions of a rule adopted pursuant to RCW 34.05.320,
9 including costs of equipment, supplies, labor, and increased
10 administrative costs, and compare to the greatest extent possible the
11 cost of compliance for small business with the cost of compliance for
12 the ten percent of firms which are the largest businesses required to
13 comply with the proposed new or amendatory rules;

14 (c) A summary of the mitigation options considered by the agency
15 and an explanation of each option not included in the rule.

16 (2) The small business economic impact statement shall use one or
17 more of the following as a basis for comparing costs:

- 18 ~~((+1))~~ (a) Cost per employee;
19 ~~((+2))~~ (b) Cost per hour of labor; and
20 ~~((+3))~~ (c) Cost per one hundred dollars of sales~~((+~~
21 ~~(4) Any combination of (1), (2), or (3))~~)).

22 (3) Agencies are encouraged to use committees pursuant to RCW
23 34.05.310 in analyzing the costs of compliance and identifying steps to
24 be taken to minimize the cost impact on small business.

25 **Sec. 10.** RCW 19.85.010 and 1982 c 6 s 1 are each amended to read
26 as follows:

27 The legislature finds that small businesses in the state of
28 Washington have in the past been subjected to rules adopted by
29 agencies, departments, and instrumentalities of the state government
30 which have placed a proportionately higher burden on the small business
31 community in Washington state. The legislature also finds that such
32 proportionately higher burdens placed on small businesses have reduced
33 competition, reduced employment, reduced new employment opportunities,
34 reduced innovation, and threatened the very existence of some small
35 businesses. Therefore, it is the intent of the legislature that rules
36 affecting the business community shall not place proportionately higher
37 burdens on small businesses. The legislature therefore enacts this
38 Regulatory Fairness Act to minimize such proportionately higher impacts

1 of rules on small businesses in the future and reduce the economic
2 impact of state rules on small business.

3 **Sec. 11.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
4 as follows:

5 (1) Within seven days of an agency hearing held after notification
6 of the agency by the rules review committee pursuant to RCW 34.05.620
7 or 34.05.630, the affected agency shall notify the committee of its
8 action on a proposed or existing rule to which the committee objected
9 or on a committee finding of the agency's failure to adopt rules. If
10 the rules review committee determines, by a majority vote of its
11 members, that the agency has failed to provide for the required
12 hearings or notice of its action to the committee, the committee may
13 file notice of its objections, together with a concise statement of the
14 reasons therefor, with the code reviser within thirty days of such
15 determination.

16 (2) If the rules review committee finds, by a majority vote of its
17 members: (a) That the proposed or existing rule in question has not
18 been modified, amended, withdrawn, or repealed by the agency so as to
19 conform with the intent of the legislature, or (b) that the agency is
20 using a policy statement, guideline, or issuance in place of a rule, or
21 that the policy statement, guideline, or issuance is outside of the
22 legislative intent, the rules review committee may, within thirty days
23 from notification by the agency of its action, file with the code
24 reviser notice of its objections together with a concise statement of
25 the reasons therefor. Such notice and statement shall also be provided
26 to the agency by the rules review committee.

27 (3) If the rules review committee makes an adverse finding under
28 subsection (2) of this section, the committee may, by a ~~((two-thirds))~~
29 majority vote of its members, recommend suspension of an existing rule.
30 Within seven days of such vote the committee shall transmit to the
31 governor, the code reviser, and the agency written notice of its
32 objection and recommended suspension and the concise reasons therefor.
33 Within thirty days of receipt of the notice, the governor shall
34 transmit to the committee, the code reviser, and the agency written
35 approval or disapproval of the recommended suspension. If the
36 suspension is approved by the governor, it is effective from the date
37 of that approval and continues until ninety days after the expiration
38 of the next regular legislative session.

1 (4) If the governor disapproves the recommendation by the rules
2 review committee to suspend the rule, the transmittal of such decision,
3 along with the findings of the rules review committee, shall be treated
4 by the agency as a petition by the rules review committee to repeal the
5 rule pursuant to RCW 34.05.330. Within sixty days the agency shall
6 either commence appropriate rule repeal or rule amendment proceedings
7 or state in writing why the rule was adopted within the scope of the
8 agency's statutory authority.

9 (5) The code reviser shall publish transmittals from the rules
10 review committee or the governor issued pursuant to subsection (1),
11 (2), or (3) of this section in the Washington state register and shall
12 publish in the next supplement and compilation of the Washington
13 Administrative Code a reference to the committee's objection or
14 recommended suspension and the governor's action on it and to the issue
15 of the Washington state register in which the full text thereof
16 appears.

17 (~~(5)~~) (6) The reference shall be removed from a rule published in
18 the Washington Administrative Code if a subsequent adjudicatory
19 proceeding determines that the rule is within the intent of the
20 legislature or was adopted in accordance with all applicable laws,
21 whichever was the objection of the rules review committee.

22 **Sec. 12.** RCW 19.85.060 and 1989 c 374 s 5 are each amended to read
23 as follows:

24 An agency is not required to prepare a small business economic
25 impact statement if the agency files a statement that:

26 (1) The rule is being adopted solely for the purpose of conformity
27 or compliance, or both, with federal law or regulations; or

28 (2) The rule will have a minor or negligible economic impact when
29 it does not exceed 0.001 multiplied by the average profits for
30 businesses in any industry affected by a rule. The business assistance
31 center shall develop guidelines (~~for~~) to assist agencies in
32 determining whether a proposed rule will have minor or negligible
33 impacts. The business assistance center may review a proposed rule
34 that indicates that there is only a minor or negligible economic impact
35 to determine if the agency's finding is within the guidelines developed
36 by the business assistance center. The business assistance center is
37 authorized to advise the joint administrative rules review committee on
38 disputes involving agency determinations under this section.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 34.05 RCW
2 to read as follows:

3 If the rules review committee by a vote of two-thirds of its
4 members recommends to the governor that an existing rule be suspended,
5 such recommendation shall establish a rebuttable presumption in any
6 proceeding challenging the validity of the rule that such rule was
7 adopted outside the scope of the authority of the agency adopting the
8 rule.

9 **Sec. 14.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
10 read as follows:

11 Except as provided in section 13 of this act, it is the express
12 policy of the legislature that establishment of procedures for review
13 of administrative rules by the legislature and the notice of objection
14 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to
15 establish a presumption as to the legality or constitutionality of a
16 rule in any subsequent judicial proceedings interpreting such rules.

17 NEW SECTION. **Sec. 15.** The department of community, trade, and
18 economic development shall develop a model standardized format for
19 reporting information that is commonly required from the public by
20 state and local government agencies for permits, licenses, approvals,
21 and services. In the development of the format, the department shall
22 work in conjunction with representatives from state and local
23 government agencies and representatives of the business community.

24 The department shall submit the standardized format together with
25 recommendations for implementation to the legislature by December 31,
26 1994.

27 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.17 RCW
28 to read as follows:

29 (1) The governor shall, where appropriate, require state agencies
30 with regulatory enforcement authority to designate one or more
31 technical assistance representatives to coordinate voluntary compliance
32 and provide technical assistance concerning compliance with the
33 agency's laws and rules.

34 (2) An employee designated by an agency as a technical assistance
35 representative or as a member of a technical assistance unit may not,
36 during the period of the designation, have authority to issue orders or

1 assess penalties on behalf of the agency. Such an employee who
2 provides on-site consultation at an industrial or commercial facility
3 and who observes violations of the law shall inform the owner or
4 operator of the facility of the violations and provide technical
5 assistance concerning compliance. On-site consultation visits by such
6 an employee may not be regarded as inspections or investigations and no
7 notices or citations may be issued or civil penalties assessed during
8 such a visit. However, violations of the law must be reported to the
9 appropriate officers within the agency. If the owner or operator of
10 the facility does not correct the observed violations within a
11 reasonable time, the agency may reinspect the facility and take
12 appropriate enforcement action. If a technical assistance
13 representative or member of a technical assistance unit observes a
14 violation of the law that places a person in danger of death or
15 substantial bodily harm, is causing or is likely to cause significant
16 environmental harm, or has caused or is likely to cause physical damage
17 to the property of others in an amount exceeding one thousand dollars,
18 the agency may initiate enforcement action immediately upon observing
19 the violation.

20 (3) The state, the agency, and officers or employees of the state
21 shall not be liable for damages to a person to the extent that
22 liability is asserted to arise from the performance by technical
23 assistance representatives of their duties, or if liability is asserted
24 to arise from the failure of the agency to supply technical assistance.

25 **Sec. 17.** RCW 36.70A.270 and 1991 sp.s. c 32 s 7 are each amended
26 to read as follows:

27 Each growth ((~~planning~~)) management hearings board shall be
28 governed by the following rules on conduct and procedure:

29 (1) Any board member may be removed for inefficiency, malfeasance,
30 and misfeasance in office, under specific written charges filed by the
31 governor. The governor shall transmit such written charges to the
32 member accused and the chief justice of the supreme court. The chief
33 justice shall thereupon designate a tribunal composed of three judges
34 of the superior court to hear and adjudicate the charges. Removal of
35 any member of a board by the tribunal shall disqualify such member for
36 reappointment.

37 (2) Each board member shall receive reimbursement for travel
38 expenses incurred in the discharge of his or her duties in accordance

1 with RCW 43.03.050 and 43.03.060. If it is determined that the review
2 boards shall operate on a full-time basis, each member shall receive an
3 annual salary to be determined by the governor pursuant to RCW
4 43.03.040. If it is determined that a review board shall operate on a
5 part-time basis, each member shall receive compensation pursuant to RCW
6 43.03.250, provided such amount shall not exceed the amount that would
7 be set if they were a full-time board member. The principal office of
8 each board shall be located by the governor within the jurisdictional
9 boundaries of each board. The boards shall operate on either a part-
10 time or full-time basis, as determined by the governor.

11 (3) Each board member shall not: (a) Be a candidate for or hold
12 any other public office or trust; (b) engage in any occupation or
13 business interfering with or inconsistent with his or her duty as a
14 board member; and (c) for a period of one year after the termination of
15 his or her board membership, act in a representative capacity before
16 the board on any matter.

17 (4) A majority of each board shall constitute a quorum for making
18 orders or decisions, adopting rules necessary for the conduct of its
19 powers and duties, or transacting other official business, and may act
20 even though one position of the board is vacant. One or more members
21 may hold hearings and take testimony to be reported for action by the
22 board when authorized by rule or order of the board. The board shall
23 perform all the powers and duties specified in this chapter or as
24 otherwise provided by law.

25 (5) The board may ~~((also))~~ appoint ~~((as its authorized agents))~~ one
26 or more hearing examiners ~~((to assist the board in the performance of~~
27 ~~its hearing function pursuant to the authority contained in))~~ pursuant
28 to the administrative procedure act, chapter 34.05 RCW, to make
29 conclusions of law and findings of fact and, if requested by the board,
30 issue written decisions in cases before the board. Such hearing
31 examiners must have demonstrated knowledge of land use planning and
32 law. In appointing hearing examiners, the board is exempt from the
33 requirements of chapter 34.12 RCW. The boards shall specify in their
34 joint rules of practice and procedure, as required by subsection (7) of
35 this section, the procedure and criteria to be employed in selecting
36 hearing examiners. Hearing examiners selected by a board shall meet
37 the requirements of subsection (3) of this section. If authorized by
38 the boards' joint rules of practice and procedure, and if the board so
39 provides in its appointment of a hearing examiner, the findings,

1 conclusions, and decision of the hearing examiner shall be deemed the
2 final order of the board and shall be effective upon receipt by the
3 board and filing at the board's principal office. Otherwise, the
4 conclusions, findings, and decision of the hearing examiner shall not
5 become final until they have been ((formally)) approved by the board
6 pursuant to a process developed by the boards in their joint rules of
7 practice and procedure and consistent with RCW 34.05.464. This
8 authorization to use hearing examiners does not waive the requirement
9 of RCW 36.70A.300 that final orders be issued within one hundred eighty
10 days of board receipt of a petition. ((Such hearing examiners must
11 have demonstrated knowledge of land use planning and law. The board
12 shall perform all the powers and duties specified in this chapter or as
13 otherwise provided by law.

14 ((5)) (6) Except as provided in subsection (5) of this section,
15 each board shall make findings of fact and prepare a written decision
16 in each case decided by it, and such findings and decision shall be
17 effective upon being signed by two or more members of the board and
18 upon being filed at the board's principal office, and shall be open for
19 public inspection at all reasonable times.

20 ((6)) (7) All proceedings before the board ((or)), any of its
21 members, or a hearing examiner appointed by the board shall be
22 conducted in accordance with such administrative rules of practice and
23 procedure as the boards jointly prescribe. All three boards shall
24 jointly meet to develop and adopt joint rules of practice and
25 procedure, including rules regarding expeditious and summary
26 disposition of appeals. The boards shall publish such rules and
27 arrange for the reasonable distribution of the rules. The
28 administrative procedure act, chapter 34.05 RCW, shall govern the
29 administrative rules of practice and procedure adopted by the boards.

30 ((7)) (8) The members of the boards shall meet jointly on at
31 least an annual basis with the objective of sharing information that
32 promotes the goals and purposes of this chapter.

33 **Sec. 18.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended
34 to read as follows:

35 (1) All requests for review to a growth ((planning)) management
36 hearings board shall be initiated by filing a petition that includes a
37 detailed statement of issues presented for resolution by the board.

1 (2) All petitions relating to whether or not an adopted
2 comprehensive plan, development regulation, or permanent amendment
3 thereto, is in compliance with the goals and requirements of this
4 chapter or chapter 43.21C RCW must be filed within sixty days after
5 publication by the legislative bodies of the county or city. The date
6 of publication for a city shall be the date the city publishes the
7 ordinance, or summary of the ordinance, adopting the comprehensive plan
8 or development regulations, or amendment thereto, as is required to be
9 published. Promptly after adoption, a county shall publish a notice
10 that it has adopted the comprehensive plan or development regulations,
11 or amendment thereto. The date of publication for a county shall be
12 the date the county publishes the notice that it has adopted the
13 comprehensive plan or development regulations, or amendment thereto.

14 (3) Unless the board dismisses the petition as frivolous or finds
15 that the person filing the petition lacks standing, the board shall,
16 within ten days of receipt of the petition, set a time for hearing the
17 matter.

18 (4) The board shall base its decision on the record developed by
19 the city, county, or the state and supplemented with additional
20 evidence if the board determines that such additional evidence would be
21 necessary or of substantial assistance to the board in reaching its
22 decision.

23 (5) The board, shall consolidate, when appropriate, all petitions
24 involving the review of the same comprehensive plan or the same
25 development regulation or regulations.

26 **Sec. 19.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended
27 to read as follows:

28 (1) The board shall issue a final order within one hundred eighty
29 days of receipt of the petition for review, or, when multiple petitions
30 are filed, within one hundred eighty days of receipt of the last
31 petition that is consolidated. Such a final order shall be based
32 exclusively on whether or not a state agency, county, or city is in
33 compliance with the requirements of this chapter, or chapter 43.21C RCW
34 as it relates to plans, regulations, and amendments thereto, adopted
35 under RCW 36.70A.040. In the final order, the board shall either: (a)
36 Find that the state agency, county, or city is in compliance with the
37 requirements of this chapter; or (b) find that the state agency,
38 county, or city is not in compliance with the requirements of this

1 chapter, in which case the board shall remand the matter to the
2 affected state agency, county, or city and specify a reasonable time
3 not in excess of one hundred eighty days within which the state agency,
4 county, or city shall comply with the requirements of this chapter.

5 (2) Any party aggrieved by a final decision of the hearings board
6 may appeal the decision (~~(to Thurston county superior court)~~) within
7 thirty days of the final order of the board. If the appeal is from
8 board review of city or county action, appeal shall be to the division
9 of the court of appeals to which appeal would be proper under RCW
10 2.06.020 had the action been initiated in the superior court for the
11 county wherein the city or county whose plan, regulation, or amendment
12 is being appealed is located. Where appeal is from board review of
13 state agency action, appeal shall be to any division of the courts of
14 appeal to which appeal would be proper under RCW 2.06.020 had the
15 action been initiated under RCW 34.05.514.

16 NEW SECTION. Sec. 20. A new section is added to chapter 36.70A
17 RCW to read as follows:

18 Development regulations adopted pursuant to RCW 36.70A.040 shall
19 provide a timely and predictable process to determine whether a
20 completed development permit application meets the requirements of
21 those development regulations. Such development regulations shall
22 specify the contents of a completed development permit application for
23 purposes of satisfying the requirements of this section.

24 NEW SECTION. Sec. 21. A new section is added to chapter 36.70A
25 RCW to read as follows:

26 Each city and county planning under RCW 36.70A.040 shall, within
27 thirty days of receiving a development permit application as defined in
28 RCW 36.70A.030, mail or provide by personal service a written notice to
29 the applicant, stating either: That the application is complete; or
30 that the application is incomplete and what is necessary to make the
31 application complete.

32 **Sec. 22.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each
33 amended to read as follows:

34 Unless the context clearly requires otherwise, the definitions in
35 this section apply throughout this chapter.

1 (1) "Adopt a comprehensive land use plan" means to enact a new
2 comprehensive land use plan or to update an existing comprehensive land
3 use plan.

4 (2) "Agricultural land" means land primarily devoted to the
5 commercial production of horticultural, viticultural, floricultural,
6 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
7 straw, turf, seed, Christmas trees not subject to the excise tax
8 imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has
9 long-term commercial significance for agricultural production.

10 (3) "City" means any city or town, including a code city.

11 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
12 means a generalized coordinated land use policy statement of the
13 governing body of a county or city that is adopted pursuant to this
14 chapter.

15 (5) "Critical areas" include the following areas and ecosystems:
16 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
17 used for potable water; (c) fish and wildlife habitat conservation
18 areas; (d) frequently flooded areas; and (e) geologically hazardous
19 areas.

20 (6) "Department" means the department of community, trade, and
21 economic development.

22 (7) "Development permit application" means any application that
23 must be submitted to a city or county for administrative approval
24 before the development or change in use of property within that city or
25 county, including, but not limited to, application for a conditional
26 use permit, application for subdivision approval, application for
27 binding site plan approval, application for a zoning permit,
28 application for planned unit development approval, and application for
29 a building permit, but does not include applications for quasi-judicial
30 or legislative acts such as rezones and alterations of the
31 comprehensive plan.

32 (8) "Development regulations" means any controls placed on
33 development or land use activities by a county or city, including, but
34 not limited to, zoning ordinances, official controls, planned unit
35 development ordinances, subdivision ordinances, and binding site plan
36 ordinances.

37 ((+8+)) (9) "Forest land" means land primarily useful for growing
38 trees, including Christmas trees subject to the excise tax imposed
39 under RCW 84.33.100 through 84.33.140, for commercial purposes, and

1 that has long-term commercial significance for growing trees
2 commercially.

3 ~~((+9))~~ (10) "Geologically hazardous areas" means areas that
4 because of their susceptibility to erosion, sliding, earthquake, or
5 other geological events, are not suited to the siting of commercial,
6 residential, or industrial development consistent with public health or
7 safety concerns.

8 ~~((+10))~~ (11) "Long-term commercial significance" includes the
9 growing capacity, productivity, and soil composition of the land for
10 long-term commercial production, in consideration with the land's
11 proximity to population areas, and the possibility of more intense uses
12 of the land.

13 ~~((+11))~~ (12) "Minerals" include gravel, sand, and valuable
14 metallic substances.

15 ~~((+12))~~ (13) "Public facilities" include streets, roads, highways,
16 sidewalks, street and road lighting systems, traffic signals, domestic
17 water systems, storm and sanitary sewer systems, parks and recreational
18 facilities, and schools.

19 ~~((+13))~~ (14) "Public services" include fire protection and
20 suppression, law enforcement, public health, education, recreation,
21 environmental protection, and other governmental services.

22 ~~((+14))~~ (15) "Urban growth" refers to growth that makes intensive
23 use of land for the location of buildings, structures, and impermeable
24 surfaces to such a degree as to be incompatible with the primary use of
25 such land for the production of food, other agricultural products, or
26 fiber, or the extraction of mineral resources. When allowed to spread
27 over wide areas, urban growth typically requires urban governmental
28 services. "Characterized by urban growth" refers to land having urban
29 growth located on it, or to land located in relationship to an area
30 with urban growth on it as to be appropriate for urban growth.

31 ~~((+15))~~ (16) "Urban growth areas" means those areas designated by
32 a county pursuant to RCW 36.70A.110.

33 ~~((+16))~~ (17) "Urban governmental services" include those
34 governmental services historically and typically delivered by cities,
35 and include storm and sanitary sewer systems, domestic water systems,
36 street cleaning services, fire and police protection services, public
37 transit services, and other public utilities associated with urban
38 areas and normally not associated with nonurban areas.

1 (~~(17)~~) (18) "Wetland" or "wetlands" means areas that are
2 inundated or saturated by surface water or ground water at a frequency
3 and duration sufficient to support, and that under normal circumstances
4 do support, a prevalence of vegetation typically adapted for life in
5 saturated soil conditions. Wetlands generally include swamps, marshes,
6 bogs, and similar areas. Wetlands do not include those artificial
7 wetlands intentionally created from nonwetland sites, including, but
8 not limited to, irrigation and drainage ditches, grass-lined swales,
9 canals, detention facilities, wastewater treatment facilities, farm
10 ponds, and landscape amenities. However, wetlands may include those
11 artificial wetlands intentionally created from nonwetland areas created
12 to mitigate conversion of wetlands, if permitted by the county or city.

13 **Sec. 23.** RCW 58.17.330 and 1977 ex.s. c 213 s 4 are each amended
14 to read as follows:

15 As an alternative to those provisions of this chapter requiring a
16 planning commission to hear and issue recommendations for plat
17 approval, the county or city legislative body may adopt a hearing
18 examiner system and shall specify by ordinance the legal effect of the
19 decisions made by the examiner. Except for appeals of procedural
20 determinations made under the state environmental policy act, which
21 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
22 such decisions shall include one of the following:

23 (1) The decision may be given the effect of a recommendation to the
24 legislative body;

25 (2) The decision may be given the effect of an administrative
26 decision appealable within a specified time limit to the legislative
27 body.

28 The legislative authority shall prescribe procedures to be followed by
29 a hearing examiner.

30 Each final decision of a hearing examiner shall be in writing and
31 shall include findings and conclusions, based on the record, to support
32 the decision. Each final decision of a hearing examiner, unless a
33 longer period is mutually agreed to by the applicant and the hearing
34 examiner, shall be rendered within ten working days following
35 conclusion of all testimony and hearings.

36 **Sec. 24.** RCW 35A.63.170 and 1977 ex.s. c 213 s 2 are each amended
37 to read as follows:

1 As an alternative to those provisions of this chapter relating to
2 powers or duties of the planning commission to hear and report on any
3 proposal to amend a zoning ordinance, the legislative body of a city
4 may adopt a hearing examiner system under which a hearing examiner or
5 hearing examiners may hear and decide applications for amending the
6 zoning ordinance when the amendment which is applied for is not of
7 general applicability. In addition, the legislative body may vest in
8 a hearing examiner the power to hear and decide applications for
9 conditional uses, variances or any other class of applications for or
10 pertaining to land uses which the legislative body believes should be
11 reviewed and decided by a hearing examiner. The legislative body shall
12 prescribe procedures to be followed by a hearing examiner. If the
13 legislative authority vests in a hearing examiner the authority to hear
14 and decide variances, then the provisions of RCW 35A.63.110 shall not
15 apply to the city.

16 Each city legislative body electing to use a hearing examiner
17 pursuant to this section shall by ordinance specify the legal effect of
18 the decisions made by the examiner. Except for appeals of procedural
19 determinations made under the state environmental policy act, which
20 shall be in accordance with RCW 43.21C.075(3)(a), the legal effect of
21 such decisions may vary for the different classes of applications
22 decided by the examiner but shall include one of the following:

23 (1) The decision may be given the effect of a recommendation to the
24 legislative body;

25 (2) The decision may be given the effect of an administrative
26 decision appealable within a specified time limit to the legislative
27 body.

28 Each final decision of a hearing examiner shall be in writing and
29 shall include findings and conclusions, based on the record, to support
30 the decision. Such findings and conclusions shall also set forth the
31 manner in which the decision would carry out and conform to the city's
32 comprehensive plan and the city's development regulations. Each final
33 decision of a hearing examiner, unless a longer period is mutually
34 agreed to in writing by the applicant and the hearing examiner, shall
35 be rendered within ten working days following conclusion of all
36 testimony and hearings.

37 **Sec. 25.** RCW 43.21C.075 and 1983 c 117 s 4 are each amended to
38 read as follows:

1 (1) Because a major purpose of this chapter is to combine
2 environmental considerations with public decisions, any appeal brought
3 under this chapter shall be linked to a specific governmental action.
4 The state environmental policy act provides a basis for challenging
5 whether governmental action is in compliance with the substantive and
6 procedural provisions of this chapter. The state environmental policy
7 act is not intended to create a cause of action unrelated to a specific
8 governmental action.

9 (2) Unless otherwise provided by this section:

10 (a) Appeals under this chapter shall be of the governmental action
11 together with its accompanying environmental determinations.

12 (b) Appeals of environmental determinations made (or lacking) under
13 this chapter shall be commenced within the time required to appeal the
14 governmental action which is subject to environmental review.

15 (3) If an agency has a procedure for appeals of agency
16 environmental determinations made under this chapter, such procedure:

17 (a) Shall not allow more than one agency appeal proceeding on a
18 procedural determination (the adequacy of a determination of
19 significance/nonsignificance or of a final environmental impact
20 statement)((~~, consistent with any state statutory requirements for~~
21 ~~appeals to local legislative bodies~~)). If a county, city, town,
22 municipal corporation, or quasi-municipal corporation uses a hearing
23 examiner, any appeal of the hearing examiner's decision shall be made
24 to superior court. The appeal proceeding on a determination of
25 significance/nonsignificance may occur before the agency's final
26 decision on a proposed action. Such an appeal shall also be allowed
27 for a determination of significance/nonsignificance which may be issued
28 by the agency after supplemental review;

29 (b) Shall consolidate appeal of procedural issues and of
30 substantive determinations made under this chapter (such as a decision
31 to require particular mitigation measures or to deny a proposal) by
32 providing for simultaneous appeal of an agency decision on a proposal
33 and any environmental determinations made under this chapter, with the
34 exception of the threshold determination appeal as provided in (a) of
35 this subsection or an appeal to the local legislative authority under
36 RCW 43.21C.060 or other applicable state statutes;

37 (c) Shall provide for the preparation of a record for use in any
38 subsequent appeal proceedings, and shall provide for any subsequent
39 appeal proceedings to be conducted on the record, consistent with other

1 applicable law. An adequate record consists of findings and
2 conclusions, testimony under oath, and taped or written transcript. An
3 electronically recorded transcript will suffice for purposes of review
4 under this paragraph; and

5 (d) Shall provide that procedural determinations made by the
6 responsible official shall be entitled to substantial weight.

7 (4) If a person aggrieved by an agency action has the right to
8 judicial appeal and if an agency has an appeal procedure, such person
9 shall, prior to seeking any judicial review, use such procedure if any
10 such procedure is available, unless expressly provided otherwise by
11 state statute.

12 (5) RCW 43.21C.080 establishes an optional "notice of action"
13 procedure which, if used, imposes a time period for appealing decisions
14 under this chapter. Some statutes and ordinances contain time periods
15 for challenging governmental actions which are subject to review under
16 this chapter, such as various local land use approvals (the "underlying
17 governmental action"). This section does not modify any such time
18 periods. This section governs when a judicial appeal must be brought
19 under this chapter where a "notice of action" is used, and/or where
20 there is another time period which is required by statute or ordinance
21 for challenging the underlying governmental action. In this
22 subsection, the term "appeal" refers to a judicial appeal only.

23 (a) If there is a time period for appealing the underlying
24 governmental action, appeals under this chapter shall be commenced
25 within thirty days. The agency shall give official notice stating the
26 date and place for commencing an appeal. If there is an agency
27 proceeding under subsection (3) of this section, the appellant shall,
28 prior to commencing a judicial appeal, submit to the responsible
29 official a notice of intent to commence a judicial appeal. This notice
30 of intent shall be given within the time period for commencing a
31 judicial appeal on the underlying governmental action.

32 (b) A notice of action under RCW 43.21C.080 may be used. If a
33 notice of action is used, judicial appeals shall be commenced within
34 the time period specified by RCW 43.21C.080, unless there is a time
35 period for appealing the underlying governmental action in which case
36 (a) of this subsection shall apply.

37 (c) Notwithstanding RCW 43.21C.080(1), if there is a time period
38 for appealing the underlying governmental action, a notice of action
39 may be published within such time period.

1 (6)(a) Judicial review of an appeal decision made by an agency
2 under RCW 43.21C.075(5) shall be on the record, consistent with other
3 applicable law.

4 (b) A taped or written transcript may be used. If a taped
5 transcript is to be reviewed, a record shall identify the location on
6 the taped transcript of testimony and evidence to be reviewed. Parties
7 are encouraged to designate only those portions of the testimony
8 necessary to present the issues raised on review, but if a party
9 alleges that a finding of fact is not supported by evidence, the party
10 should include in the record all evidence relevant to the disputed
11 finding. Any other party may designate additional portions of the
12 taped transcript relating to issues raised on review. A party may
13 provide a written transcript of portions of the testimony at the
14 party's own expense or apply to that court for an order requiring the
15 party seeking review to pay for additional portions of the written
16 transcript.

17 (c) Judicial review under this chapter shall without exception be
18 of the governmental action together with its accompanying environmental
19 determinations.

20 (7) Jurisdiction over the review of determinations under this
21 chapter in an appeal before an agency or superior court shall upon
22 consent of the parties be transferred in whole or part to the
23 shorelines hearings board. The shorelines hearings board shall hear
24 the matter and sign the final order expeditiously. The superior court
25 shall certify the final order of the shorelines hearings board and said
26 certified final order may only be appealed to an appellate court.

27 (8) For purposes of this section and RCW 43.21C.080, the words
28 "action", "decision", and "determination" mean substantive agency
29 action including any accompanying procedural determinations under this
30 chapter (except where the word "action" means "appeal" in RCW
31 43.21C.080(2) and (3)). The word "action" in this section and RCW
32 43.21C.080 does not mean a procedural determination by itself made
33 under this chapter. The word "determination" includes any
34 environmental document required by this chapter and state or local
35 implementing rules. The word "agency" refers to any state or local
36 unit of government. The word "appeal" refers to administrative,
37 legislative, or judicial appeals.

38 (9) The court in its discretion may award reasonable attorney's
39 fees of up to one thousand dollars in the aggregate to the prevailing

1 party, including a governmental agency, on issues arising out of this
2 chapter if the court makes specific findings that the legal position of
3 a party is frivolous and without reasonable basis.

4 **Sec. 26.** RCW 35.63.130 and 1977 ex.s. c 213 s 1 are each amended
5 to read as follows:

6 As an alternative to those provisions of this chapter relating to
7 powers or duties of the planning commission to hear and report on any
8 proposal to amend a zoning ordinance, the legislative body of a city or
9 county may adopt a hearing examiner system under which a hearing
10 examiner or hearing examiners may hear and decide applications for
11 amending the zoning ordinance when the amendment which is applied for
12 is not of general applicability. In addition, the legislative body may
13 vest in a hearing examiner the power to hear and decide applications
14 for conditional uses, variances, or any other class of applications for
15 or pertaining to land uses which the legislative body believes should
16 be reviewed and decided by a hearing examiner. The legislative body
17 shall prescribe procedures to be followed by the hearing examiner.

18 Each city or county legislative body electing to use a hearing
19 examiner pursuant to this section shall by ordinance specify the legal
20 effect of the decisions made by the examiner. Except for appeals of
21 procedural determinations made under the state environmental policy
22 act, which shall be in accordance with RCW 43.21C.075(3)(a), the legal
23 effect of such decisions may vary for the different classes of
24 applications decided by the examiner but shall include one of the
25 following:

26 (1) The decision may be given the effect of a recommendation to the
27 legislative body;

28 (2) The decision may be given the effect of an administrative
29 decision appealable within a specified time limit to the legislative
30 body.

31 Each final decision of a hearing examiner shall be in writing and
32 shall include findings and conclusions, based on the record, to support
33 the decision. Such findings and conclusions shall also set forth the
34 manner in which the decision would carry out and conform to the city's
35 or county's comprehensive plan and the city's or county's development
36 regulations. Each final decision of a hearing examiner, unless a
37 longer period is mutually agreed to in writing by the applicant and the

1 hearing examiner, shall be rendered within ten working days following
2 conclusion of all testimony and hearings.

3 **Sec. 27.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended
4 to read as follows:

5 As an alternative to those provisions of this chapter relating to
6 powers or duties of the planning commission to hear and issue
7 recommendations on applications for plat approval and applications for
8 amendments to the zoning ordinance, the county legislative authority
9 may adopt a hearing examiner system under which a hearing examiner or
10 hearing examiners may hear and issue decisions on proposals for plat
11 approval and for amendments to the zoning ordinance when the amendment
12 which is applied for is not of general applicability. In addition, the
13 legislative authority may vest in a hearing examiner the power to hear
14 and decide conditional use applications, variance applications,
15 applications for shoreline permits or any other class of applications
16 for or pertaining to land uses. The legislative authority shall
17 prescribe procedures to be followed by a hearing examiner.

18 Any county which vests in a hearing examiner the authority to hear
19 and decide conditional uses and variances shall not be required to have
20 a zoning adjuster or board of adjustment.

21 Each county legislative authority electing to use a hearing
22 examiner pursuant to this section shall by ordinance specify the legal
23 effect of the decisions made by the examiner. Except for appeals of
24 procedural determinations made under the state environmental policy
25 act, which shall be in accordance with RCW 43.21C.075(3)(a), such legal
26 effect may vary for the different classes of applications decided by
27 the examiner but shall include one of the following:

28 (1) The decision may be given the effect of a recommendation to the
29 legislative authority;

30 (2) The decision may be given the effect of an administrative
31 decision appealable within a specified time limit to the legislative
32 authority.

33 Each final decision of a hearing examiner shall be in writing and
34 shall include findings and conclusions, based on the record, to support
35 the decision. Such findings and conclusions shall also set forth the
36 manner in which the decision would carry out and conform to the
37 county's comprehensive plan and the county's development regulations.
38 Each final decision of a hearing examiner, unless a longer period is

1 mutually agreed to in writing by the applicant and the hearing
2 examiner, shall be rendered within ten working days following
3 conclusion of all testimony and hearings.

4 **Sec. 28.** RCW 70.105D.020 and 1989 c 2 s 2 are each amended to read
5 as follows:

6 (1) "Agreed order" means an order issued by the department under
7 this chapter with which the potentially liable person receiving the
8 order agrees to comply. An agreed order may be used to require any
9 remedial actions but it is not a settlement under RCW 70.105D.040(4)
10 and shall not contain a covenant not to sue, or provide protection from
11 claims for contribution, or provide eligibility for public funding of
12 remedial actions under RCW 70.105D.070(2)(d)(xi).

13 (2) "Department" means the department of ecology.

14 (~~(2)~~) (3) "Director" means the director of ecology or the
15 director's designee.

16 (~~(3)~~) (4) "Facility" means (a) any building, structure,
17 installation, equipment, pipe or pipeline (including any pipe into a
18 sewer or publicly owned treatment works), well, pit, pond, lagoon,
19 impoundment, ditch, landfill, storage container, motor vehicle, rolling
20 stock, vessel, or aircraft, or (b) any site or area where a hazardous
21 substance, other than a consumer product in consumer use, has been
22 deposited, stored, disposed of, or placed, or otherwise come to be
23 located.

24 (~~(4)~~) (5) "Federal cleanup law" means the federal comprehensive
25 environmental response, compensation, and liability act of 1980, 42
26 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

27 (~~(5)~~) (6) "Hazardous substance" means:

28 (a) Any dangerous or extremely hazardous waste as defined in RCW
29 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
30 designated by rule pursuant to chapter 70.105 RCW;

31 (b) Any hazardous substance as defined in RCW 70.105.010(14) or any
32 hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

33 (c) Any substance that, on March 1, 1989, is a hazardous substance
34 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
35 9601(14);

36 (d) Petroleum or petroleum products; and

37 (e) Any substance or category of substances, including solid waste
38 decomposition products, determined by the director by rule to present

1 a threat to human health or the environment if released into the
2 environment.

3 The term hazardous substance does not include any of the following
4 when contained in an underground storage tank from which there is not
5 a release: Crude oil or any fraction thereof or petroleum, if the tank
6 is in compliance with all applicable federal, state, and local law.

7 ~~((+6))~~ (7) "Owner or operator" means:

8 (a) Any person with any ownership interest in the facility or who
9 exercises any control over the facility; or

10 (b) In the case of an abandoned facility, any person who had owned,
11 or operated, or exercised control over the facility any time before its
12 abandonment;

13 The term does not include:

14 (i) An agency of the state or unit of local government which
15 acquired ownership or control involuntarily through bankruptcy, tax
16 delinquency, abandonment, or circumstances in which the government
17 involuntarily acquires title. This exclusion does not apply to an
18 agency of the state or unit of local government which has caused or
19 contributed to the release or threatened release of a hazardous
20 substance from the facility; or

21 (ii) A person who, without participating in the management of a
22 facility, holds indicia of ownership primarily to protect the person's
23 security interest in the facility.

24 ~~((+7))~~ (8) "Person" means an individual, firm, corporation,
25 association, partnership, consortium, joint venture, commercial entity,
26 state government agency, unit of local government, federal government
27 agency, or Indian tribe.

28 ~~((+8))~~ (9) "Potentially liable person" means any person whom the
29 department finds, based on credible evidence, to be liable under RCW
30 70.105D.040. The department shall give notice to any such person and
31 allow an opportunity for comment before making the finding, unless an
32 emergency requires otherwise.

33 ~~((+9))~~ (10) "Public notice" means, at a minimum, adequate notice
34 mailed to all persons who have made timely request of the department
35 and to persons residing in the potentially affected vicinity of the
36 proposed action; mailed to appropriate news media; published in the
37 newspaper of largest circulation in the city or county of the proposed
38 action; and opportunity for interested persons to comment.

1 (~~(10)~~) (11) "Release" means any intentional or unintentional
2 entry of any hazardous substance into the environment, including but
3 not limited to the abandonment or disposal of containers of hazardous
4 substances.

5 (~~(11)~~) (12) "Remedy" or "remedial action" means any action or
6 expenditure consistent with the purposes of this chapter to identify,
7 eliminate, or minimize any threat or potential threat posed by
8 hazardous substances to human health or the environment including any
9 investigative and monitoring activities with respect to any release or
10 threatened release of a hazardous substance and any health assessments
11 or health effects studies conducted in order to determine the risk or
12 potential risk to human health.

13 **Sec. 29.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
14 as follows:

15 (1) The department may exercise the following powers in addition to
16 any other powers granted by law:

17 (a) Investigate, provide for investigating, or require potentially
18 liable persons to investigate any releases or threatened releases of
19 hazardous substances, including but not limited to inspecting,
20 sampling, or testing to determine the nature or extent of any release
21 or threatened release. If there is a reasonable basis to believe that
22 a release or threatened release of a hazardous substance may exist, the
23 department's authorized employees, agents, or contractors may enter
24 upon any property and conduct investigations. The department shall
25 give reasonable notice before entering property unless an emergency
26 prevents such notice. The department may by subpoena require the
27 attendance or testimony of witnesses and the production of documents or
28 other information that the department deems necessary;

29 (b) Conduct, provide for conducting, or require potentially liable
30 persons to conduct remedial actions (including investigations under (a)
31 of this subsection) to remedy releases or threatened releases of
32 hazardous substances. In carrying out such powers, the department's
33 authorized employees, agents, or contractors may enter upon property.
34 The department shall give reasonable notice before entering property
35 unless an emergency prevents such notice. In conducting, providing for,
36 or requiring remedial action, the department shall give preference to
37 permanent solutions to the maximum extent practicable and shall provide

1 for or require adequate monitoring to ensure the effectiveness of the
2 remedial action;

3 (c) Indemnify contractors retained by the department for carrying
4 out investigations and remedial actions, but not for any contractor's
5 reckless or wilful misconduct;

6 (d) Carry out all state programs authorized under the federal
7 cleanup law and the federal resource, conservation, and recovery act,
8 42 U.S.C. Sec. 6901 et seq., as amended;

9 (e) Classify substances as hazardous substances for purposes of RCW
10 70.105D.020(5) and classify substances and products as hazardous
11 substances for purposes of RCW 82.21.020(1); and

12 (f) Take any other actions necessary to carry out the provisions of
13 this chapter, including the power to adopt rules under chapter 34.05
14 RCW.

15 (2) The department shall immediately implement all provisions of
16 this chapter to the maximum extent practicable, including investigative
17 and remedial actions where appropriate. The department, within nine
18 months after March 1, 1989, shall adopt, and thereafter enforce, rules
19 under chapter 34.05 RCW to:

20 (a) Provide for public participation, including at least (i) the
21 establishment of regional citizen's advisory committees, (ii) public
22 notice of the development of investigative plans or remedial plans for
23 releases or threatened releases, and (iii) concurrent public notice of
24 all compliance orders, agreed orders, enforcement orders, or notices of
25 violation;

26 (b) Establish a hazard ranking system for hazardous waste sites;

27 (c) Establish reasonable deadlines not to exceed ninety days for
28 initiating an investigation of a hazardous waste site after the
29 department receives information that the site may pose a threat to
30 human health or the environment and other reasonable deadlines for
31 remedying releases or threatened releases at the site; and

32 (d) Publish and periodically update minimum cleanup standards for
33 remedial actions at least as stringent as the cleanup standards under
34 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
35 least as stringent as all applicable state and federal laws, including
36 health-based standards under state and federal law.

37 (3) Before November 1st of each even-numbered year, the department
38 shall develop, with public notice and hearing, and submit to the ways
39 and means and appropriate standing environmental committees of the

1 senate and house of representatives a ranked list of projects and
2 expenditures recommended for appropriation from both the state and
3 local toxics control accounts. The department shall also provide the
4 legislature and the public each year with an accounting of the
5 department's activities supported by appropriations from the state
6 toxics control account, including a list of known hazardous waste sites
7 and their hazard rankings, actions taken and planned at each site, how
8 the department is meeting its top two management priorities under RCW
9 70.105.150, and all funds expended under this chapter.

10 (4) The department shall establish a scientific advisory board to
11 render advice to the department with respect to the hazard ranking
12 system, cleanup standards, remedial actions, deadlines for remedial
13 actions, monitoring, the classification of substances as hazardous
14 substances for purposes of RCW 70.105D.020(5) and the classification of
15 substances or products as hazardous substances for purposes of RCW
16 82.21.020(1). The board shall consist of five independent members to
17 serve staggered three-year terms. No members may be employees of the
18 department. Members shall be reimbursed for travel expenses as
19 provided in RCW 43.03.050 and 43.03.060.

20 (5) The department shall establish a program to identify potential
21 hazardous waste sites and to encourage persons to provide information
22 about hazardous waste sites.

23 **Sec. 30.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
24 as follows:

25 (1) With respect to any release, or threatened release, for which
26 the department does not conduct or contract for conducting remedial
27 action and for which the department believes remedial action is in the
28 public interest, the director shall issue orders or agreed orders
29 requiring potentially liable persons to provide the remedial action.
30 Any liable person who refuses, without sufficient cause, to comply with
31 an order or agreed order of the director is liable in an action brought
32 by the attorney general for:

33 (a) Up to three times the amount of any costs incurred by the state
34 as a result of the party's refusal to comply; and

35 (b) A civil penalty of up to twenty-five thousand dollars for each
36 day the party refuses to comply.

37 The treble damages and civil penalty under this subsection apply to all
38 recovery actions filed on or after March 1, 1989.

1 (2) Any person who incurs costs complying with an order issued
2 under subsection (1) of this section may petition the department for
3 reimbursement of those costs. If the department refuses to grant
4 reimbursement, the person may within thirty days thereafter file suit
5 and recover costs by proving that he or she was not a liable person
6 under RCW 70.105D.040 and that the costs incurred were reasonable.

7 (3) The attorney general shall seek, by filing an action if
8 necessary, to recover the amounts spent by the department for
9 investigative and remedial actions (~~(and)~~), orders, and agreed orders,
10 including amounts spent prior to March 1, 1989.

11 (4) The attorney general may bring an action to secure such relief
12 as is necessary to protect human health and the environment under this
13 chapter.

14 (5)(a) Any person may commence a civil action to compel the
15 department to perform any nondiscretionary duty under this chapter. At
16 least thirty days before commencing the action, the person must give
17 notice of intent to sue, unless a substantial endangerment exists. The
18 court may award attorneys' fees and other costs to the prevailing party
19 in the action.

20 (b) Civil actions under this section and RCW 70.105D.060 may be
21 brought in the superior court of Thurston county or of the county in
22 which the release or threatened release exists.

23 **Sec. 31.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
24 as follows:

25 The department's investigative and remedial decisions under RCW
26 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
27 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
28 exclusively in superior court and only at the following times: (1) In
29 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
30 department to enforce an order or an agreed order, or seek a civil
31 penalty under this chapter; (3) in a suit for reimbursement under RCW
32 70.105D.050(2); (4) in a suit by the department to compel investigative
33 or remedial action; and (5) in a citizen's suit under RCW
34 70.105D.050(5). The court shall uphold the department's actions unless
35 they were arbitrary and capricious.

36 NEW SECTION. **Sec. 32.** A new section is added to chapter 70.105D
37 RCW to read as follows:

1 A person conducting a remedial action at a facility under a consent
2 decree, order, or agreed order, and the department when it conducts a
3 remedial action, are exempt from the procedural requirements of
4 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
5 procedural requirements of any laws requiring or authorizing local
6 government permits or approvals for the remedial action. This
7 exemption shall not apply if it would result in the loss of authority
8 delegated to the state by the federal government under the federal
9 resource conservation and recovery act, the federal clean water act,
10 the federal clean air act, or the federal coastal zone management act.
11 The department shall ensure compliance with the substantive provisions
12 of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
13 substantive provisions of any laws requiring or authorizing local
14 government permits of approvals. The department shall establish
15 procedures for ensuring that such remedial actions comply with the
16 substantive requirements adopted pursuant to such laws, and shall
17 consult with the state agencies and local governments charged with
18 implementing these laws. The procedures shall provide an opportunity
19 for comment by the public and by the state agencies and local
20 governments that would otherwise implement the laws referenced in this
21 section. Nothing in this section is intended to prohibit implementing
22 agencies from charging a fee to the person conducting the remedial
23 action to defray the costs of services rendered relating to the
24 substantive requirements for the remedial action.

25 NEW SECTION. **Sec. 33.** A new section is added to chapter 70.94 RCW
26 to read as follows:

27 The procedural requirements of this chapter shall not apply to any
28 person conducting a remedial action at a facility pursuant to a consent
29 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
30 or to the department of ecology when it conducts a remedial action
31 under chapter 70.105D RCW. This exemption shall not apply if it would
32 result in the loss of authority delegated to the state by the federal
33 government under the federal clean air act. The department of ecology
34 shall ensure compliance with the substantive requirements of this
35 chapter through the consent decree, order, or agreed order issued
36 pursuant to chapter 70.105D RCW, or during the department-conducted
37 remedial action, through the procedures developed by the department
38 pursuant to section 32 of this act.

1 NEW SECTION. **Sec. 34.** A new section is added to chapter 70.95 RCW
2 to read as follows:

3 The procedural requirements of this chapter shall not apply to any
4 person conducting a remedial action at a facility pursuant to a consent
5 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
6 or to the department of ecology when it conducts a remedial action
7 under chapter 70.105D RCW. This exemption shall not apply if it would
8 result in the loss of authority delegated to the state by the federal
9 government under the federal resource conservation and recovery act.
10 The department of ecology shall ensure compliance with the substantive
11 requirements of this chapter through the consent decree, order, or
12 agreed order issued pursuant to chapter 70.105D RCW, or during the
13 department-conducted remedial action, through the procedures developed
14 by the department pursuant to section 32 of this act.

15 NEW SECTION. **Sec. 35.** A new section is added to chapter 70.105
16 RCW to read as follows:

17 The procedural requirements of this chapter shall not apply to any
18 person conducting a remedial action at a facility pursuant to a consent
19 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
20 or to the department of ecology when it conducts a remedial action
21 under chapter 70.105D RCW. This exemption shall not apply if it would
22 result in the loss of authority delegated to the state by the federal
23 government under the federal resource conservation and recovery act.
24 The department of ecology shall ensure compliance with the substantive
25 requirements of this chapter through the consent decree, order, or
26 agreed order issued pursuant to chapter 70.105D RCW, or during the
27 department-conducted remedial action, through the procedures developed
28 by the department pursuant to section 32 of this act.

29 NEW SECTION. **Sec. 36.** A new section is added to chapter 75.20 RCW
30 to read as follows:

31 The procedural requirements of this chapter shall not apply to any
32 person conducting a remedial action at a facility pursuant to a consent
33 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
34 or to the department of ecology when it conducts a remedial action
35 under chapter 70.105D RCW. The department of ecology shall ensure
36 compliance with the substantive requirements of this chapter through
37 the consent decree, order, or agreed order issued pursuant to chapter

1 70.105D RCW, or during the department-conducted remedial action,
2 through the procedures developed by the department pursuant to section
3 32 of this act.

4 NEW SECTION. **Sec. 37.** A new section is added to chapter 90.48 RCW
5 to read as follows:

6 The procedural requirements of this chapter shall not apply to any
7 person conducting a remedial action at a facility pursuant to a consent
8 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
9 or to the department of ecology when it conducts a remedial action
10 under chapter 70.105D RCW. This exemption shall not apply if it would
11 result in the loss of authority delegated to the state by the federal
12 government under the federal clean water act. The department of
13 ecology shall ensure compliance with the substantive requirements of
14 this chapter through the consent decree, order, or agreed order issued
15 pursuant to chapter 70.105D RCW, or during the department-conducted
16 remedial action, through the procedures developed by the department
17 pursuant to section 32 of this act.

18 NEW SECTION. **Sec. 38.** A new section is added to chapter 90.58 RCW
19 to read as follows:

20 The procedural requirements of this chapter shall not apply to any
21 person conducting a remedial action at a facility pursuant to a consent
22 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
23 or to the department of ecology when it conducts a remedial action
24 under chapter 70.105D RCW. This exemption shall not apply if it would
25 result in the loss of authority delegated to the state by the federal
26 government under the federal coastal zone management act. The
27 department of ecology shall ensure compliance with the substantive
28 requirements of this chapter through the consent decree, order, or
29 agreed order issued pursuant to chapter 70.105D RCW, or during the
30 department-conducted remedial action, through the procedures developed
31 by the department pursuant to section 32 of this act.

32 NEW SECTION. **Sec. 39.** A new section is added to chapter 43.21C
33 RCW to read as follows:

34 In conducting a remedial action at a facility pursuant to a consent
35 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
36 or if conducted by the department of ecology, the department of ecology

1 to the maximum extent practicable shall integrate the procedural
2 requirements of this chapter with the procedures under chapter 70.105D
3 RCW. Such integration shall include the public participation
4 procedures of chapter 70.105D RCW and the public notice and review
5 requirements of this chapter.

6 **Sec. 40.** RCW 34.12.020 and 1993 c 281 s 16 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Office" means the office of administrative hearings.

11 (2) "Administrative law judge" means any person appointed by the
12 chief administrative law judge to conduct or preside over hearings as
13 provided in this chapter.

14 (3) "Hearing" means an adjudicative proceeding within the meaning
15 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413
16 through 34.05.476.

17 (4) "State agency" means any state board, commission, department,
18 or officer authorized by law to make rules or to conduct adjudicative
19 proceedings, except those in the legislative or judicial branches, the
20 growth management appeals boards, the pollution control hearings board,
21 the shorelines hearings board, the forest practices appeals board, the
22 environmental hearings office, the board of industrial insurance
23 appeals, the Washington personnel resources board, the public
24 employment relations commission, the personnel appeals board, and the
25 board of tax appeals.

26 **Sec. 41.** RCW 36.70A.110 and 1993 sp.s. c 6 s 2 are each amended to
27 read as follows:

28 (1) Each county that is required or chooses to plan under RCW
29 36.70A.040 shall designate an urban growth area or areas within which
30 urban growth shall be encouraged and outside of which growth can occur
31 only if it is not urban in nature. Each city that is located in such
32 a county shall be included within an urban growth area. An urban
33 growth area may include more than a single city. An urban growth area
34 may include territory that is located outside of a city only if such
35 territory already is characterized by urban growth or is adjacent to
36 territory already characterized by urban growth.

1 (2) Based upon the population growth management planning population
2 projection made for the county by the office of financial management,
3 the urban growth areas in the county shall include areas and densities
4 sufficient to permit the urban growth that is projected to occur in the
5 county for the succeeding twenty-year period. Each urban growth area
6 shall permit urban densities and shall include greenbelt and open space
7 areas. Within one year of July 1, 1990, each county that as of June 1,
8 1991, was required or chose to plan under RCW 36.70A.040, shall begin
9 consulting with each city located within its boundaries and each city
10 shall propose the location of an urban growth area. Within sixty days
11 of the date the county legislative authority of a county adopts its
12 resolution of intention or of certification by the office of financial
13 management, all other counties that are required or choose to plan
14 under RCW 36.70A.040 shall begin this consultation with each city
15 located within its boundaries. The county shall attempt to reach
16 agreement with each city on the location of an urban growth area within
17 which the city is located. If such an agreement is not reached with
18 each city located within the urban growth area, the county shall
19 justify in writing why it so designated the area an urban growth area.
20 A city may object formally with the department over the designation of
21 the urban growth area within which it is located. Where appropriate,
22 the department shall attempt to resolve the conflicts, including the
23 use of mediation services.

24 (3) Urban growth should be located first in areas already
25 characterized by urban growth that have existing public facility and
26 service capacities to serve such development, and second in areas
27 already characterized by urban growth that will be served by a
28 combination of both existing public facilities and services and any
29 additional needed public facilities and services that are provided by
30 either public or private sources. Further, it is appropriate that
31 urban government services be provided by cities, and urban government
32 services should not be provided in rural areas.

33 (4) On or before October 1, 1993, each county that was initially
34 required to plan under RCW 36.70A.040(1) shall adopt development
35 regulations designating interim urban growth areas under this chapter.
36 Within three years and three months of the date the county legislative
37 authority of a county adopts its resolution of intention or of
38 certification by the office of financial management, all other counties
39 that are required or choose to plan under RCW 36.70A.040 shall adopt

1 development regulations designating interim urban growth areas under
2 this chapter. Adoption of the interim urban growth areas may only
3 occur after public notice; public hearing; and compliance with the
4 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
5 Such action may be appealed to the appropriate growth ((planning))
6 management hearings board under RCW 36.70A.280. Final urban growth
7 areas shall be adopted at the time of comprehensive plan adoption under
8 this chapter.

9 (5) Each county shall include designations of urban growth areas in
10 its comprehensive plan.

11 **Sec. 42.** RCW 36.70A.210 and 1993 sp.s. c 6 s 4 are each amended to
12 read as follows:

13 (1) The legislature recognizes that counties are regional
14 governments within their boundaries, and cities are primary providers
15 of urban governmental services within urban growth areas. For the
16 purposes of this section, a "county-wide planning policy" is a written
17 policy statement or statements used solely for establishing a county-
18 wide framework from which county and city comprehensive plans are
19 developed and adopted pursuant to this chapter. This framework shall
20 ensure that city and county comprehensive plans are consistent as
21 required in RCW 36.70A.100. Nothing in this section shall be construed
22 to alter the land-use powers of cities.

23 (2) The legislative authority of a county that plans under RCW
24 36.70A.040 shall adopt a county-wide planning policy in cooperation
25 with the cities located in whole or in part within the county as
26 follows:

27 (a) No later than sixty calendar days from July 16, 1991, the
28 legislative authority of each county that as of June 1, 1991, was
29 required or chose to plan under RCW 36.70A.040 shall convene a meeting
30 with representatives of each city located within the county for the
31 purpose of establishing a collaborative process that will provide a
32 framework for the adoption of a county-wide planning policy. In other
33 counties that are required or choose to plan under RCW 36.70A.040, this
34 meeting shall be convened no later than sixty days after the date the
35 county adopts its resolution of intention or was certified by the
36 office of financial management.

37 (b) The process and framework for adoption of a county-wide
38 planning policy specified in (a) of this subsection shall determine the

1 manner in which the county and the cities agree to all procedures and
2 provisions including but not limited to desired planning policies,
3 deadlines, ratification of final agreements and demonstration thereof,
4 and financing, if any, of all activities associated therewith.

5 (c) If a county fails for any reason to convene a meeting with
6 representatives of cities as required in (a) of this subsection, the
7 governor may immediately impose any appropriate sanction or sanctions
8 on the county from those specified under RCW 36.70A.340.

9 (d) If there is no agreement by October 1, 1991, in a county that
10 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,
11 or if there is no agreement within one hundred twenty days of the date
12 the county adopted its resolution of intention or was certified by the
13 office of financial management in any other county that is required or
14 chooses to plan under RCW 36.70A.040, the governor shall first inquire
15 of the jurisdictions as to the reason or reasons for failure to reach
16 an agreement. If the governor deems it appropriate, the governor may
17 immediately request the assistance of the department of community,
18 trade, and economic development to mediate any disputes that preclude
19 agreement. If mediation is unsuccessful in resolving all disputes that
20 will lead to agreement, the governor may impose appropriate sanctions
21 from those specified under RCW 36.70A.340 on the county, city, or
22 cities for failure to reach an agreement as provided in this section.
23 The governor shall specify the reason or reasons for the imposition of
24 any sanction.

25 (e) No later than July 1, 1992, the legislative authority of each
26 county that was required or chose to plan under RCW 36.70A.040 as of
27 June 1, 1991, or no later than fourteen months after the date the
28 county adopted its resolution of intention or was certified by the
29 office of financial management the county legislative authority of any
30 other county that is required or chooses to plan under RCW 36.70A.040,
31 shall adopt a county-wide planning policy according to the process
32 provided under this section and that is consistent with the agreement
33 pursuant to (b) of this subsection, and after holding a public hearing
34 or hearings on the proposed county-wide planning policy.

35 (3) A county-wide planning policy shall at a minimum, address the
36 following:

37 (a) Policies to implement RCW 36.70A.110;

38 (b) Policies for promotion of contiguous and orderly development
39 and provision of urban services to such development;

1 (c) Policies for siting public capital facilities of a county-wide
2 or state-wide nature;

3 (d) Policies for county-wide transportation facilities and
4 strategies;

5 (e) Policies that consider the need for affordable housing, such as
6 housing for all economic segments of the population and parameters for
7 its distribution;

8 (f) Policies for joint county and city planning within urban growth
9 areas;

10 (g) Policies for county-wide economic development and employment;
11 and

12 (h) An analysis of the fiscal impact.

13 (4) Federal agencies and Indian tribes may participate in and
14 cooperate with the county-wide planning policy adoption process.
15 Adopted county-wide planning policies shall be adhered to by state
16 agencies.

17 (5) Failure to adopt a county-wide planning policy that meets the
18 requirements of this section may result in the imposition of a sanction
19 or sanctions on a county or city within the county, as specified in RCW
20 36.70A.340. In imposing a sanction or sanctions, the governor shall
21 specify the reasons for failure to adopt a county-wide planning policy
22 in order that any imposed sanction or sanctions are fairly and
23 equitably related to the failure to adopt a county-wide planning
24 policy.

25 (6) Cities and the governor may appeal an adopted county-wide
26 planning policy to the growth (~~(planning))~~ management hearings board
27 within sixty days of the adoption of the county-wide planning policy.

28 (7) Multicounty planning policies shall be adopted by two or more
29 counties, each with a population of four hundred fifty thousand or
30 more, with contiguous urban areas and may be adopted by other counties,
31 according to the process established under this section or other
32 processes agreed to among the counties and cities within the affected
33 counties throughout the multicounty region.

34 **Sec. 43.** RCW 36.70A.250 and 1991 sp.s. c 32 s 5 are each amended
35 to read as follows:

36 (1) There are hereby created three growth (~~(planning))~~ management
37 hearings boards for the state of Washington. The boards shall be
38 established as follows:

1 (a) An Eastern Washington board with jurisdictional boundaries
2 including all counties that are required to or choose to plan under RCW
3 36.70A.040 and are located east of the crest of the Cascade mountains;

4 (b) A Central Puget Sound board with jurisdictional boundaries
5 including King, Pierce, Snohomish, and Kitsap counties; and

6 (c) A Western Washington board with jurisdictional boundaries
7 including all counties that are required or choose to plan under RCW
8 36.70A.040 and are located west of the crest of the Cascade mountains
9 and are not included in the Central Puget Sound board jurisdictional
10 boundaries. Skamania county, should it be required or choose to plan
11 under RCW 36.70A.040, may elect to be included within the
12 jurisdictional boundaries of either the Western or Eastern board.

13 (2) Each board shall only hear matters pertaining to the cities and
14 counties located within its jurisdictional boundaries.

15 **Sec. 44.** RCW 36.70A.260 and 1991 sp.s. c 32 s 6 are each amended
16 to read as follows:

17 (1) Each growth ((~~planning~~)) management hearings board shall
18 consist of three members qualified by experience or training in matters
19 pertaining to land use planning and residing within the jurisdictional
20 boundaries of the applicable board. At least one member of each board
21 must be admitted to practice law in this state and at least one member
22 must have been a city or county elected official. Each board shall be
23 appointed by the governor and not more than two members at the time of
24 appointment or during their term shall be members of the same political
25 party. No more than two members at the time of appointment or during
26 their term shall reside in the same county.

27 (2) Each member of a board shall be appointed for a term of six
28 years. A vacancy shall be filled by appointment by the governor for
29 the unexpired portion of the term in which the vacancy occurs. The
30 terms of the first three members of a board shall be staggered so that
31 one member is appointed to serve until July 1, 1994, one member until
32 July 1, 1996, and one member until July 1, 1998.

33 **Sec. 45.** RCW 36.70A.280 and 1991 sp.s. c 32 s 9 are each amended
34 to read as follows:

35 (1) A growth ((~~planning~~)) management hearings board shall hear and
36 determine only those petitions alleging either:

1 (a) That a state agency, county, or city is not in compliance with
2 the requirements of this chapter, or chapter 43.21C RCW as it relates
3 to plans, regulations, (~~and~~) or amendments (~~thereto~~), adopted under
4 RCW 36.70A.040; or

5 (b) That the twenty-year growth management planning population
6 projections adopted by the office of financial management pursuant to
7 RCW 43.62.035 should be adjusted.

8 (2) A petition may be filed only by the state, a county or city
9 that plans under this chapter, a person who has either appeared before
10 the county or city regarding the matter on which a review is being
11 requested or is certified by the governor within sixty days of filing
12 the request with the board, or a person qualified pursuant to RCW
13 34.05.530.

14 (3) For purposes of this section "person" means any individual,
15 partnership, corporation, association, governmental subdivision or unit
16 thereof, or public or private organization or entity of any character.

17 (4) When considering a possible adjustment to a growth management
18 planning population projection prepared by the office of financial
19 management, a board shall consider the implications of any such
20 adjustment to the population forecast for the entire state.

21 The rationale for any adjustment that is adopted by a board must be
22 documented and filed with the office of financial management within ten
23 working days after adoption.

24 If adjusted by a board, a county growth management planning
25 population projection shall only be used for the planning purposes set
26 forth in this chapter and shall be known as a "board adjusted
27 population projection". None of these changes shall affect the
28 official state and county population forecasts prepared by the office
29 of financial management, which shall continue to be used for state
30 budget and planning purposes.

31 **Sec. 46.** RCW 36.70A.310 and 1991 sp.s. c 32 s 12 are each amended
32 to read as follows:

33 A request for review by the state to a growth (~~planning~~)
34 management hearings board may be made only by the governor, or with the
35 governor's consent the head of an agency, or by the commissioner of
36 public lands as relating to state trust lands, for the review of
37 whether: (1) A county or city that is required or chooses to plan
38 under RCW 36.70A.040 has failed to adopt a comprehensive plan or

1 development regulations, or county-wide planning policies within the
2 time limits established by this chapter; or (2) a county or city that
3 is required or chooses to plan under this chapter has adopted a
4 comprehensive plan, development regulations, or county-wide planning
5 policies, that are not in compliance with the requirements of this
6 chapter.

7 **Sec. 47.** RCW 36.70A.345 and 1993 sp.s. c 6 s 5 are each amended to
8 read as follows:

9 The governor may impose a sanction or sanctions specified under RCW
10 36.70A.340 on: (1) A county or city that fails to designate critical
11 areas, agricultural lands, forest lands, or mineral resource lands
12 under RCW 36.70A.170 by the date such action was required to have been
13 taken; (2) a county or city that fails to adopt development regulations
14 under RCW 36.70A.060 protecting critical areas or conserving
15 agricultural lands, forest lands, or mineral resource lands by the date
16 such action was required to have been taken; (3) a county that fails to
17 designate urban growth areas under RCW 36.70A.110 by the date such
18 action was required to have been taken; and (4) a county or city that
19 fails to adopt its comprehensive plan or development regulations when
20 such actions are required to be taken.

21 Imposition of a sanction or sanctions under this section shall be
22 preceded by written findings by the governor, that either the county or
23 city is not proceeding in good faith to meet the requirements of the
24 act; or that the county or city has unreasonably delayed taking the
25 required action. The governor shall consult with and communicate his
26 or her findings to the appropriate growth (~~planning~~) management
27 hearings board prior to imposing the sanction or sanctions. For those
28 counties or cities that are not required to plan or have not opted in,
29 the governor in imposing sanctions shall consider the size of the
30 jurisdiction relative to the requirements of this chapter and the
31 degree of technical and financial assistance provided.

32 NEW SECTION. **Sec. 48.** Sections 8, 22, and 42 of this act shall
33 take effect July 1, 1994.

34 NEW SECTION. **Sec. 49.** This act applies prospectively only and not
35 retroactively.

1 NEW SECTION. **Sec. 50.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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