

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6339

Chapter 257, Laws of 1994

(partial veto)

53rd Legislature
1994 Regular Session

ENVIRONMENTAL LAWS AND GROWTH MANAGEMENT PLANNING--
HEARINGS--DEVELOPMENT REGULATIONS--HAZARDOUS WASTE CLEANUP

EFFECTIVE DATE: 6/9/94 - Except Section 5 which takes effect
7/1/94

Passed by the Senate March 6, 1994
YEAS 45 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 3, 1994
YEAS 96 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994, with the
exception of section 10, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington,
do hereby certify that the attached
is **ENGROSSED SUBSTITUTE SENATE BILL
6339** as passed by the Senate and
the House of Representatives on the
dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 11:19 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6339

AS AMENDED BY THE HOUSE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Sheldon, Amondson, Moore, Morton, Snyder, Gaspard, Skratek, Loveland, Quigley, Fraser, Drew, Hargrove, McAuliffe, Franklin, Haugen, Williams, Spanel, M. Rasmussen, Pelz, A. Smith, Wojahn, Winsley and Ludwig)

Read first time 02/04/94.

1 AN ACT Relating to facilitating growth management planning and
2 decisions, integration with related environmental laws, and improving
3 procedures for cleanup of hazardous waste sites; amending RCW
4 36.70A.270, 36.70A.290, 36.70A.030, 58.17.330, 35A.63.170, 35.63.130,
5 36.70.970, 70.105D.020, 70.105D.030, 70.105D.050, 70.105D.060,
6 34.12.020, 34.05.514, and 82.02.050; adding new sections to chapter
7 36.70A RCW; adding a new section to chapter 70.105D RCW; adding a new
8 section to chapter 70.94 RCW; adding a new section to chapter 70.95
9 RCW; adding a new section to chapter 70.105 RCW; adding a new section
10 to chapter 75.20 RCW; adding a new section to chapter 90.48 RCW; adding
11 a new section to chapter 90.58 RCW; adding a new section to chapter
12 43.21C RCW; and providing an effective date.

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

14 **Sec. 1.** RCW 36.70A.270 and 1991 sp.s. c 32 s 7 are each amended to
15 read as follows:

16 Each growth planning hearings board shall be governed by the
17 following rules on conduct and procedure:

18 (1) Any board member may be removed for inefficiency, malfeasance,
19 and misfeasance in office, under specific written charges filed by the

1 governor. The governor shall transmit such written charges to the
2 member accused and the chief justice of the supreme court. The chief
3 justice shall thereupon designate a tribunal composed of three judges
4 of the superior court to hear and adjudicate the charges. Removal of
5 any member of a board by the tribunal shall disqualify such member for
6 reappointment.

7 (2) Each board member shall receive reimbursement for travel
8 expenses incurred in the discharge of his or her duties in accordance
9 with RCW 43.03.050 and 43.03.060. If it is determined that the review
10 boards shall operate on a full-time basis, each member shall receive an
11 annual salary to be determined by the governor pursuant to RCW
12 43.03.040. If it is determined that a review board shall operate on a
13 part-time basis, each member shall receive compensation pursuant to RCW
14 43.03.250, provided such amount shall not exceed the amount that would
15 be set if they were a full-time board member. The principal office of
16 each board shall be located by the governor within the jurisdictional
17 boundaries of each board. The boards shall operate on either a part-
18 time or full-time basis, as determined by the governor.

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

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

33 (5) The board may ~~((also))~~ appoint ~~((as its authorized agents))~~ one
34 or more hearing examiners to assist the board in ~~((the performance of))~~
35 its hearing function ~~((pursuant to the authority contained in the~~
36 ~~administrative procedure act, chapter 34.05 RCW))~~, to make conclusions
37 of law and findings of fact and, if requested by the board, to make
38 recommendations to the board for decisions in cases before the board.
39 Such hearing examiners must have demonstrated knowledge of land use

1 planning and law. The boards shall specify in their joint rules of
2 practice and procedure, as required by subsection (7) of this section,
3 the procedure and criteria to be employed for designating hearing
4 examiners as a presiding officer. Hearing examiners selected by a
5 board shall meet the requirements of subsection (3) of this section.
6 The findings and conclusions of the hearing examiner shall not become
7 final until they have been formally approved by the board. ((Such
8 hearing examiners must have demonstrated knowledge of land use planning
9 and law. The board shall perform all the powers and duties specified
10 in this chapter or as otherwise provided by law.

11 ~~((5))~~ This authorization to use hearing examiners does not waive
12 the requirement of RCW 36.70A.300 that final orders be issued within
13 one hundred eighty days of board receipt of a petition.

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

19 ~~((6))~~ (7) All proceedings before the board ((or)), any of its
20 members, or a hearing examiner appointed by the board shall be
21 conducted in accordance with such administrative rules of practice and
22 procedure as the boards jointly prescribe. All three boards shall
23 jointly meet to develop and adopt joint rules of practice and
24 procedure, including rules regarding expeditious and summary
25 disposition of appeals. The boards shall publish such rules and
26 arrange for the reasonable distribution of the rules. The
27 administrative procedure act, chapter 34.05 RCW, shall govern the
28 administrative rules of practice and procedure adopted by the boards.

29 ~~((7))~~ (8) A board member or hearing examiner is subject to
30 disqualification for bias, prejudice, interest, or any other cause for
31 which a judge is disqualified. The joint rules of practice of the
32 boards shall establish procedures by which a party to a hearing
33 conducted before the board may file with the board a motion to
34 disqualify, with supporting affidavit, against a board member or
35 hearing examiner assigned to preside at the hearing.

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

1 **Sec. 2.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended
2 to read as follows:

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

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

19 (3) Unless the board dismisses the petition as frivolous or finds
20 that the person filing the petition lacks standing, the board shall,
21 within ten days of receipt of the petition, set a time for hearing the
22 matter.

23 (4) The board shall base its decision on the record developed by
24 the city, county, or the state and supplemented with additional
25 evidence if the board determines that such additional evidence would be
26 necessary or of substantial assistance to the board in reaching its
27 decision.

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

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A RCW
32 to read as follows:

33 Development regulations adopted pursuant to RCW 36.70A.040 shall
34 establish time periods for local government actions on specific
35 development permit applications and provide timely and predictable
36 procedures to determine whether a completed development permit
37 application meets the requirements of those development regulations.
38 Such development regulations shall specify the contents of a completed

1 development permit application necessary for the application of such
2 time periods and procedures.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
4 to read as follows:

5 Each city and county planning pursuant to RCW 36.70A.040 shall,
6 within twenty working days of receiving a development permit
7 application as defined in RCW 36.70A.030(7), mail or provide in person
8 a written notice to the applicant, stating either: That the
9 application is complete; or that the application is incomplete and what
10 is necessary to make the application complete. To the extent known by
11 the city or county, the notice shall identify other agencies of local,
12 state, or federal governments that may have jurisdiction over some
13 aspect of the application.

14 **Sec. 5.** RCW 36.70A.030 and 1990 1st ex.s. c 17 s 3 are each
15 amended to read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Adopt a comprehensive land use plan" means to enact a new
19 comprehensive land use plan or to update an existing comprehensive land
20 use plan.

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

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

28 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
29 means a generalized coordinated land use policy statement of the
30 governing body of a county or city that is adopted pursuant to this
31 chapter.

32 (5) "Critical areas" include the following areas and ecosystems:

33 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
34 used for potable water; (c) fish and wildlife habitat conservation
35 areas; (d) frequently flooded areas; and (e) geologically hazardous
36 areas.

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

3 (7) For purposes of sections 3 and 4 of this act, "development
4 permit application" means any application for a development proposal
5 for a use that could be permitted under a plan adopted pursuant to this
6 chapter and is consistent with the underlying land use and zoning,
7 including but not limited to building permits, subdivisions, binding
8 site plans, planned unit developments, conditional uses or other
9 applications pertaining to land uses, but shall not include rezones,
10 proposed amendments to comprehensive plans or the adoption or amendment
11 of development regulations.

12 (8) "Development regulations" means any controls placed on
13 development or land use activities by a county or city, including, but
14 not limited to, zoning ordinances, official controls, planned unit
15 development ordinances, subdivision ordinances, and binding site plan
16 ordinances.

17 (~~(8)~~) (9) "Forest land" means land primarily useful for growing
18 trees, including Christmas trees subject to the excise tax imposed
19 under RCW 84.33.100 through 84.33.140, for commercial purposes, and
20 that has long-term commercial significance for growing trees
21 commercially.

22 (~~(9)~~) (10) "Geologically hazardous areas" means areas that
23 because of their susceptibility to erosion, sliding, earthquake, or
24 other geological events, are not suited to the siting of commercial,
25 residential, or industrial development consistent with public health or
26 safety concerns.

27 (~~(10)~~) (11) "Long-term commercial significance" includes the
28 growing capacity, productivity, and soil composition of the land for
29 long-term commercial production, in consideration with the land's
30 proximity to population areas, and the possibility of more intense uses
31 of the land.

32 (~~(11)~~) (12) "Minerals" include gravel, sand, and valuable
33 metallic substances.

34 (~~(12)~~) (13) "Public facilities" include streets, roads, highways,
35 sidewalks, street and road lighting systems, traffic signals, domestic
36 water systems, storm and sanitary sewer systems, parks and recreational
37 facilities, and schools.

1 (~~(13)~~) (14) "Public services" include fire protection and
2 suppression, law enforcement, public health, education, recreation,
3 environmental protection, and other governmental services.

4 (~~(14)~~) (15) "Urban growth" refers to growth that makes intensive
5 use of land for the location of buildings, structures, and impermeable
6 surfaces to such a degree as to be incompatible with the primary use of
7 such land for the production of food, other agricultural products, or
8 fiber, or the extraction of mineral resources. When allowed to spread
9 over wide areas, urban growth typically requires urban governmental
10 services. "Characterized by urban growth" refers to land having urban
11 growth located on it, or to land located in relationship to an area
12 with urban growth on it as to be appropriate for urban growth.

13 (~~(15)~~) (16) "Urban growth areas" means those areas designated by
14 a county pursuant to RCW 36.70A.110.

15 (~~(16)~~) (17) "Urban governmental services" include those
16 governmental services historically and typically delivered by cities,
17 and include storm and sanitary sewer systems, domestic water systems,
18 street cleaning services, fire and police protection services, public
19 transit services, and other public utilities associated with urban
20 areas and normally not associated with nonurban areas.

21 (~~(17)~~) (18) "Wetland" or "wetlands" means areas that are
22 inundated or saturated by surface water or ground water at a frequency
23 and duration sufficient to support, and that under normal circumstances
24 do support, a prevalence of vegetation typically adapted for life in
25 saturated soil conditions. Wetlands generally include swamps, marshes,
26 bogs, and similar areas. Wetlands do not include those artificial
27 wetlands intentionally created from nonwetland sites, including, but
28 not limited to, irrigation and drainage ditches, grass-lined swales,
29 canals, detention facilities, wastewater treatment facilities, farm
30 ponds, and landscape amenities. However, wetlands may include those
31 artificial wetlands intentionally created from nonwetland areas created
32 to mitigate conversion of wetlands, if permitted by the county or city.

33 **Sec. 6.** RCW 58.17.330 and 1977 ex.s. c 213 s 4 are each amended to
34 read as follows:

35 (1) As an alternative to those provisions of this chapter requiring
36 a planning commission to hear and issue recommendations for plat
37 approval, the county or city legislative body may adopt a hearing
38 examiner system and shall specify by ordinance the legal effect of the

1 decisions made by the examiner. Except as provided in subsection (2)
2 of this section, the legal effect of such decisions shall include one
3 of the following:

4 ~~((1))~~ (a) The decision may be given the effect of a
5 recommendation to the legislative body;

6 ~~((2))~~ (b) The decision may be given the effect of an
7 administrative decision appealable within a specified time limit to the
8 legislative body.

9 The legislative authority shall prescribe procedures to be followed by
10 a hearing examiner.

11 (2) The legislative body shall specify the legal effect of a
12 hearing examiner's procedural determination under the state
13 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may
14 have the effect under subsection (1) (a) or (b) of this section, or may
15 be given the effect of a final decision of the legislative body.

16 (3) Each final decision of a hearing examiner shall be in writing
17 and shall include findings and conclusions, based on the record, to
18 support the decision. Each final decision of a hearing examiner,
19 unless a longer period is mutually agreed to by the applicant and the
20 hearing examiner, shall be rendered within ten working days following
21 conclusion of all testimony and hearings.

22 **Sec. 7.** RCW 35A.63.170 and 1977 ex.s. c 213 s 2 are each amended
23 to read as follows:

24 (1) As an alternative to those provisions of this chapter relating
25 to powers or duties of the planning commission to hear and report on
26 any proposal to amend a zoning ordinance, the legislative body of a
27 city may adopt a hearing examiner system under which a hearing examiner
28 or hearing examiners may hear and decide applications for amending the
29 zoning ordinance when the amendment which is applied for is not of
30 general applicability. In addition, the legislative body may vest in
31 a hearing examiner the power to hear and decide applications for
32 conditional uses, variances or any other class of applications for or
33 pertaining to land uses which the legislative body believes should be
34 reviewed and decided by a hearing examiner. The legislative body shall
35 prescribe procedures to be followed by a hearing examiner. If the
36 legislative authority vests in a hearing examiner the authority to hear
37 and decide variances, then the provisions of RCW 35A.63.110 shall not
38 apply to the city.

1 Each city legislative body electing to use a hearing examiner
2 pursuant to this section shall by ordinance specify the legal effect of
3 the decisions made by the examiner. Except as provided in subsection
4 (2) of this section, the legal effect of such decisions may vary for
5 the different classes of applications decided by the examiner but shall
6 include one of the following:

7 ~~((1))~~ (a) The decision may be given the effect of a
8 recommendation to the legislative body;

9 ~~((2))~~ (b) The decision may be given the effect of an
10 administrative decision appealable within a specified time limit to the
11 legislative body.

12 (2) The legislative body shall specify the legal effect of a
13 hearing examiner's procedural determination under the state
14 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may
15 have the effect under subsection (1) (a) or (b) of this section, or may
16 be given the effect of a final decision of the legislative body.

17 (3) Each final decision of a hearing examiner shall be in writing
18 and shall include findings and conclusions, based on the record, to
19 support the decision. Such findings and conclusions shall also set
20 forth the manner in which the decision would carry out and conform to
21 the city's comprehensive plan and the city's development regulations.
22 Each final decision of a hearing examiner, unless a longer period is
23 mutually agreed to in writing by the applicant and the hearing
24 examiner, shall be rendered within ten working days following
25 conclusion of all testimony and hearings.

26 **Sec. 8.** RCW 35.63.130 and 1977 ex.s. c 213 s 1 are each amended to
27 read as follows:

28 (1) As an alternative to those provisions of this chapter relating
29 to powers or duties of the planning commission to hear and report on
30 any proposal to amend a zoning ordinance, the legislative body of a
31 city or county may adopt a hearing examiner system under which a
32 hearing examiner or hearing examiners may hear and decide applications
33 for amending the zoning ordinance when the amendment which is applied
34 for is not of general applicability. In addition, the legislative body
35 may vest in a hearing examiner the power to hear and decide
36 applications for conditional uses, variances, or any other class of
37 applications for or pertaining to land uses which the legislative body
38 believes should be reviewed and decided by a hearing examiner. The

1 legislative body shall prescribe procedures to be followed by the
2 hearing examiner.

3 Each city or county legislative body electing to use a hearing
4 examiner pursuant to this section shall by ordinance specify the legal
5 effect of the decisions made by the examiner. Except as provided in
6 subsection (2) of this section, the legal effect of such decisions may
7 vary for the different classes of applications decided by the examiner
8 but shall include one of the following:

9 ~~((1))~~ (a) The decision may be given the effect of a
10 recommendation to the legislative body;

11 ~~((2))~~ (b) The decision may be given the effect of an
12 administrative decision appealable within a specified time limit to the
13 legislative body.

14 (2) The legislative body may specify the legal effect of a hearing
15 examiner's procedural determination under the state environmental
16 policy act, as defined in RCW 43.21C.075(3)(a). It may have the effect
17 under subsection (1) (a) or (b) of this section, or may be given the
18 effect of a final decision of the legislative body.

19 (3) Each final decision of a hearing examiner shall be in writing
20 and shall include findings and conclusions, based on the record, to
21 support the decision. Such findings and conclusions shall also set
22 forth the manner in which the decision would carry out and conform to
23 the city's or county's comprehensive plan and the city's or county's
24 development regulations. Each final decision of a hearing examiner,
25 unless a longer period is mutually agreed to in writing by the
26 applicant and the hearing examiner, shall be rendered within ten
27 working days following conclusion of all testimony and hearings.

28 **Sec. 9.** RCW 36.70.970 and 1977 ex.s. c 213 s 3 are each amended to
29 read as follows:

30 (1) As an alternative to those provisions of this chapter relating
31 to powers or duties of the planning commission to hear and issue
32 recommendations on applications for plat approval and applications for
33 amendments to the zoning ordinance, the county legislative authority
34 may adopt a hearing examiner system under which a hearing examiner or
35 hearing examiners may hear and issue decisions on proposals for plat
36 approval and for amendments to the zoning ordinance when the amendment
37 which is applied for is not of general applicability. In addition, the
38 legislative authority may vest in a hearing examiner the power to hear

1 and decide conditional use applications, variance applications,
2 applications for shoreline permits or any other class of applications
3 for or pertaining to land uses. The legislative authority shall
4 prescribe procedures to be followed by a hearing examiner.

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

8 Each county legislative authority electing to use a hearing
9 examiner pursuant to this section shall by ordinance specify the legal
10 effect of the decisions made by the examiner. Except as provided in
11 subsection (2) of this section , such legal effect may vary for the
12 different classes of applications decided by the examiner but shall
13 include one of the following:

14 ~~((1))~~ (a) The decision may be given the effect of a
15 recommendation to the legislative authority;

16 ~~((2))~~ (b) The decision may be given the effect of an
17 administrative decision appealable within a specified time limit to the
18 legislative authority.

19 (2) The legislative authority may specify the legal effect of a
20 hearing examiner's procedural determination under the state
21 environmental policy act, as defined in RCW 43.21C.075(3)(a). It may
22 have the effect under subsection (1) (a) or (b) of this section, or may
23 be given the effect of a final decision of the legislative authority.

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

33 **Sec. 10. RCW 70.105D.020 and 1989 c 2 s 2 are each amended to*
34 *read as follows:*

35 (1) "Agreed order" means an order issued by the department under
36 this chapter with which the potentially liable person receiving the
37 order agrees to comply. An agreed order may be used to require or
38 approve any cleanup or other remedial actions but it is not a

1 settlement under RCW 70.105D.040(4) and shall not contain a covenant
2 not to sue, or provide protection from claims for contribution, or
3 provide eligibility for public funding of remedial actions under RCW
4 70.105D.070(2)(d)(xi).

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

6 ((+2)) (3) "Director" means the director of ecology or the
7 director's designee.

8 ((+3)) (4) "Facility" means (a) any building, structure,
9 installation, equipment, pipe or pipeline (including any pipe into a
10 sewer or publicly owned treatment works), well, pit, pond, lagoon,
11 impoundment, ditch, landfill, storage container, motor vehicle, rolling
12 stock, vessel, or aircraft, or (b) any site or area where a hazardous
13 substance, other than a consumer product in consumer use, has been
14 deposited, stored, disposed of, or placed, or otherwise come to be
15 located.

16 ((+4)) (5) "Federal cleanup law" means the federal comprehensive
17 environmental response, compensation, and liability act of 1980, 42
18 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

19 ((+5)) (6) "Hazardous substance" means:

20 (a) Any dangerous or extremely hazardous waste as defined in RCW
21 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste
22 designated by rule pursuant to chapter 70.105 RCW;

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

25 (c) Any substance that, on March 1, 1989, is a hazardous substance
26 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
27 9601(14);

28 (d) Petroleum or petroleum products; and

29 (e) Any substance or category of substances, including solid waste
30 decomposition products, determined by the director by rule to present
31 a threat to human health or the environment if released into the
32 environment.

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

37 ((+6)) (7) "Owner or operator" means:

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

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

4 The term does not include:

5 (i) An agency of the state or unit of local government which
6 acquired ownership or control involuntarily through bankruptcy, tax
7 delinquency, abandonment, or circumstances in which the government
8 involuntarily acquires title. This exclusion does not apply to an
9 agency of the state or unit of local government which has caused or
10 contributed to the release or threatened release of a hazardous
11 substance from the facility; or

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

15 ~~((+7))~~ (8) "Person" means an individual, firm, corporation,
16 association, partnership, consortium, joint venture, commercial entity,
17 state government agency, unit of local government, federal government
18 agency, or Indian tribe.

19 ~~((+8))~~ (9) "Potentially liable person" means any person whom the
20 department finds, based on credible evidence, to be liable under RCW
21 70.105D.040. The department shall give notice to any such person and
22 allow an opportunity for comment before making the finding, unless an
23 emergency requires otherwise.

24 ~~((+9))~~ (10) "Public notice" means, at a minimum, adequate notice
25 mailed to all persons who have made timely request of the department
26 and to persons residing in the potentially affected vicinity of the
27 proposed action; mailed to appropriate news media; published in the
28 newspaper of largest circulation in the city or county of the proposed
29 action; and opportunity for interested persons to comment.

30 ~~((+10))~~ (11) "Release" means any intentional or unintentional
31 entry of any hazardous substance into the environment, including but
32 not limited to the abandonment or disposal of containers of hazardous
33 substances.

34 ~~((+11))~~ (12) "Remedy" or "remedial action" means any action or
35 expenditure consistent with the purposes of this chapter to identify,
36 eliminate, or minimize any threat or potential threat posed by
37 hazardous substances to human health or the environment including any
38 investigative and monitoring activities with respect to any release or
39 threatened release of a hazardous substance and any health assessments

1 *or health effects studies conducted in order to determine the risk or*
2 *potential risk to human health.*

3 **Sec. 10 was vetoed, see message at end of chapter.*

4 **Sec. 11.** RCW 70.105D.030 and 1989 c 2 s 3 are each amended to read
5 as follows:

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

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

20 (b) Conduct, provide for conducting, or require potentially liable
21 persons to conduct remedial actions (including investigations under (a)
22 of this subsection) to remedy releases or threatened releases of
23 hazardous substances. In carrying out such powers, the department's
24 authorized employees, agents, or contractors may enter upon property.
25 The department shall give reasonable notice before entering property
26 unless an emergency prevents such notice. In conducting, providing for,
27 or requiring remedial action, the department shall give preference to
28 permanent solutions to the maximum extent practicable and shall provide
29 for or require adequate monitoring to ensure the effectiveness of the
30 remedial action;

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

34 (d) Carry out all state programs authorized under the federal
35 cleanup law and the federal resource, conservation, and recovery act,
36 42 U.S.C. Sec. 6901 et seq., as amended;

1 (e) Classify substances as hazardous substances for purposes of RCW
2 70.105D.020(5) and classify substances and products as hazardous
3 substances for purposes of RCW 82.21.020(1); and

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

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

12 (a) Provide for public participation, including at least (i) the
13 establishment of regional citizen's advisory committees, (ii) public
14 notice of the development of investigative plans or remedial plans for
15 releases or threatened releases, and (iii) concurrent public notice of
16 all compliance orders, agreed orders, enforcement orders, or notices of
17 violation;

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

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

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

29 (3) Before November 1st of each even-numbered year, the department
30 shall develop, with public notice and hearing, and submit to the ways
31 and means and appropriate standing environmental committees of the
32 senate and house of representatives a ranked list of projects and
33 expenditures recommended for appropriation from both the state and
34 local toxics control accounts. The department shall also provide the
35 legislature and the public each year with an accounting of the
36 department's activities supported by appropriations from the state
37 toxics control account, including a list of known hazardous waste sites
38 and their hazard rankings, actions taken and planned at each site, how

1 the department is meeting its top two management priorities under RCW
2 70.105.150, and all funds expended under this chapter.

3 (4) The department shall establish a scientific advisory board to
4 render advice to the department with respect to the hazard ranking
5 system, cleanup standards, remedial actions, deadlines for remedial
6 actions, monitoring, the classification of substances as hazardous
7 substances for purposes of RCW 70.105D.020(5) and the classification of
8 substances or products as hazardous substances for purposes of RCW
9 82.21.020(1). The board shall consist of five independent members to
10 serve staggered three-year terms. No members may be employees of the
11 department. Members shall be reimbursed for travel expenses as
12 provided in RCW 43.03.050 and 43.03.060.

13 (5) The department shall establish a program to identify potential
14 hazardous waste sites and to encourage persons to provide information
15 about hazardous waste sites.

16 **Sec. 12.** RCW 70.105D.050 and 1989 c 2 s 5 are each amended to read
17 as follows:

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

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

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

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

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

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

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

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

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

17 **Sec. 13.** RCW 70.105D.060 and 1989 c 2 s 6 are each amended to read
18 as follows:

19 The department's investigative and remedial decisions under RCW
20 70.105D.030 and 70.105D.050 and its decisions regarding liable persons
21 under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable
22 exclusively in superior court and only at the following times: (1) In
23 a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the
24 department to enforce an order or an agreed order, or seek a civil
25 penalty under this chapter; (3) in a suit for reimbursement under RCW
26 70.105D.050(2); (4) in a suit by the department to compel investigative
27 or remedial action; and (5) in a citizen's suit under RCW
28 70.105D.050(5). The court shall uphold the department's actions unless
29 they were arbitrary and capricious.

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.105D
31 RCW to read as follows:

32 (1) A person conducting a remedial action at a facility under a
33 consent decree, order, or agreed order, and the department when it
34 conducts a remedial action, are exempt from the procedural requirements
35 of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
36 procedural requirements of any laws requiring or authorizing local
37 government permits or approvals for the remedial action. The

1 department shall ensure compliance with the substantive provisions of
2 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the
3 substantive provisions of any laws requiring or authorizing local
4 government permits or approvals. The department shall establish
5 procedures for ensuring that such remedial actions comply with the
6 substantive requirements adopted pursuant to such laws, and shall
7 consult with the state agencies and local governments charged with
8 implementing these laws. The procedures shall provide an opportunity
9 for comment by the public and by the state agencies and local
10 governments that would otherwise implement the laws referenced in this
11 section. Nothing in this section is intended to prohibit implementing
12 agencies from charging a fee to the person conducting the remedial
13 action to defray the costs of services rendered relating to the
14 substantive requirements for the remedial action.

15 (2) An exemption in this section or in sections 15, 16, 17, 18, 19,
16 and 20 of this act shall not apply if the department determines that
17 the exemption would result in loss of approval from a federal agency
18 necessary for the state to administer any federal law, including the
19 federal resource conservation and recovery act, the federal clean water
20 act, the federal clean air act, and the federal coastal zone management
21 act. Such a determination by the department shall not affect the
22 applicability of the exemptions to other statutes specified in this
23 section.

24 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.94 RCW
25 to read as follows:

26 The procedural requirements of this chapter shall not apply to any
27 person conducting a remedial action at a facility pursuant to a consent
28 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
29 or to the department of ecology when it conducts a remedial action
30 under chapter 70.105D RCW. The department of ecology shall ensure
31 compliance with the substantive requirements of this chapter through
32 the consent decree, order, or agreed order issued pursuant to chapter
33 70.105D RCW, or during the department-conducted remedial action,
34 through the procedures developed by the department pursuant to section
35 14 of this act.

36 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.95 RCW
37 to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. The department of ecology shall ensure
6 compliance with the substantive requirements of this chapter through
7 the consent decree, order, or agreed order issued pursuant to chapter
8 70.105D RCW, or during the department-conducted remedial action,
9 through the procedures developed by the department pursuant to section
10 14 of this act.

11 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.105
12 RCW to read as follows:

13 The procedural requirements of this chapter shall not apply to any
14 person conducting a remedial action at a facility pursuant to a consent
15 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
16 or to the department of ecology when it conducts a remedial action
17 under chapter 70.105D RCW. The department of ecology shall ensure
18 compliance with the substantive requirements of this chapter through
19 the consent decree, order, or agreed order issued pursuant to chapter
20 70.105D RCW, or during the department-conducted remedial action,
21 through the procedures developed by the department pursuant to section
22 14 of this act.

23 NEW SECTION. **Sec. 18.** A new section is added to chapter 75.20 RCW
24 to read as follows:

25 The procedural requirements of this chapter shall not apply to any
26 person conducting a remedial action at a facility pursuant to a consent
27 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
28 or to the department of ecology when it conducts a remedial action
29 under chapter 70.105D RCW. The department of ecology shall ensure
30 compliance with the substantive requirements of this chapter through
31 the consent decree, order, or agreed order issued pursuant to chapter
32 70.105D RCW, or during the department-conducted remedial action,
33 through the procedures developed by the department pursuant to section
34 14 of this act.

35 NEW SECTION. **Sec. 19.** A new section is added to chapter 90.48 RCW
36 to read as follows:

1 The procedural requirements of this chapter shall not apply to any
2 person conducting a remedial action at a facility pursuant to a consent
3 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
4 or to the department of ecology when it conducts a remedial action
5 under chapter 70.105D RCW. The department of ecology shall ensure
6 compliance with the substantive requirements of this chapter through
7 the consent decree, order, or agreed order issued pursuant to chapter
8 70.105D RCW, or during the department-conducted remedial action,
9 through the procedures developed by the department pursuant to section
10 14 of this act.

11 NEW SECTION. **Sec. 20.** A new section is added to chapter 90.58 RCW
12 to read as follows:

13 The procedural requirements of this chapter shall not apply to any
14 person conducting a remedial action at a facility pursuant to a consent
15 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
16 or to the department of ecology when it conducts a remedial action
17 under chapter 70.105D RCW. The department of ecology shall ensure
18 compliance with the substantive requirements of this chapter through
19 the consent decree, order, or agreed order issued pursuant to chapter
20 70.105D RCW, or during the department-conducted remedial action,
21 through the procedures developed by the department pursuant to section
22 14 of this act.

23 NEW SECTION. **Sec. 21.** A new section is added to chapter 43.21C
24 RCW to read as follows:

25 In conducting a remedial action at a facility pursuant to a consent
26 decree, order, or agreed order issued pursuant to chapter 70.105D RCW,
27 or if conducted by the department of ecology, the department of ecology
28 to the maximum extent practicable shall integrate the procedural
29 requirements and documents of this chapter with the procedures and
30 documents under chapter 70.105D RCW. Such integration shall at a
31 minimum include the public participation procedures of chapter 70.105D
32 RCW and the public notice and review requirements of this chapter.

33 **Sec. 22.** RCW 34.12.020 and 1993 c 281 s 16 are each amended to
34 read as follows:

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

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

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

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

8 (4) "State agency" means any state board, commission, department,
9 or officer authorized by law to make rules or to conduct adjudicative
10 proceedings, except those in the legislative or judicial branches, the
11 growth planning hearings boards, the pollution control hearings board,
12 the shorelines hearings board, the forest practices appeals board, the
13 environmental hearings office, the board of industrial insurance
14 appeals, the Washington personnel resources board, the public
15 employment relations commission, the personnel appeals board, and the
16 board of tax appeals.

17 **Sec. 23.** RCW 34.05.514 and 1988 c 288 s 502 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (2) of this section and RCW
20 ((34.05.538)) 36.70A.300(3), proceedings for review under this chapter
21 shall be instituted by filing a petition in the superior court, at the
22 petitioner's option, for (a) Thurston county, (b) the county of the
23 petitioner's residence or principal place of business, or (c) in any
24 county where the property owned by the petitioner and affected by the
25 contested decision is located.

26 (2) For proceedings involving institutions of higher education, the
27 petition shall be filed either in the county in which the principal
28 office of the institution involved is located or in the county of a
29 branch campus if the action involves such branch.

30 **Sec. 24.** RCW 82.02.050 and 1993 sp.s. c 6 s 6 are each amended to
31 read as follows:

32 (1) It is the intent of the legislature:

33 (a) To ensure that adequate facilities are available to serve new
34 growth and development;

35 (b) To promote orderly growth and development by establishing
36 standards by which counties, cities, and towns may require, by
37 ordinance, that new growth and development pay a proportionate share of

1 the cost of new facilities needed to serve new growth and development;
2 and

3 (c) To ensure that impact fees are imposed through established
4 procedures and criteria so that specific developments do not pay
5 arbitrary fees or duplicative fees for the same impact.

6 (2) Counties, cities, and towns that are required or choose to plan
7 under RCW 36.70A.040 are authorized to impose impact fees on
8 development activity as part of the financing for public facilities,
9 provided that the financing for system improvements to serve new
10 development must provide for a balance between impact fees and other
11 sources of public funds and cannot rely solely on impact fees.

12 (3) The impact fees:

13 (a) Shall only be imposed for system improvements that are
14 reasonably related to the new development;

15 (b) Shall not exceed a proportionate share of the costs of system
16 improvements that are reasonably related to the new development; and

17 (c) Shall be used for system improvements that will reasonably
18 benefit the new development.

19 (4) Impact fees may be collected and spent only for the public
20 facilities defined in RCW 82.02.090 which are addressed by a capital
21 facilities plan element of a comprehensive land use plan adopted
22 pursuant to the provisions of RCW 36.70A.070 or the provisions for
23 comprehensive plan adoption contained in chapter 36.70, 35.63, or
24 35A.63 RCW. After the date a county, city, or town is required to
25 adopt its ((~~comprehensive plan and~~)) development regulations under
26 chapter 36.70A RCW, continued authorization to collect and expend
27 impact fees shall be contingent on the county, city, or town adopting
28 or revising a comprehensive plan in compliance with RCW 36.70A.070, and
29 on the capital facilities plan identifying:

30 (a) Deficiencies in public facilities serving existing development
31 and the means by which existing deficiencies will be eliminated within
32 a reasonable period of time;

33 (b) Additional demands placed on existing public facilities by new
34 development; and

35 (c) Additional public facility improvements required to serve new
36 development.

37 If the capital facilities plan of the county, city, or town is
38 complete other than for the inclusion of those elements which are the
39 responsibility of a special district, the county, city, or town may

1 impose impact fees to address those public facility needs for which the
2 county, city, or town is responsible.

3 NEW SECTION. **Sec. 25.** Section 5 of this act shall take effect
4 July 1, 1994.

5 NEW SECTION. **Sec. 26.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

Passed the Senate March 6, 1994.

Passed the House March 3, 1994.

Approved by the Governor April 1, 1994, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 10,
3 Engrossed Substitute Senate Bill No. 6339 entitled:

4 "AN ACT Relating to facilitating growth management planning and
5 decisions, integration with related environmental laws, and
6 improving procedures for clean-up of hazardous waste sites;"

7 This is very valuable legislation introduced as part of the state's
8 efforts at regulatory reform. It increases the authority of Growth
9 Planning Hearings Boards to use hearings examiners and allows the
10 Department of Ecology to enter into agreed orders with potentially
11 liable parties under the Model Toxics Control Act. It allows local
12 governments to continue to impose impact fees to pay for needed public
13 facilities and requires local governments to adopt time limits for
14 development permitting and to notify applicants for permits. The
15 legislation has the effect of making the regulatory process more
16 flexible for businesses while retaining the state's ability to protect
17 the environment and local decision-making. It also pushes local
18 governments to increase the predictability of local permitting while
19 retaining local flexibility over how to meet these requirements.

20 Section 10 of the legislation amends RCW 70.105D.020 of the Model
21 Toxics Control Act which is also amended in section 2 of Engrossed
22 Substitute Senate Bill No. 6123. While both sections include identical
23 definitions of the term "agreed order," the amendment in Engrossed
24 Substitute Senate Bill No. 6123 contains additional new language. To
25 avoid a double amendment of this statute, I am vetoing section 10 of
26 Engrossed Substitute Senate Bill No. 6339.

27 With the exception of section 10, Engrossed Substitute Senate Bill
28 No. 6339 is approved."