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**SUBSTITUTE HOUSE BILL 2935**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** House General Government Appropriations (originally sponsored by Representatives Van De Wege, Sells, Blake, Takko, Darneille, Walsh, Hinkle, and Kessler; by request of Governor Gregoire)

READ FIRST TIME 02/09/10.

1       AN ACT Relating to environmental and land use hearings boards;  
2 amending RCW 43.21B.001, 43.21B.010, 43.21B.010, 43.21B.180,  
3 43.21B.230, 43.21B.320, 36.70A.270, 70.95.094, 76.06.180, 76.09.050,  
4 76.09.080, 76.09.090, 76.09.170, 76.09.310, 77.55.011, 77.55.021,  
5 77.55.141, 77.55.181, 77.55.241, 77.55.291, 78.44.270, 78.44.380,  
6 79.100.120, 84.33.0775, 90.58.140, 90.58.180, 90.58.190, 90.58.210, and  
7 90.58.560; reenacting and amending RCW 43.21B.005, 43.21B.005,  
8 43.21B.110, 43.21B.110, 43.21B.300, 43.21B.310, and 76.09.020; adding  
9 a new section to chapter 43.21B RCW; adding new sections to chapter  
10 36.70A RCW; adding a new section to chapter 76.09 RCW; creating new  
11 sections; repealing RCW 43.21B.190, 76.09.210, 76.09.220, 76.09.230,  
12 77.55.301, and 77.55.311; providing effective dates; and providing  
13 expiration dates.

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

15       NEW SECTION.   **Sec. 1.** It is the intent of the legislature to  
16 reduce and consolidate the number of state boards that conduct  
17 administrative review of environmental and land use decisions and to  
18 make more uniform the timelines for filing appeals with such boards.  
19 The legislature intends to eliminate the hydraulics appeals board and

1 the forest practices appeals board by transferring their duties to the  
2 pollution control hearings board. The legislature further intends to  
3 eliminate certain preliminary informal appeals heard internally by  
4 agencies. The legislature also intends to consolidate administratively  
5 and physically collocate the growth management hearings boards into the  
6 environmental and land use hearings office by July 1, 2011.

7 **Sec. 2.** RCW 43.21B.001 and 2004 c 204 s 1 are each amended to read  
8 as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Business days" means Monday through Friday exclusive of any  
12 state or federal holiday.

13 (2) "Date of receipt" means:

14 (a) Five business days after the date of mailing; or

15 (b) The date of actual receipt, when the actual receipt date can be  
16 proven by a preponderance of the evidence. The recipient's sworn  
17 affidavit or declaration indicating the date of receipt, which is  
18 unchallenged by the agency, shall constitute sufficient evidence of  
19 actual receipt. The date of actual receipt, however, may not exceed  
20 forty-five days from the date of mailing.

21 (3) "Department" means the department of ecology.

22 (4) "Director" means the director of ecology.

23 (5) "Environmental boards" means the pollution control hearings  
24 board created in RCW 43.21B.010 and the shorelines hearings board  
25 created in RCW 90.58.170.

26 (6) "Land use board" means the growth management hearings board  
27 created in RCW 36.70A.250.

28 **Sec. 3.** RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are  
29 each reenacted and amended to read as follows:

30 (1) There is created an environmental hearings office of the state  
31 of Washington. The environmental hearings office (~~(shall)~~) consists of  
32 the pollution control hearings board created in RCW 43.21B.010, (~~the~~  
33 ~~forest practices appeals board created in RCW 76.09.210,~~) and the  
34 shorelines hearings board created in RCW 90.58.170, and the  
35 environmental and land use hearings board created in chapter 43.21L  
36 RCW(~~(, and the hydraulic appeals board created in RCW 77.55.170)~~). The

1 chair of the pollution control hearings board shall be the chief  
2 executive officer of the environmental hearings office. Membership,  
3 powers, functions, and duties of the pollution control hearings  
4 board(~~(, the forest practices appeals board,)~~) and the shorelines  
5 hearings board(~~(, and the hydraulic appeals board)~~) shall be as  
6 provided by law.

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

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

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

28 (5) The chief executive officer may also contract for required  
29 services.

30 **Sec. 4.** RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are  
31 each reenacted and amended to read as follows:

32 (1) There is created an environmental and land use hearings office  
33 of the state of Washington. The environmental and land use hearings  
34 office (~~(shall)~~) consists of the pollution control hearings board  
35 created in RCW 43.21B.010, (~~(the forest practices appeals board created~~  
36 ~~in RCW 76.09.210,)~~) the shorelines hearings board created in RCW  
37 90.58.170, (~~(the environmental and land use hearings board created in~~

1 ~~chapter 43.21L RCW, and the hydraulic appeals board created in RCW~~  
2 ~~77.55.170. The chair of the pollution control hearings board shall be~~  
3 ~~the chief executive officer of the environmental hearings office)) and~~  
4 the growth management hearings board created in RCW 36.70A.250. The  
5 governor shall designate one of the members of the pollution control  
6 hearings board or growth management hearings board to be the director  
7 of the environmental and land use hearings office during the term of  
8 the governor. Membership, powers, functions, and duties of the  
9 pollution control hearings board, (~~the forest practices appeals~~  
10 ~~board,~~) the shorelines hearings board, and the (~~hydraulic appeals~~)  
11 growth management hearings board shall be as provided by law.

12 (2) The (~~chief executive officer~~) director of the environmental  
13 and land use hearings office may appoint ((an)) one or more  
14 administrative appeals judges ((who shall possess the powers and duties  
15 conferred by the administrative procedure act, chapter 34.05 RCW,)) in  
16 cases before the environmental boards and, with the consent of the  
17 chair of the growth management hearings board, one or more hearing  
18 examiners in cases before the land use board comprising the office.  
19 The administrative appeals judges shall possess the powers and duties  
20 conferred by the administrative procedure act, chapter 34.05 RCW, have  
21 a demonstrated knowledge of environmental law, and shall be admitted to  
22 the practice of law in the state of Washington. ((Additional  
23 administrative appeals judges may also be appointed by the chief  
24 executive officer on the same terms. Administrative appeals judges  
25 shall not be subject to chapter 41.06 RCW.)) The hearing examiners  
26 possess the powers and duties provided for in RCW 36.70A.270.

27 (3) Administrative appeals judges are not subject to chapter 41.06  
28 RCW. The administrative appeals judges appointed under subsection (2)  
29 of this section are subject to discipline and termination, for cause,  
30 by the (~~chief executive officer~~) director of the environmental and  
31 land use hearings office. Upon written request by the person so  
32 disciplined or terminated, the (~~chief executive officer~~) director of  
33 the environmental and land use hearings office shall state the reasons  
34 for such action in writing. The person affected has a right of review  
35 by the superior court of Thurston county on petition for reinstatement  
36 or other remedy filed within thirty days of receipt of such written  
37 reasons.

1 (4) The (~~chief executive officer~~) director of the environmental  
2 and land use hearings office may appoint, discharge, and fix the  
3 compensation of such administrative or clerical staff as may be  
4 necessary.

5 (5) The (~~chief executive officer~~) director of the environmental  
6 and land use hearings office may also contract for required services.

7 **Sec. 5.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to  
8 read as follows:

9 There is hereby created within the environmental hearings office a  
10 pollution control hearings board of the state of Washington.

11 The purpose of the pollution control hearings board is to provide  
12 for a more expeditious and efficient disposition of designated  
13 environmental appeals (~~(with respect to the decisions and orders of the~~  
14 ~~department and director and with respect to all decisions of air~~  
15 ~~pollution control boards or authorities established pursuant to chapter~~  
16 ~~70.94 RCW)~~) as provided for in RCW 43.21B.110.

17 **Sec. 6.** RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to  
18 read as follows:

19 There is hereby created within the environmental and land use  
20 hearings office a pollution control hearings board of the state of  
21 Washington.

22 The purpose of the pollution control hearings board is to provide  
23 for a more expeditious and efficient disposition of designated  
24 environmental appeals (~~(with respect to the decisions and orders of the~~  
25 ~~department and director and with respect to all decisions of air~~  
26 ~~pollution control boards or authorities established pursuant to chapter~~  
27 ~~70.94 RCW)~~) as provided for in RCW 43.21B.110.

28 **Sec. 7.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and  
29 2009 c 183 s 17 are each reenacted and amended to read as follows:

30 (1) The hearings board shall only have jurisdiction to hear and  
31 decide appeals from the following decisions of the department, the  
32 director, local conservation districts, (~~and~~) the air pollution  
33 control boards or authorities as established pursuant to chapter 70.94  
34 RCW, (~~or~~) local health departments, the department of natural

1 resources, the department of fish and wildlife, and the parks and  
2 recreation commission:

3 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
4 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,  
5 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

6 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
7 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
8 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

9 (c) A final decision by the department or director made under  
10 chapter 183, Laws of 2009.

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

19 (e) Decisions of local health departments regarding the grant or  
20 denial of solid waste permits pursuant to chapter 70.95 RCW.

21 (f) Decisions of local health departments regarding the issuance  
22 and enforcement of permits to use or dispose of biosolids under RCW  
23 70.95J.080.

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

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

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

36 (j) Decisions of the department of natural resources, the  
37 department of fish and wildlife, and the department that are reviewable

1 under chapter 76.09 RCW, and the department of natural resources'  
2 appeals of county, city, or town objections under RCW 76.09.050(7).

3 (k) Forest health hazard orders issued by the commissioner of  
4 public lands under RCW 76.06.180.

5 (l) Decisions of the department of fish and wildlife to issue,  
6 deny, condition, or modify a hydraulic project approval permit under  
7 chapter 77.55 RCW.

8 (m) Decisions of the department of natural resources that are  
9 reviewable under RCW 78.44.270.

10 (n) Decisions of a state agency that is an authorized public entity  
11 under RCW 79.100.010 to take temporary possession of a vessel or to  
12 contest the amount of reimbursement owed that are reviewable under RCW  
13 79.100.120.

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

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

18 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
19 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

20 (c) Appeals of decisions by the department under RCW 90.03.110 and  
21 90.44.220.

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

24 (e) Appeals of decisions by the department as provided in chapter  
25 43.21L RCW.

26 (3) Review of rules and regulations adopted by the hearings board  
27 shall be subject to review in accordance with the provisions of the  
28 administrative procedure act, chapter 34.05 RCW.

29 **Sec. 8.** RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are  
30 each reenacted and amended to read as follows:

31 (1) The hearings board shall only have jurisdiction to hear and  
32 decide appeals from the following decisions of the department, the  
33 director, local conservation districts, (~~and~~) the air pollution  
34 control boards or authorities as established pursuant to chapter 70.94  
35 RCW, (~~or~~) local health departments, the department of natural  
36 resources, the department of fish and wildlife, and the parks and  
37 recreation commission:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
2 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,  
3 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
5 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
6 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

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

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

32 (i) Decisions of the department of natural resources, the  
33 department of fish and wildlife, and the department that are reviewable  
34 under chapter 76.09 RCW, and the department of natural resources'  
35 appeals of county, city, or town objections under RCW 76.09.050(7).

36 (j) Forest health hazard orders issued by the commissioner of  
37 public lands under RCW 76.06.180.



1        (k) Decisions of the department of fish and wildlife to issue,  
2 deny, condition, or modify a hydraulic project approval permit under  
3 chapter 77.55 RCW.

4        (l) Decisions of the department of natural resources that are  
5 reviewable under RCW 78.44.270.

6        (m) Decisions of a state agency that is an authorized public entity  
7 under RCW 79.100.010 to take temporary possession of a vessel or to  
8 contest the amount of reimbursement owed that are reviewable under RCW  
9 79.100.120.

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

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

14        (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
15 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

16        (c) Appeals of decisions by the department under RCW 90.03.110 and  
17 90.44.220.

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

20        (e) Appeals of decisions by the department as provided in chapter  
21 43.21L RCW.

22        (3) Review of rules and regulations adopted by the hearings board  
23 shall be subject to review in accordance with the provisions of the  
24 administrative procedure act, chapter 34.05 RCW.

25        NEW SECTION. Sec. 9. A new section is added to chapter 43.21B RCW  
26 to read as follows:

27        In all appeals, upon request of one or more parties and with the  
28 consent of all parties, the environmental hearings boards may schedule  
29 a conference for the purpose of attempting to mediate the case.  
30 Mediation must be conducted by an administrative appeals judge or other  
31 duly authorized agent of the board who has received training in dispute  
32 resolution techniques or has a demonstrated history of successfully  
33 resolving disputes, as determined by the board. A person who mediates  
34 in a particular appeal may not participate in a hearing on that appeal  
35 and may not write the decision and order in the appeal. The mediator  
36 may not communicate with board members regarding the mediation other  
37 than to inform them of the pendency of the mediation and whether the

1 case settled. Mediation provided by the environmental hearings boards  
2 must be conducted pursuant to the provisions of the uniform mediation  
3 act, chapter 7.07 RCW.

4 **Sec. 10.** RCW 43.21B.180 and 1994 c 253 s 6 are each amended to  
5 read as follows:

6 ~~((Judicial review of))~~ Any party aggrieved by a final decision and  
7 order of the pollution control hearings board may ~~((be obtained only~~  
8 obtain judicial review of the final decision and order as  
9 provided in RCW 34.05.510 through 34.05.598. ~~The ((director))~~ state or  
10 local agency that issued the decision appealed to the board shall have  
11 the same right of review from a decision made pursuant to RCW  
12 43.21B.110 as does any person.

13 **Sec. 11.** RCW 43.21B.230 and 2004 c 204 s 3 are each amended to  
14 read as follows:

15 ~~((Consistent with RCW 43.21B.110, any person having received notice~~  
16 ~~of denial of a petition, a notice of determination, or notice of an~~  
17 ~~order made by the department may appeal to the hearings board, within~~  
18 ~~thirty days from the date of receipt of the notice of such denial,~~  
19 ~~order, or determination by the appealing party.))~~ (1) Unless otherwise  
20 provided by law, any person with standing may commence an appeal to the  
21 pollution control hearings board by filing a notice of appeal with the  
22 board within thirty days from the date of receipt of the decision being  
23 appealed.

24 (2) The appeal ~~((shall be perfected by serving a copy of the notice~~  
25 ~~of appeal upon the department or air pollution authority established~~  
26 ~~pursuant to chapter 70.94 RCW, as the case may be, within the time~~  
27 ~~specified herein and by filing the original thereof with))~~ is timely if  
28 it is filed with the board and served upon the state or local agency  
29 whose action is being appealed within the same thirty-day period.  
30 Proof of service must be filed with the clerk of the hearings board to  
31 perfect the appeal.

32 (3) The appeal must contain the following in accordance with the  
33 rules of the hearings board:

34 (a) The appellant's name and address;

35 (b) The date and docket number of the order, permit, license, or  
36 decision appealed;

1 (c) A copy of the order, permit, license, or decision that is the  
2 subject of the appeal;

3 (d) A clear, separate, and concise statement of every error alleged  
4 to have been committed;

5 (e) A clear and concise statement of facts upon which the requester  
6 relies to sustain his or her statements of error; and

7 (f) A statement setting forth the relief sought.

8 **Sec. 12.** RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are  
9 each reenacted and amended to read as follows:

10 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
11 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,  
12 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be  
13 imposed by a notice in writing, either by certified mail with return  
14 receipt requested or by personal service, to the person incurring the  
15 penalty from the department or the local air authority, describing the  
16 violation with reasonable particularity. For penalties issued by local  
17 air authorities, within thirty days after the notice is received, the  
18 person incurring the penalty may apply in writing to ((the department  
19 or)) the authority for the remission or mitigation of the penalty.  
20 Upon receipt of the application, the ((department or)) authority may  
21 remit or mitigate the penalty upon whatever terms ((the department or))  
22 the authority in its discretion deems proper. The ((department or  
23 the)) authority may ascertain the facts regarding all such applications  
24 in such reasonable manner and under such rules as it may deem proper  
25 and shall remit or mitigate the penalty only upon a demonstration of  
26 extraordinary circumstances such as the presence of information or  
27 factors not considered in setting the original penalty.

28 (2) Any penalty imposed under this section may be appealed to the  
29 pollution control hearings board in accordance with this chapter if the  
30 appeal is filed with the hearings board and served on the department or  
31 authority thirty days after the date of receipt by the person penalized  
32 of the notice imposing the penalty or thirty days after the date of  
33 receipt of the notice of disposition by a local air authority of the  
34 application for relief from penalty.

35 (3) A penalty shall become due and payable on the later of:

36 (a) Thirty days after receipt of the notice imposing the penalty;

1 (b) Thirty days after receipt of the notice of disposition by a  
2 local air authority on application for relief from penalty, if such an  
3 application is made; or

4 (c) Thirty days after receipt of the notice of decision of the  
5 hearings board if the penalty is appealed.

6 (4) If the amount of any penalty is not paid to the department  
7 within thirty days after it becomes due and payable, the attorney  
8 general, upon request of the department, shall bring an action in the  
9 name of the state of Washington in the superior court of Thurston  
10 county, or of any county in which the violator does business, to  
11 recover the penalty. If the amount of the penalty is not paid to the  
12 authority within thirty days after it becomes due and payable, the  
13 authority may bring an action to recover the penalty in the superior  
14 court of the county of the authority's main office or of any county in  
15 which the violator does business. In these actions, the procedures and  
16 rules of evidence shall be the same as in an ordinary civil action.

17 (5) All penalties recovered shall be paid into the state treasury  
18 and credited to the general fund except those penalties imposed  
19 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
20 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
21 disposition of which shall be governed by that provision, RCW  
22 70.105.080, which shall be credited to the hazardous waste control and  
23 elimination account created by RCW 70.105.180, RCW 90.56.330, which  
24 shall be credited to the coastal protection fund created by RCW  
25 90.48.390, and RCW 90.76.080, which shall be credited to the  
26 underground storage tank account created by RCW 90.76.100.

27 **Sec. 13.** RCW 43.21B.310 and 2009 c 456 s 18 and 2009 c 178 s 3 are  
28 each reenacted and amended to read as follows:

29 ~~(1) ((Except as provided in RCW 90.03.210(2), any order issued by~~  
30 ~~the department or local air authority pursuant to RCW 43.27A.190,~~  
31 ~~70.94.211, 70.94.332, 70.95.315, 70.105.095, 86.16.020, 88.46.070,~~  
32 ~~90.46.250, or 90.48.120(2) or any provision enacted after July 26,~~  
33 ~~1987, or any permit, certificate, or license issued by the department~~  
34 ~~may be appealed to the pollution control hearings board if the appeal~~  
35 ~~is filed with the board and served on the department or authority~~  
36 ~~within thirty days after the date of receipt of the order. Except as~~

1 ~~provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the~~  
2 ~~exclusive means of appeal of such an order.~~

3 ~~(2) The department or the authority))~~ The issuing agency in its  
4 discretion may stay the effectiveness of ~~((an))~~ any order that has been  
5 appealed to the board during the pendency of such an appeal.

6 ~~((3))~~ (2) At any time during the pendency of an appeal of such an  
7 order to the board, the appellant may apply pursuant to RCW 43.21B.320  
8 to the hearings board for a stay of the order or for the removal  
9 thereof.

10 ~~((4) Any appeal must contain the following in accordance with the~~  
11 ~~rules of the hearings board:~~

12 ~~(a) The appellant's name and address;~~

13 ~~(b) The date and docket number of the order, permit, or license~~  
14 ~~appealed;~~

15 ~~(c) A description of the substance of the order, permit, or license~~  
16 ~~that is the subject of the appeal;~~

17 ~~(d) A clear, separate, and concise statement of every error alleged~~  
18 ~~to have been committed;~~

19 ~~(e) A clear and concise statement of facts upon which the requester~~  
20 ~~relies to sustain his or her statements of error; and~~

21 ~~(f) A statement setting forth the relief sought.~~

22 ~~(5))~~ (3) Upon failure to comply with any final order of the  
23 department, the attorney general, on request of the department, may  
24 bring an action in the superior court of the county where the violation  
25 occurred or the potential violation is about to occur to obtain such  
26 relief as necessary, including injunctive relief, to ~~((insure))~~ ensure  
27 compliance with the order. The air authorities may bring similar  
28 actions to enforce their orders.

29 ~~((6))~~ (4) An appealable decision or order shall be identified as  
30 such and shall contain a conspicuous notice to the recipient that it  
31 may be appealed only by filing an appeal with the hearings board and  
32 serving it on the ~~((department))~~ issuing agency within thirty days of  
33 the date of receipt.

34 **Sec. 14.** RCW 43.21B.320 and 1987 c 109 s 7 are each amended to  
35 read as follows:

36 (1) A person appealing to the hearings board an order ~~((of the~~

1 ~~department or an authority~~)), not stayed by the issuing agency, may  
2 obtain a stay of the effectiveness of that order only as set forth in  
3 this section.

4 (2) An appealing party may request a stay by including such a  
5 request in the appeal document, in a subsequent motion, or by such  
6 other means as the rules of the hearings board shall prescribe. The  
7 request must be accompanied by a statement of grounds for the stay and  
8 evidence setting forth the factual basis upon which request is based.  
9 The hearings board shall hear the request for a stay as soon as  
10 possible. The hearing on the request for stay may be consolidated with  
11 the hearing on the merits.

12 (3) The applicant may make a prima facie case for stay if the  
13 applicant demonstrates either a likelihood of success on the merits of  
14 the appeal or irreparable harm. Upon such a showing, the hearings  
15 board shall grant the stay unless the (~~department or authority~~)  
16 issuing agency demonstrates either (a) a substantial probability of  
17 success on the merits or (b) likelihood of success on the merits and an  
18 overriding public interest which justifies denial of the stay.

19 (4) Unless otherwise stipulated by the parties, the hearings board,  
20 after granting or denying an application for a stay, shall expedite the  
21 hearing and decision on the merits.

22 (5) Any party or other person aggrieved by the grant or denial of  
23 a stay by the hearings board may petition the superior court for  
24 Thurston county for review of that decision pursuant to chapter 34.05  
25 RCW pending the appeal on the merits before the board. The superior  
26 court shall expedite its review of the decision of the hearings board.

27 NEW SECTION. **Sec. 15.** A new section is added to chapter 36.70A  
28 RCW to read as follows:

29 (1) On July 1, 2011, the growth management hearings board is  
30 administratively consolidated into the environmental and land use  
31 hearings office created in RCW 43.21B.005.

32 (2) Not later than July 1, 2012, the growth management hearings  
33 board consists of seven members qualified by experience or training in  
34 matters pertaining to land use law or land use planning, except that  
35 the governor may reduce the board to six members if warranted by the  
36 board's caseload. All board members must be appointed by the governor,  
37 two each residing respectively in the central Puget Sound, eastern

1 Washington, and western Washington regions and shall continue to meet  
2 the qualifications set out in RCW 36.70A.260. The reduction from seven  
3 board members to six board members must be made through attrition,  
4 voluntary resignation, or retirement.

5 **Sec. 16.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to  
6 read as follows:

7 Each growth management hearings board shall be governed by the  
8 following rules on conduct and procedure:

9 (1) Any board member may be removed for inefficiency, malfeasance,  
10 and misfeasance in office, under specific written charges filed by the  
11 governor. The governor shall transmit such written charges to the  
12 member accused and the chief justice of the supreme court. The chief  
13 justice shall thereupon designate a tribunal composed of three judges  
14 of the superior court to hear and adjudicate the charges. Removal of  
15 any member of a board by the tribunal shall disqualify such member for  
16 reappointment.

17 (2) Each board member shall receive reimbursement for travel  
18 expenses incurred in the discharge of his or her duties in accordance  
19 with RCW 43.03.050 and 43.03.060. If it is determined that the review  
20 boards shall operate on a full-time basis, each member shall receive an  
21 annual salary to be determined by the governor pursuant to RCW  
22 43.03.040. If it is determined that a review board shall operate on a  
23 part-time basis, each member shall receive compensation pursuant to RCW  
24 43.03.250, provided such amount shall not exceed the amount that would  
25 be set if they were a full-time board member. The principal office of  
26 each board shall be located by the governor within the jurisdictional  
27 boundaries of each board. The boards shall operate on either a part-  
28 time or full-time basis, as determined by the governor.

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

35 (4) A majority of each board shall constitute a quorum for making  
36 orders or decisions, adopting rules necessary for the conduct of its  
37 powers and duties, or transacting other official business, and may act

1 even though one position of the board is vacant. One or more members  
2 may hold hearings and take testimony to be reported for action by the  
3 board when authorized by rule or order of the board. The board shall  
4 perform all the powers and duties specified in this chapter or as  
5 otherwise provided by law.

6 (5) The board may (~~appoint~~) use one or more hearing examiners to  
7 assist the board in its hearing function, to make conclusions of law  
8 and findings of fact and, if requested by the board, to make  
9 recommendations to the board for decisions in cases before the board.  
10 Such hearing examiners must have demonstrated knowledge of land use  
11 planning and law. The boards shall specify in their joint rules of  
12 practice and procedure, as required by subsection (7) of this section,  
13 the procedure and criteria to be employed for designating hearing  
14 examiners as a presiding officer. Hearing examiners (~~selected~~) used  
15 by a board shall meet the requirements of subsection (3) of this  
16 section. The findings and conclusions of the hearing examiner shall  
17 not become final until they have been formally approved by the board.  
18 This authorization to use hearing examiners does not waive the  
19 requirement of RCW 36.70A.300 that final orders be issued within one  
20 hundred eighty days of board receipt of a petition.

21 (6) Each board shall make findings of fact and prepare a written  
22 decision in each case decided by it, and such findings and decision  
23 shall be effective upon being signed by two or more members of the  
24 board and upon being filed at the board's principal office, and shall  
25 be open for public inspection at all reasonable times.

26 (7) All proceedings before the board, any of its members, or a  
27 hearing examiner appointed by the board shall be conducted in  
28 accordance with such administrative rules of practice and procedure as  
29 the boards jointly prescribe. All three boards shall jointly meet to  
30 develop and adopt joint rules of practice and procedure, including  
31 rules regarding expeditious and summary disposition of appeals. The  
32 boards shall publish such rules and decisions they render and arrange  
33 for the reasonable distribution of the rules and decisions. Except as  
34 it conflicts with specific provisions of this chapter, the  
35 administrative procedure act, chapter 34.05 RCW, and specifically  
36 including the provisions of RCW 34.05.455 governing ex parte  
37 communications, shall govern the practice and procedure of the boards.



1 (8) A board member or hearing examiner is subject to  
2 disqualification under chapter 34.05 RCW. The joint rules of practice  
3 of the boards shall establish procedures by which a party to a hearing  
4 conducted before the board may file with the board a motion to  
5 disqualify, with supporting affidavit, against a board member or  
6 hearing examiner assigned to preside at the hearing.

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

10 **Sec. 17.** RCW 70.95.094 and 1989 c 431 s 8 are each amended to read  
11 as follows:

12 (1) The department and local governments preparing plans are  
13 encouraged to work cooperatively during plan development. Each county  
14 and city preparing a comprehensive solid waste management plan shall  
15 submit a preliminary draft plan to the department for technical review.  
16 The department shall review and comment on the draft plan within one  
17 hundred twenty days of receipt. The department's comments shall state  
18 specific actions or revisions that must be completed for plan approval.

19 (2) Each final draft solid waste management plan shall be submitted  
20 to the department for approval. The department will limit its comments  
21 on the final draft plans to those issues identified during its review  
22 of the draft plan and any other changes made between submittal of the  
23 preliminary draft and final draft plans. Disapproval of the local  
24 comprehensive solid waste management plan shall be supported by  
25 specific findings. A final draft plan shall be deemed approved if the  
26 department does not disapprove it within forty-five days of receipt.

27 (3) If the department disapproves a plan or any plan amendments,  
28 the submitting entity may appeal the decision (~~((under the procedures of  
29 Part IV of chapter 34.05 RCW. An administrative law judge shall  
30 preside over the appeal))~~) to the pollution control hearings board as  
31 provided in RCW 43.21B.230. The appeal shall be limited to review of  
32 the specific findings which supported the disapproval under subsection  
33 (2) of this section.

34 **Sec. 18.** RCW 76.06.180 and 2007 c 480 s 7 are each amended to read  
35 as follows:

36 (1) Prior to issuing a forest health hazard warning or forest

1 health hazard order, the commissioner shall consider the findings and  
2 recommendations of the forest health technical advisory committee and  
3 shall consult with county government officials, forest landowners and  
4 forest land managers, consulting foresters, and other interested  
5 parties to gather information on the threat, opportunities or  
6 constraints on treatment options, and other information they may  
7 provide. The commissioner, or a designee, shall conduct a public  
8 hearing in a county within the geographical area being considered.

9 (2) The commissioner of public lands may issue a forest health  
10 hazard warning when he or she deems such action is necessary to manage  
11 the development of a threat to forest health or address an existing  
12 threat to forest health. A decision to issue a forest health hazard  
13 warning may be based on existing forest stand conditions and:

14 (a) The presence of an uncharacteristic insect or disease outbreak  
15 that has or is likely to (i) spread to multiple forest ownerships and  
16 cause extensive damage to forests; or (ii) significantly increase  
17 forest fuel that is likely to further the spread of uncharacteristic  
18 fire;

19 (b) When, due to extensive physical damage from wind or ice storm  
20 or other cause, there are (i) insect populations building up to large  
21 scale levels; or (ii) significantly increased forest fuels that are  
22 likely to further the spread of uncharacteristic fire; or

23 (c) When otherwise determined by the commissioner to be  
24 appropriate.

25 (3) The commissioner of public lands may issue a forest health  
26 hazard order when he or she deems such action is necessary to address  
27 a significant threat to forest health. A decision to issue a forest  
28 health hazard order may be based on existing forest stand conditions  
29 and:

30 (a) The presence of an uncharacteristic insect or disease outbreak  
31 that has (i) spread to multiple forest ownerships and has caused and is  
32 likely to continue to cause extensive damage to forests; or (ii)  
33 significantly increased forest fuels that are likely to further the  
34 spread of uncharacteristic fire;

35 (b) When, due to extensive physical damage from wind or ice storm  
36 or other cause (i) insect populations are causing extensive damage to  
37 forests; or (ii) significantly increased forest fuels are likely to  
38 further the spread of uncharacteristic fire;

1 (c) Insufficient landowner action under a forest health hazard  
2 warning; or

3 (d) When otherwise determined by the commissioner to be  
4 appropriate.

5 (4) A forest health hazard warning or forest health hazard order  
6 shall be issued by use of a commissioner's order. General notice of  
7 the commissioner's order shall be published in a newspaper of general  
8 circulation in each county within the area covered by the order and on  
9 the department's web site. The order shall specify the boundaries of  
10 the area affected, including federal and tribal lands, the forest stand  
11 conditions that would make a parcel subject to the provisions of the  
12 order, and the actions landowners or land managers should take to  
13 reduce the hazard.

14 (5) Written notice of a forest health hazard warning or forest  
15 health hazard order shall be provided to forest landowners of  
16 specifically affected property.

17 (a) The notice shall set forth:

18 (i) The reasons for the action;

19 (ii) The boundaries of the area affected, including federal and  
20 tribal lands;

21 (iii) Suggested actions that should be taken by the forest  
22 landowner under a forest health hazard warning or the actions that must  
23 be taken by a forest landowner under a forest health hazard order;

24 (iv) The time within which such actions should or must be taken;

25 (v) How to obtain information or technical assistance on forest  
26 health conditions and treatment options;

27 (vi) The right to request mitigation under subsection (6) of this  
28 section and appeal under subsection (7) of this section;

29 (vii) These requirements are advisory only for federal and tribal  
30 lands.

31 (b) The notice shall be served by personal service or by mail to  
32 the latest recorded real property owner, as shown by the records of the  
33 county recording officer as defined in RCW 65.08.060. Service by mail  
34 is effective on the date of mailing. Proof of service shall be by  
35 affidavit or declaration under penalty of perjury.

36 (6) Forest landowners who have been issued a forest health hazard  
37 order under subsection (5) of this section may apply to the department  
38 for the remission or mitigation of such order. The application shall

1 be made to the department within fifteen days after notice of the order  
2 has been served. Upon receipt of the application, the department may  
3 remit or mitigate the order upon whatever terms the department in its  
4 discretion deems proper, provided the department deems the remission or  
5 mitigation to be in the best interests of carrying out the purposes of  
6 this chapter. The department may ascertain the facts regarding all  
7 such applications in such reasonable manner and under such rule as it  
8 deems proper.

9 (7) Forest landowners who have been issued a forest health hazard  
10 order under subsection (5) of this section may appeal the order to the  
11 (~~forest practices appeals~~) pollution control hearings board.

12 (~~(a)~~) The appeal shall be filed within thirty days after notice  
13 of the order has been served, unless application for mitigation has  
14 been made to the department. When such an application for mitigation  
15 is made, such appeal shall be filed within thirty days after notice of  
16 the disposition of the application for mitigation has been served as  
17 provided in RCW 43.21B.230.

- 18 (~~(b) The appeal must set forth:~~
- 19 (~~i) The name and mailing address of the appellant;~~
  - 20 (~~ii) The name and mailing address of the appellant's attorney, if~~  
21 ~~any;~~
  - 22 (~~iii) A duplicate copy of the forest health hazard order;~~
  - 23 (~~iv) A separate and concise statement of each error alleged to have~~  
24 ~~been committed;~~
  - 25 (~~v) A concise statement of facts upon which the appellant relies to~~  
26 ~~sustain the statement of error; and~~
  - 27 (~~vi) A statement of the relief requested.~~)

28 (8) A forest health hazard order issued under subsection (5) of  
29 this section is effective thirty days after date of service unless  
30 application for remission or mitigation is made or an appeal is filed.  
31 When an application for remission or mitigation is made, the order is  
32 effective thirty days after notice setting forth the disposition of the  
33 application is served unless an appeal is filed from such disposition.  
34 Whenever an appeal of the order is filed, the order shall become  
35 effective only upon completion of all administrative and judicial  
36 review proceedings and the issuance of a final decision confirming the  
37 order in whole or in part.

1 (9) Upon written request, the department may certify as adequate a  
2 forest health management plan developed by a forest landowner, before  
3 or in response to a forest health hazard warning or forest health  
4 hazard order, if the plan is likely to achieve the desired result and  
5 the terms of the plan are being diligently followed by the forest  
6 landowner. The certification of adequacy shall be determined by the  
7 department in its sole discretion, and be provided to the requestor in  
8 writing.

9 **Sec. 19.** RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are  
10 each reenacted and amended to read as follows:

11 The definitions in this section apply throughout this chapter  
12 unless the context clearly requires otherwise.

13 (1) "Adaptive management" means reliance on scientific methods to  
14 test the results of actions taken so that the management and related  
15 policy can be changed promptly and appropriately.

16 (2) "Appeals board" means the ((forest practices appeals))  
17 pollution control hearings board created by RCW ((76.09.210))  
18 43.21B.010.

19 (3) "Application" means the application required pursuant to RCW  
20 76.09.050.

21 (4) "Aquatic resources" includes water quality, salmon, other  
22 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes  
23 identified in the forests and fish report, the Columbia torrent  
24 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander  
25 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*  
26 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's  
27 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and  
28 their respective habitats.

29 (5) "Board" means the forest practices board created in RCW  
30 76.09.030.

31 (6) "Commissioner" means the commissioner of public lands.

32 (7) "Contiguous" means land adjoining or touching by common corner  
33 or otherwise. Land having common ownership divided by a road or other  
34 right-of-way shall be considered contiguous.

35 (8) "Conversion to a use other than commercial timber operation"  
36 means a bona fide conversion to an active use which is incompatible  
37 with timber growing and as may be defined by forest practices rules.

1 (9) "Department" means the department of natural resources.

2 (10) "Fish passage barrier" means any artificial instream structure  
3 that impedes the free passage of fish.

4 (11) "Forest land" means all land which is capable of supporting a  
5 merchantable stand of timber and is not being actively used for a use  
6 which is incompatible with timber growing. Forest land does not  
7 include agricultural land that is or was enrolled in the conservation  
8 reserve enhancement program by contract if such agricultural land was  
9 historically used for agricultural purposes and the landowner intends  
10 to continue to use the land for agricultural purposes in the future.  
11 As it applies to the operation of the road maintenance and abandonment  
12 plan element of the forest practices rules on small forest landowners,  
13 the term "forest land" excludes:

14 (a) Residential home sites, which may include up to five acres; and

15 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,  
16 and the land on which appurtenances necessary to the production,  
17 preparation, or sale of crops, fruit, dairy products, fish, and  
18 livestock exist.

19 (12) "Forest landowner" means any person in actual control of  
20 forest land, whether such control is based either on legal or equitable  
21 title, or on any other interest entitling the holder to sell or  
22 otherwise dispose of any or all of the timber on such land in any  
23 manner. However, any lessee or other person in possession of forest  
24 land without legal or equitable title to such land shall be excluded  
25 from the definition of "forest landowner" unless such lessee or other  
26 person has the right to sell or otherwise dispose of any or all of the  
27 timber located on such forest land.

28 (13) "Forest practice" means any activity conducted on or directly  
29 pertaining to forest land and relating to growing, harvesting, or  
30 processing timber, including but not limited to:

31 (a) Road and trail construction;

32 (b) Harvesting, final and intermediate;

33 (c) Precommercial thinning;

34 (d) Reforestation;

35 (e) Fertilization;

36 (f) Prevention and suppression of diseases and insects;

37 (g) Salvage of trees; and

38 (h) Brush control.

1 "Forest practice" shall not include preparatory work such as tree  
2 marking, surveying and road flagging, and removal or harvesting of  
3 incidental vegetation from forest lands such as berries, ferns,  
4 greenery, mistletoe, herbs, mushrooms, and other products which cannot  
5 normally be expected to result in damage to forest soils, timber, or  
6 public resources.

7 (14) "Forest practices rules" means any rules adopted pursuant to  
8 RCW 76.09.040.

9 (15) "Forest road," as it applies to the operation of the road  
10 maintenance and abandonment plan element of the forest practices rules  
11 on small forest landowners, means a road or road segment that crosses  
12 land that meets the definition of forest land, but excludes residential  
13 access roads.

14 (16) "Forest trees" does not include hardwood trees cultivated by  
15 agricultural methods in growing cycles shorter than fifteen years if  
16 the trees were planted on land that was not in forest use immediately  
17 before the trees were planted and before the land was prepared for  
18 planting the trees. "Forest trees" includes Christmas trees, but does  
19 not include Christmas trees that are cultivated by agricultural  
20 methods, as that term is defined in RCW 84.33.035.

21 (17) "Forests and fish report" means the forests and fish report to  
22 the board dated April 29, 1999.

23 (18) "Operator" means any person engaging in forest practices  
24 except an employee with wages as his or her sole compensation.

25 (19) "Person" means any individual, partnership, private, public,  
26 or municipal corporation, county, the department or other state or  
27 local governmental entity, or association of individuals of whatever  
28 nature.

29 (20) "Public resources" means water, fish and wildlife, and in  
30 addition shall mean capital improvements of the state or its political  
31 subdivisions.

32 (21) "Small forest landowner" has the same meaning as defined in  
33 RCW 76.09.450.

34 (22) "Timber" means forest trees, standing or down, of a commercial  
35 species, including Christmas trees. However, "timber" does not include  
36 Christmas trees that are cultivated by agricultural methods, as that  
37 term is defined in RCW 84.33.035.

1 (23) "Timber owner" means any person having all or any part of the  
2 legal interest in timber. Where such timber is subject to a contract  
3 of sale, "timber owner" shall mean the contract purchaser.

4 (24) "Unconfined channel migration zone" means the area within  
5 which the active channel of an unconfined stream is prone to move and  
6 where the movement would result in a potential near-term loss of  
7 riparian forest adjacent to the stream. Sizeable islands with  
8 productive timber may exist within the zone.

9 (25) "Unconfined stream" means generally fifth order or larger  
10 waters that experience abrupt shifts in channel location, creating a  
11 complex floodplain characterized by extensive gravel bars, disturbance  
12 species of vegetation of variable age, numerous side channels, wall-  
13 based channels, oxbow lakes, and wetland complexes. Many of these  
14 streams have dikes and levees that may temporarily or permanently  
15 restrict channel movement.

16 (26) "Date of receipt" has the same meaning as defined in RCW  
17 43.21B.001.

18 **Sec. 20.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to  
19 read as follows:

20 (1) The board shall establish by rule which forest practices shall  
21 be included within each of the following classes:

22 Class I: Minimal or specific forest practices that have no direct  
23 potential for damaging a public resource and that may be conducted  
24 without submitting an application or a notification except that when  
25 the regulating authority is transferred to a local governmental entity,  
26 those Class I forest practices that involve timber harvesting or road  
27 construction within "urban growth areas," designated pursuant to  
28 chapter 36.70A RCW, are processed as Class IV forest practices, but are  
29 not subject to environmental review under chapter 43.21C RCW;

30 Class II: Forest practices which have a less than ordinary  
31 potential for damaging a public resource that may be conducted without  
32 submitting an application and may begin five calendar days, or such  
33 lesser time as the department may determine, after written notification  
34 by the operator, in the manner, content, and form as prescribed by the  
35 department, is received by the department. However, the work may not  
36 begin until all forest practice fees required under RCW 76.09.065 have



1 been received by the department. Class II shall not include forest  
2 practices:

3 (a) On lands platted after January 1, 1960, as provided in chapter  
4 58.17 RCW or on lands that have or are being converted to another use;

5 (b) Which require approvals under the provisions of the hydraulics  
6 act, RCW 77.55.021;

7 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

8 (d) Excluded from Class II by the board; or

9 (e) Including timber harvesting or road construction within "urban  
10 growth areas," designated pursuant to chapter 36.70A RCW, which are  
11 Class IV;

12 Class III: Forest practices other than those contained in Class I,  
13 II, or IV. A Class III application must be approved or disapproved by  
14 the department within thirty calendar days from the date the department  
15 receives the application. However, the applicant may not begin work on  
16 that forest practice until all forest practice fees required under RCW  
17 76.09.065 have been received by the department;

18 Class IV: Forest practices other than those contained in Class I  
19 or II: (a) On lands platted after January 1, 1960, as provided in  
20 chapter 58.17 RCW, (b) on lands that have or are being converted to  
21 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or  
22 hereafter amended, are not to be reforested because of the likelihood  
23 of future conversion to urban development, (d) involving timber  
24 harvesting or road construction on lands that are contained within  
25 "urban growth areas," designated pursuant to chapter 36.70A RCW, except  
26 where the forest landowner provides: (i) A written statement of intent  
27 signed by the forest landowner not to convert to a use other than  
28 commercial forest product operations for ten years, accompanied by  
29 either a written forest management plan acceptable to the department or  
30 documentation that the land is enrolled under the provisions of chapter  
31 84.33 RCW; or (ii) a conversion option harvest plan approved by the  
32 local governmental entity and submitted to the department as part of  
33 the application, and/or (e) which have a potential for a substantial  
34 impact on the environment and therefore require an evaluation by the  
35 department as to whether or not a detailed statement must be prepared  
36 pursuant to the state environmental policy act, chapter 43.21C RCW.  
37 Such evaluation shall be made within ten days from the date the  
38 department receives the application: PROVIDED, That nothing herein

1 shall be construed to prevent any local or regional governmental entity  
2 from determining that a detailed statement must be prepared for an  
3 action pursuant to a Class IV forest practice taken by that  
4 governmental entity concerning the land on which forest practices will  
5 be conducted. A Class IV application must be approved or disapproved  
6 by the department within thirty calendar days from the date the  
7 department receives the application, unless the department determines  
8 that a detailed statement must be made, in which case the application  
9 must be approved or disapproved by the department within sixty calendar  
10 days from the date the department receives the application, unless the  
11 commissioner of public lands, through the promulgation of a formal  
12 order, determines that the process cannot be completed within such  
13 period. However, the applicant may not begin work on that forest  
14 practice until all forest practice fees required under RCW 76.09.065  
15 have been received by the department.

16 Forest practices under Classes I, II, and III are exempt from the  
17 requirements for preparation of a detailed statement under the state  
18 environmental policy act.

19 (2) Except for those forest practices being regulated by local  
20 governmental entities as provided elsewhere in this chapter, no Class  
21 II, Class III, or Class IV forest practice shall be commenced or  
22 continued after January 1, 1975, unless the department has received a  
23 notification with regard to a Class II forest practice or approved an  
24 application with regard to a Class III or Class IV forest practice  
25 containing all information required by RCW 76.09.060 as now or  
26 hereafter amended. However, in the event forest practices regulations  
27 necessary for the scheduled implementation of this chapter and RCW  
28 90.48.420 have not been adopted in time to meet such schedules, the  
29 department shall have the authority to regulate forest practices and  
30 approve applications on such terms and conditions consistent with this  
31 chapter and RCW 90.48.420 and the purposes and policies of RCW  
32 76.09.010 until applicable forest practices regulations are in effect.

33 (3) Except for those forest practices being regulated by local  
34 governmental entities as provided elsewhere in this chapter, if a  
35 notification or application is delivered in person to the department by  
36 the operator or the operator's agent, the department shall immediately  
37 provide a dated receipt thereof. In all other cases, the department  
38 shall immediately mail a dated receipt to the operator.

1 (4) Except for those forest practices being regulated by local  
2 governmental entities as provided elsewhere in this chapter, forest  
3 practices shall be conducted in accordance with the forest practices  
4 regulations, orders and directives as authorized by this chapter or the  
5 forest practices regulations, and the terms and conditions of any  
6 approved applications.

7 (5) Except for those forest practices being regulated by local  
8 governmental entities as provided elsewhere in this chapter, the  
9 department of natural resources shall notify the applicant in writing  
10 of either its approval of the application or its disapproval of the  
11 application and the specific manner in which the application fails to  
12 comply with the provisions of this section or with the forest practices  
13 regulations. Except as provided otherwise in this section, if the  
14 department fails to either approve or disapprove an application or any  
15 portion thereof within the applicable time limit, the application shall  
16 be deemed approved and the operation may be commenced: PROVIDED, That  
17 this provision shall not apply to applications which are neither  
18 approved nor disapproved pursuant to the provisions of subsection (7)  
19 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
20 prevent the department from being able to properly evaluate the  
21 application, the department may issue an approval conditional upon  
22 further review within sixty days: PROVIDED, FURTHER, That the  
23 department shall have until April 1, 1975, to approve or disapprove an  
24 application involving forest practices allowed to continue to April 1,  
25 1975, under the provisions of subsection (2) of this section. Upon  
26 receipt of any notification or any satisfactorily completed application  
27 the department shall in any event no later than two business days after  
28 such receipt transmit a copy to the departments of ecology and fish and  
29 wildlife, and to the county, city, or town in whose jurisdiction the  
30 forest practice is to be commenced. Any comments by such agencies  
31 shall be directed to the department of natural resources.

32 (6) For those forest practices regulated by the board and the  
33 department, if the county, city, or town believes that an application  
34 is inconsistent with this chapter, the forest practices regulations, or  
35 any local authority consistent with RCW 76.09.240 as now or hereafter  
36 amended, it may so notify the department and the applicant, specifying  
37 its objections.

1 (7) For those forest practices regulated by the board and the  
2 department, the department shall not approve portions of applications  
3 to which a county, city, or town objects if:

4 (a) The department receives written notice from the county, city,  
5 or town of such objections within fourteen business days from the time  
6 of transmittal of the application to the county, city, or town, or one  
7 day before the department acts on the application, whichever is later;  
8 and

9 (b) The objections relate to lands either:

10 (i) Platted after January 1, 1960, as provided in chapter 58.17  
11 RCW; or

12 (ii) On lands that have or are being converted to another use.

13 The department shall either disapprove those portions of such  
14 application or appeal the county, city, or town objections to the  
15 appeals board. If the objections related to subparagraphs (b)(i) and  
16 (ii) of this subsection are based on local authority consistent with  
17 RCW 76.09.240 as now or hereafter amended, the department shall  
18 disapprove the application until such time as the county, city, or town  
19 consents to its approval or such disapproval is reversed on appeal.  
20 The applicant shall be a party to all department appeals of county,  
21 city, or town objections. Unless the county, city, or town either  
22 consents or has waived its rights under this subsection, the department  
23 shall not approve portions of an application affecting such lands until  
24 the minimum time for county, city, or town objections has expired.

25 (8) For those forest practices regulated by the board and the  
26 department, in addition to any rights under the above paragraph, the  
27 county, city, or town may appeal any department approval of an  
28 application with respect to any lands within its jurisdiction. The  
29 appeals board may suspend the department's approval in whole or in part  
30 pending such appeal where there exists potential for immediate and  
31 material damage to a public resource.

32 (9) For those forest practices regulated by the board and the  
33 department, appeals under this section shall be made to the appeals  
34 board in the manner and time provided in (~~RCW 76.09.220(8)~~) section  
35 24 of this act. In such appeals there shall be no presumption of  
36 correctness of either the county, city, or town or the department  
37 position.

1 (10) For those forest practices regulated by the board and the  
2 department, the department shall, within four business days notify the  
3 county, city, or town of all notifications, approvals, and disapprovals  
4 of an application affecting lands within the county, city, or town,  
5 except to the extent the county, city, or town has waived its right to  
6 such notice.

7 (11) For those forest practices regulated by the board and the  
8 department, a county, city, or town may waive in whole or in part its  
9 rights under this section, and may withdraw or modify any such waiver,  
10 at any time by written notice to the department.

11 (12) Notwithstanding subsections (2) through (5) of this section,  
12 forest practices applications or notifications are not required for  
13 exotic insect and disease control operations conducted in accordance  
14 with RCW 76.09.060(8) where eradication can reasonably be expected.

15 **Sec. 21.** RCW 76.09.080 and 1989 c 175 s 163 are each amended to  
16 read as follows:

17 (1) The department shall have the authority to serve upon an  
18 operator a stop work order which shall be a final order of the  
19 department if:

20 (a) There is any violation of the provisions of this chapter or the  
21 forest practices regulations; or

22 (b) There is a deviation from the approved application; or

23 (c) Immediate action is necessary to prevent continuation of or to  
24 avoid material damage to a public resource.

25 (2) The stop work order shall set forth:

26 (a) The specific nature, extent, and time of the violation,  
27 deviation, damage, or potential damage;

28 (b) An order to stop all work connected with the violation,  
29 deviation, damage, or potential damage;

30 (c) The specific course of action needed to correct such violation  
31 or deviation or to prevent damage and to correct and/or compensate for  
32 damage to public resources which has resulted from any violation,  
33 unauthorized deviation, or willful or negligent disregard for potential  
34 damage to a public resource; and/or those courses of action necessary  
35 to prevent continuing damage to public resources where the damage is  
36 resulting from the forest practice activities but has not resulted from  
37 any violation, unauthorized deviation, or negligence; and

1 (d) The right of the operator to a hearing before the appeals  
2 board.

3 The department shall immediately file a copy of such order with the  
4 appeals board and mail a copy thereof to the timber owner and forest  
5 land owner at the addresses shown on the application. The operator,  
6 timber owner, or forest land owner may commence an appeal to the  
7 appeals board within ~~((fifteen))~~ thirty days ~~((after service upon))~~  
8 from the date of receipt of the order by the operator. If such appeal  
9 is commenced, a hearing shall be held not more than twenty days after  
10 copies of the notice of appeal were filed with the appeals board. Such  
11 proceeding shall be an adjudicative proceeding within the meaning of  
12 chapter 34.05 RCW, the administrative procedure act. The operator  
13 shall comply with the order of the department immediately upon being  
14 served, but the appeals board if requested shall have authority to  
15 continue or discontinue in whole or in part the order of the department  
16 under such conditions as it may impose pending the outcome of the  
17 proceeding.

18 **Sec. 22.** RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each  
19 amended to read as follows:

20 If a violation, a deviation, material damage or potential for  
21 material damage to a public resource has occurred and the department  
22 determines that a stop work order is unnecessary, then the department  
23 shall issue and serve upon the operator or land owner a notice, which  
24 shall clearly set forth:

25 (1)(a) The specific nature, extent, and time of failure to comply  
26 with the approved application; or identifying the damage or potential  
27 damage; and/or

28 (b) The relevant provisions of this chapter or of the forest  
29 practice regulations relating thereto;

30 (2) The right of the operator or land owner to a hearing before the  
31 department; and

32 (3) The specific course of action ordered by the department to be  
33 followed by the operator to correct such failure to comply and to  
34 prevent, correct and/or compensate for material damage to public  
35 resources which resulted from any violation, unauthorized deviation, or  
36 wilful or negligent disregard for potential damage to a public  
37 resource; and/or those courses of action necessary to prevent

1 continuing damage to public resources where the damage is resulting  
2 from the forest practice activities but has not resulted from any  
3 violation, unauthorized deviation, or negligence.

4 The department shall mail a copy thereof to the forest land owner  
5 and the timber owner at the addresses shown on the application, showing  
6 the date of service upon the operator. Such notice to comply shall  
7 become a final order of the department: PROVIDED, That no direct  
8 appeal to the appeals board will be allowed from such final order.  
9 Such operator shall undertake the course of action so ordered by the  
10 department unless, within fifteen days after the date of service of  
11 such notice to comply, the operator, forest land owner, or timber  
12 owner, shall request the department in writing to schedule a hearing.  
13 If so requested, the department shall schedule a hearing on a date not  
14 more than twenty days after receiving such request. Within ten days  
15 after such hearing, the department shall issue a final order either  
16 withdrawing its notice to comply or clearly setting forth the specific  
17 course of action to be followed by such operator. Such operator shall  
18 undertake the course of action so ordered by the department unless  
19 within thirty days after the date of receipt of such final order, the  
20 operator, forest land owner, or timber owner appeals such final order  
21 to the appeals board.

22 No person shall be under any obligation under this section to  
23 prevent, correct, or compensate for any damage to public resources  
24 which occurs more than one year after the date of completion of the  
25 forest practices operations involved exclusive of reforestation, unless  
26 such forest practices were not conducted in accordance with forest  
27 practices rules and regulations: PROVIDED, That this provision shall  
28 not relieve the forest land owner from any obligation to comply with  
29 forest practices rules and regulations pertaining to providing  
30 continuing road maintenance. No action to recover damages shall be  
31 taken under this section more than two years after the date the damage  
32 involved occurs.

33 **Sec. 23.** RCW 76.09.170 and 1999 sp.s. c 4 s 803 are each amended  
34 to read as follows:

35 (1) Every person who violates any provision of RCW 76.09.010  
36 through 76.09.280 or of the forest practices rules, or who converts  
37 forest land to a use other than commercial timber operation within

1 three years after completion of the forest practice without the consent  
2 of the county, city, or town, shall be subject to a penalty in an  
3 amount of not more than ten thousand dollars for every such violation.  
4 Each and every such violation shall be a separate and distinct offense.  
5 In case of a failure to comply with a stop work order, every day's  
6 continuance shall be a separate and distinct violation. Every person  
7 who through an act of commission or omission procures, aids or abets in  
8 the violation shall be considered to have violated the provisions of  
9 this section and shall be subject to the penalty in this section. No  
10 penalty shall be imposed under this section upon any governmental  
11 official, an employee of any governmental department, agency, or  
12 entity, or a member of any board or advisory committee created by this  
13 chapter for any act or omission in his or her duties in the  
14 administration of this chapter or of any rule adopted under this  
15 chapter.

16 (2) The department shall develop and recommend to the board a  
17 penalty schedule to determine the amount to be imposed under this  
18 section. The board shall adopt by rule, pursuant to chapter 34.05 RCW,  
19 such penalty schedule to be effective no later than January 1, 1994.  
20 The schedule shall be developed in consideration of the following:

- 21 (a) Previous violation history;
- 22 (b) Severity of the impact on public resources;
- 23 (c) Whether the violation of this chapter or its rules was  
24 intentional;
- 25 (d) Cooperation with the department;
- 26 (e) Repairability of the adverse effect from the violation; and
- 27 (f) The extent to which a penalty to be imposed on a forest  
28 landowner for a forest practice violation committed by another should  
29 be reduced because the owner was unaware of the violation and has not  
30 received substantial economic benefits from the violation.

31 (3) The penalty in this section shall be imposed by a notice in  
32 writing, either by certified mail with return receipt requested or by  
33 personal service, to the person incurring the same from the department  
34 describing the violation with reasonable particularity. (~~Within~~  
35 ~~fifteen days after the notice is received, the person incurring the~~  
36 ~~penalty may apply in writing to the department for the remission or~~  
37 ~~mitigation of such penalty. Upon receipt of the application, that~~  
38 ~~department may remit or mitigate the penalty upon whatever terms that~~



1 ~~department in its discretion deems proper, provided the department~~  
2 ~~deems such remission or mitigation to be in the best interests of~~  
3 ~~carrying out the purposes of this chapter. The department shall have~~  
4 ~~authority to ascertain the facts regarding all such applications in~~  
5 ~~such reasonable manner and under such rule as it may deem proper.))~~

6 (4) Any person incurring a penalty under this section may appeal  
7 the penalty to the ~~((forest practices))~~ appeals board. Such appeals  
8 shall be filed within thirty days ~~((of))~~ after the date of receipt of  
9 ~~((notice imposing any))~~ the penalty ~~((unless an application for~~  
10 ~~remission or mitigation is made to the department. When such an~~  
11 ~~application for remission or mitigation is made, such appeals shall be~~  
12 ~~filed within thirty days of receipt of notice from the department~~  
13 ~~setting forth the disposition of the application for remission or~~  
14 ~~mitigation))~~ in accordance with RCW 43.21B.230.

15 (5) The penalty imposed under this section shall become due and  
16 payable thirty days after receipt of a notice imposing the same unless  
17 ~~((application for remission or mitigation is made or))~~ an appeal is  
18 filed. ~~((When such an application for remission or mitigation is made,~~  
19 ~~any penalty incurred under this section shall become due and payable~~  
20 ~~thirty days after receipt of notice setting forth the disposition of~~  
21 ~~such application unless an appeal is filed from such disposition.))~~  
22 Whenever an appeal of the penalty incurred is filed, the penalty shall  
23 become due and payable only upon completion of all administrative and  
24 judicial review proceedings and the issuance of a final decision  
25 confirming the penalty in whole or in part.

26 (6) If the amount of any penalty is not paid to the department  
27 within thirty days after it becomes due and payable, the attorney  
28 general, upon the request of the department, shall bring an action in  
29 the name of the state of Washington in the superior court of Thurston  
30 county or of any county in which such violator may do business, to  
31 recover such penalty, interest, costs, and attorneys' fees. In all  
32 such actions the procedure and rules of evidence shall be the same as  
33 an ordinary civil action except as otherwise provided in this chapter  
34 ~~((provided))~~. In addition to or as an alternative to seeking  
35 enforcement of penalties in superior court, the department may bring an  
36 action in district court as provided in Title 3 RCW, to collect  
37 penalties, interest, costs, and attorneys' fees.

1 (7) Penalties imposed under this section for violations associated  
2 with a conversion to a use other than commercial timber operation shall  
3 be a lien upon the real property of the person assessed the penalty and  
4 the department may collect such amount in the same manner provided in  
5 chapter 60.04 RCW for mechanics' liens.

6 (8) Any person incurring a penalty imposed under this section is  
7 also responsible for the payment of all costs and attorneys' fees  
8 incurred in connection with the penalty and interest accruing on the  
9 unpaid penalty amount.

10 NEW SECTION. **Sec. 24.** A new section is added to chapter 76.09 RCW  
11 to read as follows:

12 A person aggrieved by the approval or disapproval of an application  
13 to conduct a forest practice or the approval or disapproval of any  
14 landscape plan or permit or watershed analysis may seek review from the  
15 appeals board by filing a request for the same within thirty days from  
16 the date of receipt of the decision. Concurrently with the filing of  
17 any request for review with the appeals board as provided in this  
18 section, the requestor must file a copy of his or her request with the  
19 department and the attorney general. The attorney general may  
20 intervene to protect the public interest and ensure that the provisions  
21 of this chapter are complied with.

22 **Sec. 25.** RCW 76.09.310 and 1987 c 95 s 4 are each amended to read  
23 as follows:

24 (1) The department shall send a notice to all forest landowners,  
25 both public and private, within the geographic area selected for  
26 review, stating that the department intends to study the area as part  
27 of the hazard-reduction program.

28 (2) The department shall prepare a proposed plan for each  
29 geographic area studied. The department shall provide the proposed  
30 plan to affected landowners, Indian tribes, interested parties, and to  
31 the advisory committee, if established pursuant to RCW 76.09.305.

32 (3) Any aggrieved landowners, agencies, tribes, and other persons  
33 who object to any or all of the proposed hazard-reduction plan may,  
34 within thirty days of issuance of the plan, request the department in  
35 writing to schedule a conference. If so requested, the department

1 shall schedule a conference on a date not more than thirty days after  
2 receiving such request.

3 (4) Within ten days after such a conference, the department shall  
4 either amend the proposed plan or respond in writing indicating why the  
5 objections were not incorporated into the plan.

6 (5) Within one hundred twenty days following the issuance of the  
7 proposed plan as provided in subsection (2) of this section, the  
8 department shall distribute a final hazard-reduction plan designating  
9 those sites for which hazard-reduction measures are recommended and  
10 those sites where no action is recommended. For each hazard-reduction  
11 measure recommended, a description of the work and cost estimate shall  
12 be provided.

13 (6) Any aggrieved landowners, agencies, tribes, and other persons  
14 are entitled to appeal the final hazard-reduction plan to the (~~forest~~  
15 ~~practices~~) appeals board if, within thirty days of the issuance of the  
16 final plan, the party transmits a notice of appeal to the (~~forest~~  
17 ~~practices~~) appeals board and to the department.

18 (7) A landowner's failure to object to the recommendations or to  
19 appeal the final hazard-reduction plan shall not be deemed an admission  
20 that the hazard-reduction recommendations are appropriate.

21 (8) The department shall provide a copy of the final hazard-  
22 reduction plan to the department of ecology and to each affected  
23 county.

24 **Sec. 26.** RCW 77.55.011 and 2009 c 549 s 1028 are each amended to  
25 read as follows:

26 The definitions in this section apply throughout this chapter  
27 unless the context clearly requires otherwise.

28 (1) "Bed" means the land below the ordinary high water lines of  
29 state waters. This definition does not include irrigation ditches,  
30 canals, storm water runoff devices, or other artificial watercourses  
31 except where they exist in a natural watercourse that has been altered  
32 artificially.

33 (2) "Board" means the (~~hydraulic appeals~~) pollution control  
34 hearings board created in chapter 43.21B RCW (~~(77.55.301)~~).

35 (3) "Commission" means the state fish and wildlife commission.

36 (4) "Department" means the department of fish and wildlife.

1 (5) "Director" means the director of the department of fish and  
2 wildlife.

3 (6) "Emergency" means an immediate threat to life, the public,  
4 property, or of environmental degradation.

5 (7) "Hydraulic project" means the construction or performance of  
6 work that will use, divert, obstruct, or change the natural flow or bed  
7 of any of the salt or freshwaters of the state.

8 (8) "Imminent danger" means a threat by weather, water flow, or  
9 other natural conditions that is likely to occur within sixty days of  
10 a request for a permit application.

11 (9) "Marina" means a public or private facility providing boat  
12 moorage space, fuel, or commercial services. Commercial services  
13 include but are not limited to overnight or live-aboard boating  
14 accommodations.

15 (10) "Marine terminal" means a public or private commercial wharf  
16 located in the navigable water of the state and used, or intended to be  
17 used, as a port or facility for the storing, handling, transferring, or  
18 transporting of goods to and from vessels.

19 (11) "Ordinary high water line" means the mark on the shores of all  
20 water that will be found by examining the bed and banks and  
21 ascertaining where the presence and action of waters are so common and  
22 usual, and so long continued in ordinary years as to mark upon the soil  
23 or vegetation a character distinct from the abutting upland. Provided,  
24 that in any area where the ordinary high water line cannot be found,  
25 the ordinary high water line adjoining saltwater is the line of mean  
26 higher high water and the ordinary high water line adjoining fresh  
27 water is the elevation of the mean annual flood.

28 (12) "Permit" means a hydraulic project approval permit issued  
29 under this chapter.

30 (13) "Sandbars" includes, but is not limited to, sand, gravel,  
31 rock, silt, and sediments.

32 (14) "Small scale prospecting and mining" means the use of only the  
33 following methods: Pans; nonmotorized sluice boxes; concentrators; and  
34 minirocker boxes for the discovery and recovery of minerals.

35 (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds"  
36 have the same meanings as defined in RCW 17.26.020.

37 (16) "Streambank stabilization" means those projects that prevent  
38 or limit erosion, slippage, and mass wasting. These projects include,

1 but are not limited to, bank resloping, log and debris relocation or  
2 removal, planting of woody vegetation, bank protection using rock or  
3 woody material or placement of jetties or groins, gravel removal, or  
4 erosion control.

5 (17) "Tide gate" means a one-way check valve that prevents the  
6 backflow of tidal water.

7 (18) "Waters of the state" and "state waters" means all salt and  
8 fresh waters waterward of the ordinary high water line and within the  
9 territorial boundary of the state.

10 (19) "Date of receipt" has the same meaning as defined in RCW  
11 43.21B.001.

12 **Sec. 27.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read  
13 as follows:

14 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,  
15 in the event that any person or government agency desires to undertake  
16 a hydraulic project, the person or government agency shall, before  
17 commencing work thereon, secure the approval of the department in the  
18 form of a permit as to the adequacy of the means proposed for the  
19 protection of fish life.

20 (2) A complete written application for a permit may be submitted in  
21 person or by registered mail and must contain the following:

- 22 (a) General plans for the overall project;
- 23 (b) Complete plans and specifications of the proposed construction  
24 or work within the mean higher high water line in saltwater or within  
25 the ordinary high water line in freshwater;
- 26 (c) Complete plans and specifications for the proper protection of  
27 fish life; and

28 (d) Notice of compliance with any applicable requirements of the  
29 state environmental policy act, unless otherwise provided for in this  
30 chapter.

31 (3)(a) Protection of fish life is the only ground upon which  
32 approval of a permit may be denied or conditioned. Approval of a  
33 permit may not be unreasonably withheld or unreasonably conditioned.  
34 Except as provided in this subsection and subsections (8), (10), and  
35 (12) of this section, the department has forty-five calendar days upon  
36 receipt of a complete application to grant or deny approval of a  
37 permit. The forty-five day requirement is suspended if:

1 (i) After ten working days of receipt of the application, the  
2 applicant remains unavailable or unable to arrange for a timely field  
3 evaluation of the proposed project;

4 (ii) The site is physically inaccessible for inspection;

5 (iii) The applicant requests a delay; or

6 (iv) The department is issuing a permit for a storm water discharge  
7 and is complying with the requirements of RCW 77.55.161(3)(b).

8 (b) Immediately upon determination that the forty-five day period  
9 is suspended, the department shall notify the applicant in writing of  
10 the reasons for the delay.

11 (c) The period of forty-five calendar days may be extended if the  
12 permit is part of a multiagency permit streamlining effort and all  
13 participating permitting agencies and the permit applicant agree to an  
14 extended timeline longer than forty-five calendar days.

15 (4) If the department denies approval of a permit, the department  
16 shall provide the applicant a written statement of the specific reasons  
17 why and how the proposed project would adversely affect fish life.

18 (a) Except as provided in (b) of this subsection, issuance, denial,  
19 conditioning, or modification of a permit shall be appealable to ((the  
20 department or)) the board ((as specified in RCW 77.55.301)) within  
21 thirty days from the date of receipt of the ((notice of)) decision as  
22 provided in RCW 43.21B.230.

23 (b) Issuance, denial, conditioning, or modification of a permit may  
24 be informally appealed to the department within thirty days from the  
25 date of receipt of the decision. Requests for informal appeals must be  
26 filed in the form and manner prescribed by the department by rule. A  
27 permit decision that has been informally appealed to the department is  
28 appealable to the board within thirty days from the date of receipt of  
29 the department's decision on the informal appeal.

30 (5)(a) The permittee must demonstrate substantial progress on  
31 construction of that portion of the project relating to the permit  
32 within two years of the date of issuance.

33 (b) Approval of a permit is valid for a period of up to five years  
34 from the date of issuance, except as provided in (c) of this subsection  
35 and in RCW 77.55.151.

36 (c) A permit remains in effect without need for periodic renewal  
37 for hydraulic projects that divert water for agricultural irrigation or  
38 stock watering purposes and that involve seasonal construction or other

1 work. A permit for streambank stabilization projects to protect farm  
2 and agricultural land as defined in RCW 84.34.020 remains in effect  
3 without need for periodic renewal if the problem causing the need for  
4 the streambank stabilization occurs on an annual or more frequent  
5 basis. The permittee must notify the appropriate agency before  
6 commencing the construction or other work within the area covered by  
7 the permit.

8 (6) The department may, after consultation with the permittee,  
9 modify a permit due to changed conditions. The modification (~~((becomes~~  
10 ~~effective unless appealed to the department or the board as specified~~  
11 ~~in RCW 77.55.301 within thirty days from the notice of the proposed~~  
12 ~~modification))~~ is appealable as provided in subsection (4) of this  
13 section. For hydraulic projects that divert water for agricultural  
14 irrigation or stock watering purposes, or when the hydraulic project or  
15 other work is associated with streambank stabilization to protect farm  
16 and agricultural land as defined in RCW 84.34.020, the burden is on the  
17 department to show that changed conditions warrant the modification in  
18 order to protect fish life.

19 (7) A permittee may request modification of a permit due to changed  
20 conditions. The request must be processed within forty-five calendar  
21 days of receipt of the written request. A decision by the department  
22 (~~((may be appealed to the board within thirty days of the notice of the~~  
23 ~~decision))~~ is appealable as provided in subsection (4) of this section.  
24 For hydraulic projects that divert water for agricultural irrigation or  
25 stock watering purposes, or when the hydraulic project or other work is  
26 associated with streambank stabilization to protect farm and  
27 agricultural land as defined in RCW 84.34.020, the burden is on the  
28 permittee to show that changed conditions warrant the requested  
29 modification and that such a modification will not impair fish life.

30 (8)(a) The department, the county legislative authority, or the  
31 governor may declare and continue an emergency. If the county  
32 legislative authority declares an emergency under this subsection, it  
33 shall immediately notify the department. A declared state of emergency  
34 by the governor under RCW 43.06.010 shall constitute a declaration  
35 under this subsection.

36 (b) The department, through its authorized representatives, shall  
37 issue immediately, upon request, oral approval for a stream crossing,  
38 or work to remove any obstructions, repair existing structures, restore

1 streambanks, protect fish life, or protect property threatened by the  
2 stream or a change in the stream flow without the necessity of  
3 obtaining a written permit prior to commencing work. Conditions of the  
4 emergency oral permit must be established by the department and reduced  
5 to writing within thirty days and complied with as provided for in this  
6 chapter.

7 (c) The department may not require the provisions of the state  
8 environmental policy act, chapter 43.21C RCW, to be met as a condition  
9 of issuing a permit under this subsection.

10 (9) All state and local agencies with authority under this chapter  
11 to issue permits or other authorizations in connection with emergency  
12 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
13 expedite the processing of such permits or authorizations in keeping  
14 with the emergency nature of such requests and shall provide a decision  
15 to the applicant within fifteen calendar days of the date of  
16 application.

17 (10) The department or the county legislative authority may  
18 determine an imminent danger exists. The county legislative authority  
19 shall notify the department, in writing, if it determines that an  
20 imminent danger exists. In cases of imminent danger, the department  
21 shall issue an expedited written permit, upon request, for work to  
22 remove any obstructions, repair existing structures, restore banks,  
23 protect fish resources, or protect property. Expedited permit requests  
24 require a complete written application as provided in subsection (2) of  
25 this section and must be issued within fifteen calendar days of the  
26 receipt of a complete written application. Approval of an expedited  
27 permit is valid for up to sixty days from the date of issuance. The  
28 department may not require the provisions of the state environmental  
29 policy act, chapter 43.21C RCW, to be met as a condition of issuing a  
30 permit under this subsection.

31 (11)(a) For any property, except for property located on a marine  
32 shoreline, that has experienced at least two consecutive years of  
33 flooding or erosion that has damaged or has threatened to damage a  
34 major structure, water supply system, septic system, or access to any  
35 road or highway, the county legislative authority may determine that a  
36 chronic danger exists. The county legislative authority shall notify  
37 the department, in writing, when it determines that a chronic danger  
38 exists. In cases of chronic danger, the department shall issue a



1 permit, upon request, for work necessary to abate the chronic danger by  
2 removing any obstructions, repairing existing structures, restoring  
3 banks, restoring road or highway access, protecting fish resources, or  
4 protecting property. Permit requests must be made and processed in  
5 accordance with subsections (2) and (3) of this section.

6 (b) Any projects proposed to address a chronic danger identified  
7 under (a) of this subsection that satisfies the project description  
8 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
9 of the state environmental policy act, chapter 43.21C RCW. However,  
10 the project is subject to the review process established in RCW  
11 77.55.181(3) as if it were a fish habitat improvement project.

12 (12) The department may issue an expedited written permit in those  
13 instances where normal permit processing would result in significant  
14 hardship for the applicant or unacceptable damage to the environment.  
15 Expedited permit requests require a complete written application as  
16 provided in subsection (2) of this section and must be issued within  
17 fifteen calendar days of the receipt of a complete written application.  
18 Approval of an expedited permit is valid for up to sixty days from the  
19 date of issuance. The department may not require the provisions of the  
20 state environmental policy act, chapter 43.21C RCW, to be met as a  
21 condition of issuing a permit under this subsection.

22 **Sec. 28.** RCW 77.55.141 and 2005 c 146 s 501 are each amended to  
23 read as follows:

24 (1) In order to protect the property of marine waterfront shoreline  
25 owners it is necessary to facilitate issuance of permits for bulkheads  
26 or rockwalls under certain conditions.

27 (2) The department shall issue a permit with or without conditions  
28 within forty-five days of receipt of a complete and accurate  
29 application which authorizes commencement of construction, replacement,  
30 or repair of a marine beach front protective bulkhead or rockwall for  
31 single-family type residences or property under the following  
32 conditions:

33 (a) The waterward face of a new bulkhead or rockwall shall be  
34 located only as far waterward as is necessary to excavate for footings  
35 or place base rock for the structure and under no conditions shall be  
36 located more than six feet waterward of the ordinary high water line;

1 (b) Any bulkhead or rockwall to replace or repair an existing  
2 bulkhead or rockwall shall be placed along the same alignment as the  
3 bulkhead or rockwall it is replacing. However, the replaced or  
4 repaired bulkhead or rockwall may be placed waterward of and directly  
5 abutting the existing structure only in cases where removal of the  
6 existing bulkhead or rockwall would result in environmental degradation  
7 or removal problems related to geological, engineering, or safety  
8 considerations; and

9 (c) Construction of a new bulkhead or rockwall, or replacement or  
10 repair of an existing bulkhead or rockwall waterward of the existing  
11 structure shall not result in the permanent loss of critical food fish  
12 or shellfish habitats; and

13 (d) Timing constraints shall be applied on a case-by-case basis for  
14 the protection of critical habitats, including but not limited to  
15 migration corridors, rearing and feeding areas, and spawning habitats,  
16 for the proper protection of fish life.

17 (3) Any bulkhead or rockwall construction, replacement, or repair  
18 not meeting the conditions in this section shall be processed under  
19 this chapter in the same manner as any other application.

20 (4) Any person aggrieved by the approval, denial, conditioning, or  
21 modification of a permit under this section may (~~formally~~) appeal the  
22 decision (~~to the board pursuant to this chapter~~) as provided in RCW  
23 77.55.021(4).

24 **Sec. 29.** RCW 77.55.181 and 2005 c 146 s 505 are each amended to  
25 read as follows:

26 (1) In order to receive the permit review and approval process  
27 created in this section, a fish habitat enhancement project must meet  
28 the criteria under (a) and (b) of this subsection:

29 (a) A fish habitat enhancement project must be a project to  
30 accomplish one or more of the following tasks:

31 (i) Elimination of human-made fish passage barriers, including  
32 culvert repair and replacement;

33 (ii) Restoration of an eroded or unstable streambank employing the  
34 principle of bioengineering, including limited use of rock as a  
35 stabilization only at the toe of the bank, and with primary emphasis on  
36 using native vegetation to control the erosive forces of flowing water;  
37 or

1 (iii) Placement of woody debris or other instream structures that  
2 benefit naturally reproducing fish stocks.

3 The department shall develop size or scale threshold tests to  
4 determine if projects accomplishing any of these tasks should be  
5 evaluated under the process created in this section or under other  
6 project review and approval processes. A project proposal shall not be  
7 reviewed under the process created in this section if the department  
8 determines that the scale of the project raises concerns regarding  
9 public health and safety; and

10 (b) A fish habitat enhancement project must be approved in one of  
11 the following ways:

12 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

13 (ii) By the sponsor of a watershed restoration plan as provided in  
14 chapter 89.08 RCW;

15 (iii) By the department as a department-sponsored fish habitat  
16 enhancement or restoration project;

17 (iv) Through the review and approval process for the jobs for the  
18 environment program;

19 (v) Through the review and approval process for conservation  
20 district-sponsored projects, where the project complies with design  
21 standards established by the conservation commission through  
22 interagency agreement with the United States fish and wildlife service  
23 and the natural resource conservation service;

24 (vi) Through a formal grant program established by the legislature  
25 or the department for fish habitat enhancement or restoration; and

26 (vii) Through other formal review and approval processes  
27 established by the legislature.

28 (2) Fish habitat enhancement projects meeting the criteria of  
29 subsection (1) of this section are expected to result in beneficial  
30 impacts to the environment. Decisions pertaining to fish habitat  
31 enhancement projects meeting the criteria of subsection (1) of this  
32 section and being reviewed and approved according to the provisions of  
33 this section are not subject to the requirements of RCW  
34 43.21C.030(2)(c).

35 (3)(a) A permit is required for projects that meet the criteria of  
36 subsection (1) of this section and are being reviewed and approved  
37 under this section. An applicant shall use a joint aquatic resource  
38 permit application form developed by the office of regulatory

1 assistance to apply for approval under this chapter. On the same day,  
2 the applicant shall provide copies of the completed application form to  
3 the department and to each appropriate local government. Local  
4 governments shall accept the application as notice of the proposed  
5 project. The department shall provide a fifteen-day comment period  
6 during which it will receive comments regarding environmental impacts.  
7 Within forty-five days, the department shall either issue a permit,  
8 with or without conditions, deny approval, or make a determination that  
9 the review and approval process created by this section is not  
10 appropriate for the proposed project. The department shall base this  
11 determination on identification during the comment period of adverse  
12 impacts that cannot be mitigated by the conditioning of a permit. If  
13 the department determines that the review and approval process created  
14 by this section is not appropriate for the proposed project, the  
15 department shall notify the applicant and the appropriate local  
16 governments of its determination. The applicant may reapply for  
17 approval of the project under other review and approval processes.

18 (b) Any person aggrieved by the approval, denial, conditioning, or  
19 modification of a permit under this section may ~~((formally))~~ appeal the  
20 decision ~~((to the board pursuant to the provisions of this chapter))~~ as  
21 provided in RCW 77.55.021(4).

22 (4) No local government may require permits or charge fees for fish  
23 habitat enhancement projects that meet the criteria of subsection (1)  
24 of this section and that are reviewed and approved according to the  
25 provisions of this section.

26 **Sec. 30.** RCW 77.55.241 and 2005 c 146 s 602 are each amended to  
27 read as follows:

28 (1) The legislature finds that the construction of hydraulic  
29 projects may require mitigation for the protection of fish life, and  
30 that the mitigation may be most cost-effective and provide the most  
31 benefit to the fish resource if the mitigation is allowed to be applied  
32 in locations that are off-site of the hydraulic project location. The  
33 department may approve off-site mitigation plans that are submitted by  
34 permit applicants.

35 (2) If a permit applicant proposes off-site mitigation and the  
36 department does not approve the permit or conditions the permit in such  
37 a manner as to render off-site mitigation unpracticable, the project

1 proponent (~~must be given the opportunity to submit the permit~~  
2 ~~application to the board for approval~~) may appeal the decision as  
3 provided in RCW 77.55.021(4).

4 **Sec. 31.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to  
5 read as follows:

6 (1) The department may levy civil penalties of up to one hundred  
7 dollars per day for violation of any provisions of RCW 77.55.021. The  
8 penalty provided shall be imposed by notice in writing, either by  
9 certified mail or personal service to the person incurring the penalty,  
10 from the director or the director's designee describing the violation.

11 (2)(a) Except as provided in (b) of this subsection, any person  
12 incurring any penalty under this chapter may appeal the same under  
13 chapter 34.05 RCW to the (~~director~~) board. Appeals shall be filed  
14 within thirty days from the date of receipt of (~~notice imposing any~~)  
15 the penalty in accordance with RCW 43.21B.230.

16 (b) Issuance of a civil penalty may be informally appealed to the  
17 department within thirty days from the date of receipt of the penalty.  
18 Requests for informal appeal must be filed in the form and manner  
19 prescribed by the department by rule. A civil penalty that has been  
20 informally appealed to the department is appealable to the board within  
21 thirty days from the date of receipt of the department's decision on  
22 the informal appeal.

23 (3) The penalty imposed shall become due and payable thirty days  
24 after receipt of a notice imposing the penalty unless an appeal is  
25 filed. Whenever an appeal of any penalty incurred under this chapter  
26 is filed, the penalty shall become due and payable only upon completion  
27 of all review proceedings and the issuance of a final order confirming  
28 the penalty in whole or in part.

29 (4) If the amount of any penalty is not paid within thirty days  
30 after it becomes due and payable, the attorney general, upon the  
31 request of the director, shall bring an action in the name of the state  
32 of Washington in the superior court of Thurston county or of any county  
33 in which such violator may do business, to recover such penalty. In  
34 all such actions the procedure and rules of evidence shall be the same  
35 as an ordinary civil action. All penalties recovered under this  
36 section shall be paid into the state's general fund.

1           **Sec. 32.** RCW 78.44.270 and 1993 c 518 s 35 are each amended to  
2 read as follows:

3           (~~Appeals from~~) Department determinations under this chapter  
4 (~~shall be made as follows~~;

5           ~~Appeals from department determinations made under this chapter~~  
6 ~~shall be made under the provisions of the Administrative Procedure Act~~  
7 ~~(chapter 34.05 RCW), and shall be considered an adjudicative proceeding~~  
8 ~~within the meaning of the Administrative Procedure Act, chapter 34.05~~  
9 ~~RCW)) may be appealed to the pollution control hearings board as~~  
10 ~~provided in RCW 43.21B.230. Only a person aggrieved within the meaning~~  
11 ~~of RCW 34.05.530 has standing and can file an appeal.~~

12           **Sec. 33.** RCW 78.44.380 and 2007 c 192 s 3 are each amended to read  
13 as follows:

14           (1) The department may issue an order to stop all surface mining to  
15 any permit holder, miner, or other person who authorizes, directs, or  
16 conducts such activities without a valid surface mine reclamation  
17 permit. This order is effective upon issuance unless otherwise stated  
18 in the order. Administrative appeal of the order to stop work does not  
19 stay the stop work requirement. The department shall notify the local  
20 jurisdiction of record when a stop work order has been issued for  
21 operating without a valid reclamation permit.

22           (2) The department may issue an order to stop surface mining  
23 occurring outside of any permit area to a permit holder that does not  
24 have a legal right to occupy the affected area. This order is  
25 effective upon issuance unless otherwise stated in the order. An  
26 administrative appeal of the order to stop work does not stay the stop  
27 work requirement.

28           (3) Where a permit holder is conducting surface mining activities  
29 outside of its permit boundary, but within land that it has the right  
30 to occupy, the department may issue an order to stop surface mining or  
31 mining-related activities occurring outside of the authorized area  
32 after the permit holder fails to comply with a notice of correction.  
33 The notice of correction must specify the corrections necessary as per  
34 the violation and provide a reasonable time to do so. This order is  
35 effective upon issuance unless otherwise stated in the order. An  
36 administrative appeal of the order to stop work does not stay the stop  
37 work requirement.

1 (4) Stop work orders must be in writing, delivered by United States  
2 certified mail with return receipt requested, facsimile, or by hand to  
3 the permit holder of record. The order must state the facts supporting  
4 the violation, the law being violated, and the specific activities  
5 being stopped. Stop work orders must be signed by the state geologist  
6 or an assistant state geologist. The ((department)) pollution control  
7 hearings board shall proceed as quickly as feasible to complete any  
8 requested adjudicative proceedings unless the parties stipulate to an  
9 appeal timeline or the department's stop work order states that it is  
10 not effective until after the administrative review process. If the  
11 recipient appeals the order, the recipient may file a motion for stay  
12 with the presiding officer, which will be reviewed under ((preliminary  
13 ~~injunction standards~~)) RCW 43.21B.320.

14 **Sec. 34.** RCW 79.100.120 and 2006 c 153 s 5 are each amended to  
15 read as follows:

16 (1) A person seeking to contest an authorized public entity's  
17 decision to take temporary possession or custody of a vessel under this  
18 chapter, or to contest the amount of reimbursement owed to an  
19 authorized public entity under this chapter, may request a hearing in  
20 accordance with this section.

21 (2)(a) If the contested decision or action was undertaken by a  
22 state agency, a written request for a hearing related to the decision  
23 or action must be filed with the ((aquatic resources division of the  
24 department)) pollution control hearings board and served on the state  
25 agency in accordance with RCW 43.21B.230 (2) and (3) within ((twenty))  
26 thirty days of the date the authorized public entity acquires custody  
27 of the vessel under RCW 79.100.040, or if the vessel is redeemed before  
28 the authorized public entity acquires custody, the date of redemption,  
29 or the right to a hearing is deemed waived and the vessel's owner is  
30 liable for any costs owed the authorized public entity. In the event  
31 of litigation, the prevailing party is entitled to reasonable  
32 attorneys' fees and costs.

33 (b) Upon receipt of a timely hearing request, the ((department))  
34 pollution control hearings board shall proceed to hear and determine  
35 the validity of the decision to take the vessel into temporary  
36 possession or custody and the reasonableness of any towing, storage, or  
37 other charges permitted under this chapter. Within five business days

1 after the request for a hearing is filed, the ((department)) pollution  
2 control hearings board shall notify the vessel owner requesting the  
3 hearing and the authorized public entity of the date, time, and  
4 location for the hearing. Unless the vessel is redeemed before the  
5 request for hearing is filed, the ((department)) pollution control  
6 hearings board shall set the hearing on a date that is within ten  
7 business days of the filing of the request for hearing. If the vessel  
8 is redeemed before the request for a hearing is filed, the  
9 ((department)) pollution control hearings board shall set the hearing  
10 on a date that is within sixty days of the filing of the request for  
11 hearing. A proceeding brought under this subsection may be heard by  
12 one member of the pollution control hearings board, whose decision is  
13 the final decision of the board.

14 (3)(a) If the contested decision or action was undertaken by a  
15 metropolitan park district, port district, city, town, or county, which  
16 has adopted rules or procedures for contesting decisions or actions  
17 pertaining to derelict or abandoned vessels, those rules or procedures  
18 must be followed in order to contest a decision to take temporary  
19 possession or custody of a vessel, or to contest the amount of  
20 reimbursement owed.

21 (b) If the metropolitan park district, port district, city, town,  
22 or county has not adopted rules or procedures for contesting decisions  
23 or actions pertaining to derelict or abandoned vessels, then a person  
24 requesting a hearing under this section must follow the procedure  
25 established in RCW 53.08.320(5) for contesting the decisions or actions  
26 of moorage facility operators.

27 **Sec. 35.** RCW 84.33.0775 and 1999 sp.s. c 5 s 1 are each amended to  
28 read as follows:

29 (1) A taxpayer is allowed a credit against the tax imposed under  
30 RCW 84.33.041 for timber harvested on and after January 1, 2000, under  
31 a forest practices notification filed or application approved under RCW  
32 76.09.050 and subject to enhanced aquatic resources requirements.

33 (2)(a) For a person other than a small harvester who elects to  
34 calculate tax under RCW 84.33.074, the credit is equal to the stumpage  
35 value of timber harvested for sale or for commercial or industrial use  
36 multiplied by eight-tenths of one percent.



1 (b) For a small harvester who elects to calculate tax under RCW  
2 84.33.074, the credit is equal to sixteen percent of the tax imposed  
3 under this chapter.

4 (c) The amount of credit claimed by a taxpayer under this section  
5 shall be reduced by the amount of any compensation received from the  
6 federal government for reduced timber harvest due to enhanced aquatic  
7 resource requirements. If the amount of compensation from the federal  
8 government exceeds the amount of credit available to a taxpayer in any  
9 reporting period, the excess shall be carried forward and applied  
10 against credits in future reporting periods. This subsection does not  
11 apply to small harvesters as defined in RCW 84.33.073.

12 (d) Refunds may not be given in place of credits. Credit may not  
13 be claimed in excess of tax owed. The department of revenue shall  
14 disallow any credits, used or unused, upon written notification from  
15 the department of natural resources of a final decision that timber for  
16 which credit was claimed was not harvested under a forest practices  
17 notification filed or application approved under RCW 76.09.050 and  
18 subject to enhanced aquatic resources requirements.

19 (3) As used in this section, a forest (~~(practice[s])~~) practices  
20 notification or application is subject to enhanced aquatic resource  
21 requirements if it includes, in whole or in part, riparian area,  
22 wetland, or steep or unstable slope from which the operator is limited,  
23 by rule adopted under RCW 76.09.055, 34.05.090, 43.21C.250, and  
24 76.09.370, or any federally approved habitat conservation plan or  
25 department of natural resources approved watershed analysis, from  
26 harvesting timber, or if a road is included within or adjacent to the  
27 area covered by such notification or application and the road is  
28 covered by a road maintenance plan approved by the department of  
29 natural resources under rules adopted under chapter 76.09 RCW, the  
30 forest practices act, or a federally approved habitat conservation  
31 plan.

32 (4) For forest practices notification or applications submitted  
33 after January 1, 2000, the department of natural resources shall  
34 indicate whether the notification or application is subject to enhanced  
35 aquatic resource requirements and, unless notified of a contrary  
36 determination by the (~~(forest practices appeals board)~~) pollution  
37 control hearings board, the department of revenue shall use such  
38 indication in determining the credit to be allowed against the tax

1 assessed under RCW 84.33.041. The department of natural resources  
2 shall develop revisions to the form of the forest practices  
3 notifications and applications to provide a space for the applicant to  
4 indicate and the department of natural resources to confirm or not  
5 confirm, whether the notification or application is subject to enhanced  
6 aquatic resource requirements. For forest practices notifications or  
7 applications submitted before January 1, 2000, the applicant may submit  
8 the approved notification or application to the department of natural  
9 resources for confirmation that the notification or application is  
10 subject to enhanced aquatic resource requirements. Upon any such  
11 submission, the department of natural resources will within thirty days  
12 confirm or deny that the notification or application is subject to  
13 enhanced aquatic resource requirements and will forward separate  
14 evidence of each confirmation to the department of revenue. Unless  
15 notified of a contrary ruling by the ((~~forest practices appeals board~~))  
16 pollution control hearings board, the department of revenue shall use  
17 the separate confirmations in determining the credit to be allowed  
18 against the tax assessed under RCW 84.33.041.

19 (5) A refusal by the department of natural resources to confirm  
20 that a notification or application is subject to enhanced aquatic  
21 resources requirements may be appealed to the ((~~forest practices  
22 appeals board under RCW 76.09.220~~)) pollution control hearings board.

23 (6) A person receiving approval of credit must keep records  
24 necessary for the department of revenue to verify eligibility under  
25 this section.

26 **Sec. 36.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to  
27 read as follows:

28 (1) A development shall not be undertaken on the shorelines of the  
29 state unless it is consistent with the policy of this chapter and,  
30 after adoption or approval, as appropriate, the applicable guidelines,  
31 rules, or master program.

32 (2) A substantial development shall not be undertaken on shorelines  
33 of the state without first obtaining a permit from the government  
34 entity having administrative jurisdiction under this chapter.

35 A permit shall be granted:

36 (a) From June 1, 1971, until such time as an applicable master  
37 program has become effective, only when the development proposed is

1 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their  
2 adoption, the guidelines and rules of the department; and (iii) so far  
3 as can be ascertained, the master program being developed for the area;

4 (b) After adoption or approval, as appropriate, by the department  
5 of an applicable master program, only when the development proposed is  
6 consistent with the applicable master program and this chapter.

7 (3) The local government shall establish a program, consistent with  
8 rules adopted by the department, for the administration and enforcement  
9 of the permit system provided in this section. The administration of  
10 the system so established shall be performed exclusively by the local  
11 government.

12 (4) Except as otherwise specifically provided in subsection (11) of  
13 this section, the local government shall require notification of the  
14 public of all applications for permits governed by any permit system  
15 established pursuant to subsection (3) of this section by ensuring that  
16 notice of the application is given by at least one of the following  
17 methods:

18 (a) Mailing of the notice to the latest recorded real property  
19 owners as shown by the records of the county assessor within at least  
20 three hundred feet of the boundary of the property upon which the  
21 substantial development is proposed;

22 (b) Posting of the notice in a conspicuous manner on the property  
23 upon which the project is to be constructed; or

24 (c) Any other manner deemed appropriate by local authorities to  
25 accomplish the objectives of reasonable notice to adjacent landowners  
26 and the public.

27 The notices shall include a statement that any person desiring to  
28 submit written comments concerning an application, or desiring to  
29 receive notification of the final decision concerning an application as  
30 expeditiously as possible after the issuance of the decision, may  
31 submit the comments or requests for decisions to the local government  
32 within thirty days of the last date the notice is to be published  
33 pursuant to this subsection. The local government shall forward, in a  
34 timely manner following the issuance of a decision, a copy of the  
35 decision to each person who submits a request for the decision.

36 If a hearing is to be held on an application, notices of such a  
37 hearing shall include a statement that any person may submit oral or  
38 written comments on an application at the hearing.

1 (5) The system shall include provisions to assure that construction  
2 pursuant to a permit will not begin or be authorized until (~~twenty-~~  
3 ~~one~~) after thirty days from the date (~~the permit decision was filed~~)  
4 of receipt as provided in subsection (6) of this section; or until all  
5 review proceedings are terminated if the proceedings were initiated  
6 within (~~twenty-one~~) thirty days from the date of (~~filing~~) receipt  
7 as defined in subsection (6) of this section except as follows:

8 (a) In the case of any permit issued to the state of Washington,  
9 department of transportation, for the construction and modification of  
10 SR 90 (I-90) on or adjacent to Lake Washington, the construction may  
11 begin after thirty days from the date of filing, and the permits are  
12 valid until December 31, 1995;

13 (b) Construction may be commenced no sooner than thirty days after  
14 the date of the appeal of the board's decision is filed if a permit is  
15 granted by the local government and (i) the granting of the permit is  
16 appealed to the shorelines hearings board within (~~twenty-one~~) thirty  
17 days of the date of (~~filing~~) receipt, (ii) the hearings board  
18 approves the granting of the permit by the local government or approves  
19 a portion of the substantial development for which the local government  
20 issued the permit, and (iii) an appeal for judicial review of the  
21 hearings board decision is filed pursuant to chapter 34.05 RCW. The  
22 appellant may request, within ten days of the filing of the appeal with  
23 the court, a hearing before the court to determine whether construction  
24 pursuant to the permit approved by the hearings board or to a revised  
25 permit issued pursuant to the order of the hearings board should not  
26 commence. If, at the conclusion of the hearing, the court finds that  
27 construction pursuant to such a permit would involve a significant,  
28 irreversible damaging of the environment, the court shall prohibit the  
29 permittee from commencing the construction pursuant to the approved or  
30 revised permit until all review proceedings are final. Construction  
31 pursuant to a permit revised at the direction of the hearings board may  
32 begin only on that portion of the substantial development for which the  
33 local government had originally issued the permit, and construction  
34 pursuant to such a revised permit on other portions of the substantial  
35 development may not begin until after all review proceedings are  
36 terminated. In such a hearing before the court, the burden of proving  
37 whether the construction may involve significant irreversible damage to

1 the environment and demonstrating whether such construction would or  
2 would not be appropriate is on the appellant;

3 (c) If the permit is for a substantial development meeting the  
4 requirements of subsection (11) of this section, construction pursuant  
5 to that permit may not begin or be authorized until (~~(twenty-one)~~)  
6 after thirty days from the date (~~(the permit decision was filed)~~) of  
7 receipt as provided in subsection (6) of this section.

8 If a permittee begins construction pursuant to subsections (a),  
9 (b), or (c) of this subsection, the construction is begun at the  
10 permittee's own risk. If, as a result of judicial review, the courts  
11 order the removal of any portion of the construction or the restoration  
12 of any portion of the environment involved or require the alteration of  
13 any portion of a substantial development constructed pursuant to a  
14 permit, the permittee is barred from recovering damages or costs  
15 involved in adhering to such requirements from the local government  
16 that granted the permit, the hearings board, or any appellant or  
17 intervener.

18 (6) Any decision on an application for a permit under the authority  
19 of this section, whether it is an approval or a denial, shall,  
20 concurrently with the transmittal of the ruling to the applicant, be  
21 (~~(filed with)~~) transmitted to the department and the attorney general.  
22 A petition for review of such a decision must be commenced within  
23 thirty days from the date of receipt of the decision. With regard to  
24 a permit other than a permit governed by subsection (10) of this  
25 section, "date of (~~(filing)~~) receipt" as used herein (~~(means)~~) refers  
26 to the date ((of actual receipt by the department)) that the applicant  
27 receives written notice from the department that the department has  
28 received the decision. With regard to a permit for a variance or a  
29 conditional use, "date of (~~(filing)~~) receipt" means the date a local  
30 government or applicant receives the written decision of the department  
31 rendered on the permit pursuant to subsection (10) of this section (~~(is~~  
32 ~~transmitted by the department to the local government. The department~~  
33 ~~shall notify in writing the local government and the applicant of the~~  
34 ~~date of filing)). For the purposes of this subsection, the term "date  
35 of receipt" has the same meaning as provided in RCW 43.21B.001.~~

36 (7) Applicants for permits under this section have the burden of  
37 proving that a proposed substantial development is consistent with the  
38 criteria that must be met before a permit is granted. In any review of

1 the granting or denial of an application for a permit as provided in  
2 RCW 90.58.180 (1) and (2), the person requesting the review has the  
3 burden of proof.

4 (8) Any permit may, after a hearing with adequate notice to the  
5 permittee and the public, be rescinded by the issuing authority upon  
6 the finding that a permittee has not complied with conditions of a  
7 permit. If the department is of the opinion that noncompliance exists,  
8 the department shall provide written notice to the local government and  
9 the permittee. If the department is of the opinion that the  
10 noncompliance continues to exist thirty days after the date of the  
11 notice, and the local government has taken no action to rescind the  
12 permit, the department may petition the hearings board for a rescission  
13 of the permit upon written notice of the petition to the local  
14 government and the permittee if the request by the department is made  
15 to the hearings board within (~~fifteen~~) thirty days of the termination  
16 of the thirty-day notice to the local government.

17 (9) The holder of a certification from the governor pursuant to  
18 chapter 80.50 RCW shall not be required to obtain a permit under this  
19 section.

20 (10) Any permit for a variance or a conditional use by local  
21 government under approved master programs must be submitted to the  
22 department for its approval or disapproval.

23 (11)(a) An application for a substantial development permit for a  
24 limited utility extension or for the construction of a bulkhead or  
25 other measures to protect a single family residence and its appurtenant  
26 structures from shoreline erosion shall be subject to the following  
27 procedures:

28 (i) The public comment period under subsection (4) of this section  
29 shall be twenty days. The notice provided under subsection (4) of this  
30 section shall state the manner in which the public may obtain a copy of  
31 the local government decision on the application no later than two days  
32 following its issuance;

33 (ii) The local government shall issue its decision to grant or deny  
34 the permit within twenty-one days of the last day of the comment period  
35 specified in (i) of this subsection; and

36 (iii) If there is an appeal of the decision to grant or deny the  
37 permit to the local government legislative authority, the appeal shall  
38 be finally determined by the legislative authority within thirty days.

1 (b) For purposes of this section, a limited utility extension means  
2 the extension of a utility service that:

3 (i) Is categorically exempt under chapter 43.21C RCW for one or  
4 more of the following: Natural gas, electricity, telephone, water, or  
5 sewer;

6 (ii) Will serve an existing use in compliance with this chapter;  
7 and

8 (iii) Will not extend more than twenty-five hundred linear feet  
9 within the shorelines of the state.

10 **Sec. 37.** RCW 90.58.180 and 2003 c 393 s 22 are each amended to  
11 read as follows:

12 (1) Any person aggrieved by the granting, denying, or rescinding of  
13 a permit on shorelines of the state pursuant to RCW 90.58.140 may,  
14 except as otherwise provided in chapter 43.21L RCW, seek review from  
15 the shorelines hearings board by filing a petition for review within  
16 ~~((twenty-one))~~ thirty days of the date of ~~((filing))~~ receipt of the  
17 decision as ~~((defined))~~ provided for in RCW 90.58.140(6).

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

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

36 (3) The review proceedings authorized in subsections (1) and (2) of  
37 this section are subject to the provisions of chapter 34.05 RCW

1 pertaining to procedures in adjudicative proceedings. Judicial review  
2 of such proceedings of the shorelines hearings board is governed by  
3 chapter 34.05 RCW. The board shall issue its decision on the appeal  
4 authorized under subsections (1) and (2) of this section within one  
5 hundred eighty days after the date the petition is filed with the board  
6 or a petition to intervene is filed by the department or the attorney  
7 general, whichever is later. The time period may be extended by the  
8 board for a period of thirty days upon a showing of good cause or may  
9 be waived by the parties.

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

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

- 17 (a) Is clearly erroneous in light of the policy of this chapter; or
- 18 (b) Constitutes an implementation of this chapter in violation of  
19 constitutional or statutory provisions; or
- 20 (c) Is arbitrary and capricious; or
- 21 (d) Was developed without fully considering and evaluating all  
22 material submitted to the department during public review and comment;  
23 or
- 24 (e) Was not adopted in accordance with required procedures.

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

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



1       **Sec. 38.** RCW 90.58.190 and 2003 c 321 s 4 are each amended to read  
2 as follows:

3       (1) The appeal of the department's decision to adopt a master  
4 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is  
5 governed by RCW 34.05.510 through 34.05.598.

6       (2)(a) The department's final decision to approve(~~( $\tau$ )~~) or reject(~~( $\tau$~~   
7 ~~or modify~~)) a proposed master program or master program amendment  
8 (~~(adopted)~~) by a local government planning under RCW 36.70A.040 shall  
9 be appealed to the growth management hearings board (~~((with jurisdiction~~  
10 ~~over the local government. The appeal shall be initiated))~~) by filing  
11 a petition within sixty days from the date of the department's written  
12 notice to the local government of the department's final decision to  
13 approve or reject a proposed master program or master program  
14 amendment, as provided in RCW ((36.70A.250 through 36.70A.320))  
15 36.70A.290. The department's written notice must conspicuously and  
16 plainly state that it is the department's final decision and that there  
17 will be no further modifications under RCW 90.58.090(2).

18       (b) If the appeal to the growth management hearings board concerns  
19 shorelines, the growth management hearings board shall review the  
20 proposed master program or amendment solely for compliance with the  
21 requirements of this chapter, the policy of RCW 90.58.020 and the  
22 applicable guidelines, the internal consistency provisions of RCW  
23 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter  
24 43.21C RCW as it relates to the adoption of master programs and  
25 amendments under chapter 90.58 RCW.

26       (c) If the appeal to the growth management hearings board concerns  
27 a shoreline of statewide significance, the board shall uphold the  
28 decision by the department unless the board, by clear and convincing  
29 evidence, determines that the decision of the department is  
30 inconsistent with the policy of RCW 90.58.020 and the applicable  
31 guidelines.

32       (d) The appellant has the burden of proof in all appeals to the  
33 growth management hearings board under this subsection.

34       (e) Any party aggrieved by a final decision of a growth management  
35 hearings board under this subsection may appeal the decision to  
36 superior court as provided in RCW 36.70A.300.

37       (3)(a) The department's final decision to approve(~~( $\tau$ )~~) or reject(~~( $\tau$~~   
38 ~~or modify~~)) a proposed master program or master program amendment by a

1 local government not planning under RCW 36.70A.040 shall be appealed to  
2 the shorelines hearings board by filing a petition within thirty days  
3 of the date of the department's written notice to the local government  
4 of the department's final decision to approve(~~(7)~~) or reject(~~(7—or~~  
5 ~~modify)~~) a proposed master program or master program amendment (~~as~~  
6 ~~provided in RCW 90.58.090(2)~~). The department's written notice must  
7 conspicuously and plainly state that it is the department's final  
8 decision and that there will be no further modifications under RCW  
9 90.58.090(2).

10 (b) In an appeal relating to shorelines, the shorelines hearings  
11 board shall review the proposed master program or master program  
12 amendment and, after full consideration of the presentations of the  
13 local government and the department, shall determine the validity of  
14 the local government's master program or amendment in light of the  
15 policy of RCW 90.58.020 and the applicable guidelines.

16 (c) In an appeal relating to shorelines of statewide significance,  
17 the shorelines hearings board shall uphold the decision by the  
18 department unless the board determines, by clear and convincing  
19 evidence that the decision of the department is inconsistent with the  
20 policy of RCW 90.58.020 and the applicable guidelines.

21 (d) Review by the shorelines hearings board shall be considered an  
22 adjudicative proceeding under chapter 34.05 RCW, the administrative  
23 procedure act. The aggrieved local government shall have the burden of  
24 proof in all such reviews.

25 (e) Whenever possible, the review by the shorelines hearings board  
26 shall be heard within the county where the land subject to the proposed  
27 master program or master program amendment is primarily located. The  
28 department and any local government aggrieved by a final decision of  
29 the hearings board may appeal the decision to superior court as  
30 provided in chapter 34.05 RCW.

31 (4) A master program amendment shall become effective after the  
32 approval of the department or after the decision of the shorelines  
33 hearings board to uphold the master program or master program  
34 amendment, provided that the board may remand the master program or  
35 master program adjustment to the local government or the department for  
36 modification prior to the final adoption of the master program or  
37 master program amendment.

1       **Sec. 39.** RCW 90.58.210 and 1995 c 403 s 637 are each amended to  
2 read as follows:

3       (1) Except as provided in RCW 43.05.060 through 43.05.080 and  
4 43.05.150, the attorney general or the attorney for the local  
5 government shall bring such injunctive, declaratory, or other actions  
6 as are necessary to (~~insure~~) ensure that no uses are made of the  
7 shorelines of the state in conflict with the provisions and programs of  
8 this chapter, and to otherwise enforce the provisions of this chapter.

9       (2) Any person who shall fail to conform to the terms of a permit  
10 issued under this chapter or who shall undertake development on the  
11 shorelines of the state without first obtaining any permit required  
12 under this chapter shall also be subject to a civil penalty not to  
13 exceed one thousand dollars for each violation. Each permit violation  
14 or each day of continued development without a required permit shall  
15 constitute a separate violation.

16       (3) The penalty provided for in this section shall be imposed by a  
17 notice in writing, either by certified mail with return receipt  
18 requested or by personal service, to the person incurring the same from  
19 the department or local government, describing the violation with  
20 reasonable particularity and ordering the act or acts constituting the  
21 violation or violations to cease and desist or, in appropriate cases,  
22 requiring necessary corrective action to be taken within a specific and  
23 reasonable time.

24       (4) (~~Within thirty days after the notice is received, the person~~  
25 ~~incurring the penalty may apply in writing to the department for~~  
26 ~~remission or mitigation of such penalty. Upon receipt of the~~  
27 ~~application, the department or local government may remit or mitigate~~  
28 ~~the penalty upon whatever terms the department or local government in~~  
29 ~~its discretion deems proper.)) The person incurring the penalty may  
30 appeal within thirty days from the date of receipt of the penalty. The  
31 term "date of receipt" has the same meaning as provided in RCW  
32 43.21B.001. Any penalty imposed pursuant to this section by the  
33 department shall be subject to review by the shorelines hearings board.  
34 Any penalty imposed pursuant to this section by local government shall  
35 be subject to review by the local government legislative authority.  
36 Any penalty jointly imposed by the department and local government  
37 shall be appealed to the shorelines hearings board.~~

1           **Sec. 40.** RCW 90.58.560 and 1995 c 403 s 638 are each amended to  
2 read as follows:

3           (1) Except as provided in RCW 43.05.060 through 43.05.080 and  
4 43.05.150, a person who violates RCW 90.58.550, or any rule adopted  
5 thereunder, is subject to a penalty in an amount of up to five thousand  
6 dollars a day for every such violation. Each and every such violation  
7 shall be a separate and distinct offense, and in case of a continuing  
8 violation, every day's continuance shall be and be deemed to be a  
9 separate and distinct violation. Every act of commission or omission  
10 which procures, aids or abets in the violation shall be considered a  
11 violation under the provisions of this section and subject to the  
12 penalty provided for in this section.

13           (2) The penalty shall be imposed by a notice in writing, either by  
14 certified mail with return receipt requested or by personal service, to  
15 the person incurring the penalty from the director or the director's  
16 representative describing such violation with reasonable particularity.  
17 ~~((The director or the director's representative may, upon written  
18 application therefor received within fifteen days after notice imposing  
19 any penalty is received by the person incurring the penalty, and when  
20 deemed to carry out the purposes of this chapter, remit or mitigate any  
21 penalty provided for in this section upon such terms as he or she deems  
22 proper, and shall have authority to ascertain the facts upon all such  
23 applications in such manner and under such regulations as he or she may  
24 deem proper.))~~

25           (3) Any person incurring any penalty under this section may appeal  
26 the penalty to the hearings board as provided for in chapter 43.21B  
27 RCW. Such appeals shall be filed within thirty days from the date of  
28 receipt of ~~((notice imposing any))~~ the penalty ~~((unless an application  
29 for remission or mitigation is made to the department. When an  
30 application for remission or mitigation is made, such appeals shall be  
31 filed within thirty days of receipt of notice from the director or the  
32 director's representative setting forth the disposition of the  
33 application))~~. Any penalty imposed under this section shall become due  
34 and payable thirty days after receipt of a notice imposing the same  
35 unless ~~((application for remission or mitigation is made or))~~ an appeal  
36 is filed. ~~((When an application for remission or mitigation is made,  
37 any penalty incurred hereunder shall become due and payable thirty days  
38 after receipt of notice setting forth the disposition of the~~

1 ~~application unless an appeal is filed from such disposition.))~~  
2 Whenever an appeal of any penalty incurred under this section is filed,  
3 the penalty shall become due and payable only upon completion of all  
4 review proceedings and the issuance of a final order confirming the  
5 penalty in whole or in part.

6 (4) If the amount of any penalty is not paid to the department  
7 within thirty days after it becomes due and payable, the attorney  
8 general, upon the request of the director, shall bring an action in the  
9 name of the state of Washington in the superior court of Thurston  
10 county or of any county in which such violator may do business, to  
11 recover such penalty. In all such actions the procedure and rules of  
12 evidence shall be the same as an ordinary civil action except as  
13 otherwise provided in this chapter (~~provided~~). All penalties  
14 recovered under this section shall be paid into the state treasury and  
15 credited to the general fund.

16 NEW SECTION. **Sec. 41.** The following acts or parts of acts are  
17 each repealed:

18 (1) RCW 43.21B.190 (Judicial review--Appeal from board's order) and  
19 2004 c 204 s 2, 1995 c 382 s 4, 1994 c 253 s 7, 1988 c 202 s 43, & 1970  
20 ex.s. c 62 s 49;

21 (2) RCW 76.09.210 (Forest practices appeals board--Created--  
22 Membership--Terms--Vacancies--Removal) and 1979 ex.s. c 47 s 4 & 1974  
23 ex.s. c 137 s 21;

24 (3) RCW 76.09.220 (Forest practices appeals board--Compensation--  
25 Travel expenses--Chair--Office--Quorum--Powers and duties--  
26 Jurisdiction--Review) and 2007 c 480 s 8, 2003 c 393 s 20, 1999 sp.s.  
27 c 4 s 902, & 1999 c 90 s 1;

28 (4) RCW 76.09.230 (Forest practices appeals board--Mediation--  
29 Appeal procedure--Judicial review) and 1994 c 253 s 9, 1992 c 52 s 23,  
30 1989 c 175 s 165, & 1974 ex.s. c 137 s 23;

31 (5) RCW 77.55.301 (Hydraulic appeals board--Members--Jurisdiction--  
32 Procedures) and 2005 c 146 s 801, 2003 c 393 s 21, 2000 c 107 s 20,  
33 1996 c 276 s 2, 1993 sp.s. c 2 s 37, 1989 c 175 s 160, 1988 c 272 s 3,  
34 1988 c 36 s 37, & 1986 c 173 s 4; and

35 (6) RCW 77.55.311 (Hydraulic appeals board--Procedures) and 2005 c  
36 146 s 802, 1995 c 382 s 7, 1989 c 175 s 161, & 1986 c 173 s 5.

1        NEW SECTION.    **Sec. 42.**    (1) This act applies prospectively only and  
2 not retroactively. It applies only to appeals that are commenced on or  
3 after the effective date of this section. The repeals in section 41 of  
4 this act do not affect any existing right acquired or liability or  
5 obligation incurred under the statutes repealed or under any rule or  
6 order adopted under those statutes nor do they affect any proceeding  
7 instituted under them.

8        (2) All pending cases before the forest practices appeals board and  
9 the hydraulics appeals board shall be continued and acted upon by those  
10 boards. All existing rules of the forest practices appeals board shall  
11 remain in effect and be used by the pollution control hearings board  
12 until the pollution control hearings board adopts superceding rules for  
13 forest practices appeals.

14        NEW SECTION.    **Sec. 43.**    A new section is added to chapter 36.70A  
15 RCW to read as follows:

16        (1) The powers, duties, and functions of the growth management  
17 hearings board are hereby transferred to the environmental and land use  
18 hearings office.

19        (2)(a) All reports, documents, surveys, books, records, files,  
20 papers, or written material in the possession of the growth management  
21 hearings board shall be delivered to the custody of the environmental  
22 and land use hearings office. All cabinets, furniture, office  
23 equipment, motor vehicles, and other tangible property employed by the  
24 growth management hearings board shall be made available to the  
25 environmental and land use hearings office. All funds, credits, or  
26 other assets held by the growth management hearings board shall be  
27 assigned to the environmental and land use hearings office.

28        (b) Any appropriations made to the growth management hearings board  
29 shall, on the effective date of this section, be transferred and  
30 credited to the environmental and land use hearings office.

31        (c) If any question arises as to the transfer of any personnel,  
32 funds, books, documents, records, papers, files, equipment, or other  
33 tangible property used or held in the exercise of the powers and the  
34 performance of the duties and functions transferred, the director of  
35 financial management shall make a determination as to the proper  
36 allocation and certify the same to the state agencies concerned.

1 (3) All employees of the growth management hearings board are  
2 transferred to the jurisdiction of the environmental and land use  
3 hearings office. All employees classified under chapter 41.06 RCW, the  
4 state civil service law, are assigned to the environmental and land use  
5 hearings office to perform their usual duties upon the same terms as  
6 formerly, without any loss of rights, subject to any action that may be  
7 appropriate thereafter in accordance with the laws and rules governing  
8 state civil service.

9 (4) All existing rules and all pending cases before the growth  
10 management hearings board shall be continued and acted upon by the  
11 growth management hearings board located within the environmental and  
12 land use hearings office. All pending business, existing contracts,  
13 and obligations shall remain in full force and shall be performed by  
14 the environmental and land use hearings office.

15 (5) The transfer of the powers, duties, functions, and personnel of  
16 the growth management hearings board shall not affect the validity of  
17 any act performed before the effective date of this section.

18 (6) If apportionments of budgeted funds are required because of the  
19 transfers directed by this section, the director of financial  
20 management shall certify the apportionments to the agencies affected,  
21 the state auditor, and the state treasurer. Each of these shall make  
22 the appropriate transfer and adjustments in funds and appropriation  
23 accounts and equipment records in accordance with the certification.

24 NEW SECTION. **Sec. 44.** (1) Sections 1, 3, 5, 7, 9 through 14, and  
25 16 through 42 of this act take effect July 1, 2010.

26 (2) Sections 2, 4, 6, 15, and 43 of this act take effect July 1,  
27 2011. The chief executive officer of the environmental hearings office  
28 may take the necessary steps to ensure that these sections are  
29 implemented on their effective date.

30 (3) Section 8 of this act takes effect June 30, 2019.

31 NEW SECTION. **Sec. 45.** (1) Sections 3 and 5 of this act expire  
32 July 1, 2011.

33 (2) Section 7 of this act expires June 30, 2019.

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