

It is essential in our system of government that the Legislature be fully informed of the activities of executive agencies in carrying out legislative delegations of authority. By the same token, the Executive must not be hampered in its administration of the laws by having to seek Legislative approval of policy decisions at every turn. Section 5 of the bill violates this elementary principle of good government by requiring two executive agencies well experienced in the management and disposal of state properties to surrender the culminating phase of administrative decision-making to the Legislature. Accordingly, I have determined to veto Section 5.

Veto
Message

With the exception of that section, the remainder of Engrossed Senate Bill No. 3358 is approved."

CHAPTER 179

[Engrossed Substitute Senate Bill No. 3277]

ENVIRONMENTAL POLICY

ANACT Relating to environmental policy; amending section 2, chapter 179, Laws of 1973 1st ex. sess. and RCW 43.21C.080; adding a new section to chapter 67, Laws of 1970 ex. sess. and to chapter 43.21B RCW; adding new sections to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW; making an appropriation; and declaring an emergency.

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

NEW SECTION. Section 1. The purpose of this 1974 amendatory act is to establish methods and means of providing for full implementation of chapter 43.21C RCW (the state environmental policy act of 1971) in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages public involvement, and promotes certainty with respect to the requirements of the act.

Sec. 2. Section 2, chapter 179, Laws of 1973 1st ex. sess. and RCW 43.21C.080 are each amended to read as follows:

(1) Notice of any action taken by a governmental agency ((which is "a major action significantly affecting the quality of the environment" pertaining to any private project shall be published)) may be publicized by the acting governmental agency, the applicant for, or the proponent of such ((project)) action, in ((a)) substantially the form ((approved)) as set forth in subsection (3) of this section and in the following manner:

(a) By publishing notice on the same day of each week for two consecutive weeks in a legal newspaper of general circulation in the area where the property which is the subject of the action is located ((by the governmental agency, on the same day of each week for two consecutive weeks in a newspaper of general circulation in the

county, city, or general area where the property which is the subject of the action and where such governmental agency has its principal offices.);

(b) By filing notice of such action with the department of ecology at its main office in Olympia; and

(c) Where no detailed statement is filed and where the property which is the subject matter of the action is under ten acres, such action shall be publicized by sending a notice of such action through the United States mail, first class, postage prepaid, to all owners of property abutting the property which is the subject matter of such action, as such property owners appear on the property tax rolls of the county treasurer. An affidavit of mailing of such notice may be filed with the department of ecology at the same time as the filing of the notice of the governmental action.

(2) Any action to set aside, enjoin, review, or otherwise challenge any such governmental action ((of a governmental agency with respect to any private project)) for which notice is given as provided in subsection (1) of this section on grounds of noncompliance with the provisions of this chapter shall be commenced within sixty days from the ((final)) date of ((publication of notice of such action)) filing of the notice with the department of ecology, the date of final newspaper publication, or date of mailing, if applicable, whichever is later, or be barred: PROVIDED, HOWEVER, That (1) The time period within which an action shall be commenced shall be ninety days for projects to be performed by a governmental

V agency or to be performed under government contract by a governmental V agency, or (2) for thermal power plant projects: PROVIDED FURTHER, That any subsequent action of the acting governmental agency for which the regulations of the acting governmental agency permit the same detailed statement to be utilized and as long as there is no substantial change in the project between the time of the action and any such subsequent action, shall not be set aside, enjoined, reviewed, or thereafter challenged on grounds of noncompliance with RCW 43.21C.030 (2) (c).

(3) The form for such notice of action shall be issued by the department of ecology and shall be made available by the governmental agency taking an action subject to being publicized pursuant to this section, by the county auditor, and/or the city clerk to the project applicant or proposer. The form of such notice shall be substantially as follows:

NOTICE OF ACTION BY

(Government agency or entity)

Pursuant to the provisions of chapter 43.21C RCW, notice is hereby given that:

The (Government agency or entity) did on (date), take action which may or may not be held or deemed to be "a major action significantly affecting the quality of the environment".

Any action to set aside, enjoin, review, or otherwise challenge such action on the grounds of noncompliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) shall be commenced within days or be barred.

The action taken by (Government agency or entity), notice of which is hereby given, was as follows:

(1) (Here insert description of action taken such as: Adoption Ordinance No.; Issued Building Permit; Approved preliminary (or final) plat, etc.)

(2) (Here insert description of the project.)

(3) Said action pertained to property commonly known as: (Sufficient description to locate property, but complete legal description not required)

(4) Pertinent documents may be examined during regular business hours at the office of:.....located at:..... (Location, including room number) (Name of government agency, proponent, or applicant giving notice) Filed by (Signature of individual and capacity in which such individual is signing)

NEW SECTION. Sec. 3. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

The limitations on challenges to action taken by a governmental entity under section 2 of this 1974 amendatory act shall not constitute the time limits for a challenge or appeal on the adoption of rules by state agencies, political subdivisions, public or municipal corporations or counties, but the limitations under section 2 of this 1974 amendatory act shall apply to a challenge or appeal of such rule adoption on grounds of noncompliance with RCW 43.21C.030 (2) (c).

NEW SECTION. Sec. 4. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

There is hereby established the council on environmental policy which shall be composed of the members of the pollution control hearings board.

The council shall be abolished and shall cease to exist at midnight, June 30, 1976. The guidelines established by the council prior to midnight, June 30, 1976, shall continue to be valid and of force and effect, except as they are thereafter amended by further guidelines promulgated by the department of ecology, in accord with chapter 34.04 RCW.

Upon the abolishment of the council on June 30, 1976, all powers, duties and functions of the council are transferred to the department of ecology.

NEW SECTION. Sec. 5. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

The council may employ such personnel as are necessary for the performances of its duties.

NEW SECTION. Sec. 6. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

It shall be the duty and function of the council:

(1) To adopt initially and amend thereafter rules of interpretation and implementation of this chapter (the state environmental policy act of 1971), subject to the requirements of chapter 34.04 RCW, for the purpose of providing guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The rule making powers authorized in this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter (the state environmental policy act of 1971):

(a) Categories of governmental actions which normally are to be considered as potential major actions significantly affecting the quality of the environment as well as categories of actions exempt from such classification, including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW.

(b) Criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a

detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Procedures applicable to the preparation of detailed statements, including but not limited to obtaining comments, data and other information, and providing for and determining areas of public participation.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable.

(e) Procedures for public notification of actions taken and documents prepared.

(f) Definition of terms relevant to the implementation of this chapter.

(g) Guidelines for determining the obligations and powers under this chapter of two or more branches of government involved in the same project significantly affecting the quality of the environment.

(h) Methods to assure adequate public awareness of the preparation and issuance of detailed statements required by RCW 43.21C.030 (2) (c).

(i) To prepare guidelines for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter and the conditions under which someone other than such responsible governmental entity may voluntarily assume some or all of the costs of compliance with this chapter by providing information, materials and data relevant to the implementation of this chapter, including preparation of a detailed statement.

(j) Guidelines for utilization of a detailed statement for more than one action.

(k) Guidelines relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

(2) In exercising its powers, functions, and duties under this section, the council may:

(a) Consult with the state agencies and with representatives of science, industry, agriculture, labor, conservation organizations, state and local governments and other groups, as it deems advisable; and

(b) Utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies.

(3) Rules adopted pursuant to this section shall be subject to the review procedures of RCW 34.04.070 and 34.04.080.

V- NEW SECTION. Sec. 7. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

(1) All guidelines, rules and regulations adopted by state agencies pursuant to the requirements of this chapter, except emergency rules adopted pursuant to RCW 34.04.030, shall be submitted by the adopting agency to the standing rules committees of the legislature at least twenty days before such rules are filed with the code reviser pursuant to chapter 34.04 RCW: PROVIDED, That the rules and guidelines adopted by the council under section 6 of this 1974 amendatory act shall be submitted during December, 1974. The standing rules committees shall refer such rules to the appropriate standing committees of the senate and the house of representatives, or to a joint committee designated by the standing rules committees for substantive review and approval.

(2) If the committees of the senate and house of representatives or joint committee to which the rule or regulation was referred pursuant to subsection (1) of this section have failed to approve a rule or regulation submitted to them within thirty days after such submission to the standing rules committees, such rule or regulation shall take effect upon filing with the code reviser, by the attorney representing the agency involved, of an affidavit of nonaction by the appropriate committee of the senate or house stating that no action was taken within the thirty day period specified herein.

(3) If the appropriate committees shall reject the proposed rule as not being within the intent of the statute purporting to authorize the adoption thereof, such rejection shall be by majority vote of all the members of both such committees or of the joint committee. The agency affected shall be notified of such rejection and the reasons therefor, and the effective date of the rules suspended for a maximum of thirty days. If at the end of thirty days the agency affected and the appropriate legislative committees have not reached agreement as to the form or content of the proposed rule, it shall become effective as provided in chapter 34.04 RCW. The appropriate committees shall report to the code reviser any proposal for corrective action by the legislature.

NEW SECTION. Sec. 8. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

(1) All agencies of government of this state are directed, consistent with rules and guidelines adopted under section 6 of this

1974 amendatory act, to adopt rules pertaining to the integration of the policies and procedures of this chapter (the state environmental policy act of 1971), into the various programs under their jurisdiction for implementation. Adoption of the initial rules required under this section shall take place not later than one hundred twenty days after the effective date of rules and guidelines adopted pursuant to section 6 of this 1974 amendatory act.

(2) Rules adopted by state agencies under subsection (1) of this section shall be adopted in accordance with the provisions of chapter 34.04 RCW and shall be subject to the review procedures of RCW 34.04.070 and 34.04.080.

(3) All public and municipal corporations, political subdivisions, and counties of this state are directed, consistent with rules and guidelines adopted under section 6 of this 1974 amendatory act, to adopt rules, ordinances, or resolutions pertaining to the integration of the policies and procedures of this chapter (the state environmental policy act of 1971), into the various programs under their jurisdiction for implementation. Adoption of the initial rules required under this section shall take place not later than one hundred eighty days after the effective date of rules and guidelines adopted pursuant to section 6 of this 1974 amendatory act.

(4) Ordinances or regulations adopted prior to the effective date of rules and guidelines adopted pursuant to section 6 of this 1974 amendatory act shall continue to be effective until the adoptions of any new ordinances or regulations.

NEW SECTION. Sec. 9. There is added to chapter 62, Laws of 1970 ex. sess. and to chapter 43.21B RCW a new section to read as follows:

(1) All challenges in regard to the consistency of the rules adopted pursuant to section 8 of this 1974 amendatory act and with the rules and guidelines adopted pursuant to section 6 of this 1974 amendatory act shall be initiated by filing a petition for review with the pollution control hearings board in accordance with rules of practice and procedures promulgated by the hearings board.

(2) All challenges to the hearings board provided under this section shall be decided on the basis of conformance of rules, with the applicable rules and guidelines adopted pursuant to section 6 of this 1974 amendatory act. The board may in its discretion require briefs, testimony, and oral arguments.

(3) The decisions of the hearings board authorized under this section shall be final.

NEW SECTION. Sec. 10. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

The department of ecology, in consultation with concerned state agencies, shall with the assistance of the associations of county prosecutors and city attorneys, the association of county elected officials, the Washington state association of counties, and the association of cities, draft model ordinances for use by counties, cities and towns in drafting their ordinances under this chapter.

NEW SECTION. Sec. 11. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

Each state agency, political subdivision, municipal and public corporation, and county shall review all actions taken to implement this chapter (the state environmental policy act) and may submit a report of such actions to the office of program planning and fiscal management, which shall compile and analyze such data and prepare a report which shall be submitted to the forty-fifth regular session of the legislature. In addition information on the cost of implementation and administration of the act shall be included in such report including the cost of preparation of all detailed statements since the effective date of this 1974 amendatory act.

NEW SECTION. Sec. 12. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

The requirements of RCW 43,21C.030 (2) (c) pertaining to the preparation of a detailed statement by branches of government shall not apply when an adequate detailed statement is prepared pursuant to the national environmental policy act of 1969, in which event said prepared statement may be utilized in lieu of a separately prepared statement under RCW 43.21C.030 (2) (c): PROVIDED, That this section shall not apply to actions of the thermal power plant site evaluation council or to thermal power plant sites subject to the thermal power plant siting council under chapter 45, Laws of 1970 ex. sess., as amended by chapter 110, Laws of 1974 1st ex. sess., and chapter 80.50 RCW as now or hereafter amended.

NEW SECTION. Sec. 13. There is added to chapter 109, Laws of 1971 ex. sess. and to chapter 43.21C RCW a new section to read as follows:

In the implementation of chapter 90.62 RCW (the Environmental Coordination Procedures Act of 1973), the department of ecology, consistent with guidelines adopted by the council shall adopt rules which insure that one detailed statement prepared under RCW 43.21C.030 may be utilized by all branches of government participating in the processing of a master application. Whenever the procedures established pursuant to chapter 90.62 RCW are used, those

procedures shall be utilized wherever possible to satisfy the procedural requirements of RCW 43.21C.030 (2) (c). The time limits for challenges provided for in section 2(2) of this 1974 amendatory act shall be applicable when such procedures are so utilized.

NEW SECTION. Sec. 14. The department of ecology shall prepare a list of all filings required by section 2 of this 1974 amendatory act each week and shall make such list available to any interested party. The list of filings shall include a brief description of the governmental action and the project involved in such action, along with the location of where information on the project or action may be obtained. Failure of the department to include any project or action shall not affect the running of the statute of limitations provided in section 2 of this 1974 amendatory act.

NEW SECTION. Sec. 15. There is appropriated from the general fund to the council, the sum of one hundred thousand dollars, or so much thereof as shall be necessary to carry out the purposes of this 1974 amendatory act.

NEW SECTION. Sec. 16. If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 17. This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 20, 1974.

Passed the House April 19, 1974.

Approved by the Governor May 5, 1974, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 5, 1974.

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

"I am returning herewith without my approval as to certain items Engrossed Substitute Senate Bill No. 3277 entitled:

"AN ACT Relating to environmental policy."

Veto
Message

Subsection 2 of section 2 sets up time limitations for any challenge to governmental action for which notice has been given pursuant to section 2 (1) of the bill. Such governmental action would presumably include governmental projects constructed either by a governmental agency or by a private contractor. The intent of this subsection is distorted, however, by an item that makes it ambiguous as to whether such projects constructed by a private contractor would be covered by the same time limitation. In order to clarify the legislative intent in this section, I have determined to veto that item.

Section 6 (1) of the bill sets forth the duties and functions of the newly created Council on Environmental Policy. Subpart (i) of that section contains an item which would effectively shift the burden of paying for the cost of an environmental impact statement to the governmental entity having jurisdiction over proposed action, unless a proponent should volunteer to pay a share of the costs. This shift is unwarranted and will impose an undue

burden on the governmental agency, particularly at the local level. Also overlooked is the basic premise that the cost of the environmental impact statement should be borne not by the public but by the party whose proposed action would impact the environment. Accordingly, I have vetoed the referenced item. Veto
Message

Section 7, which provides an elaborate legislative review procedure over guidelines, rules and regulations adopted by state agencies under the State Environmental Policy Act, violates the fundamentals of good government by interposing legislative interference in the administrative process. The legislature will always have the prerogative to set, by legislation, basic policy and such guidelines as may be needed for its implementation. Having done so, however, administrative agencies must be entrusted to carry out its functions without having to seek legislative approval at every turn of the decision-making process. For these reasons, I have determined to veto section 7.

With the foregoing exceptions, I have approved the remainder of Engrossed Substitute Senate Bill No. 3277."

CHAPTER 180

[Engrossed Senate Bill No. 2156]

COMMERCIAL TRANSACTIONS

—WARRANTIES—REMEDIES

AN ACT Relating to commercial transactions; amending section 2-316, chapter 157, Laws of 1965 ex. sess. as amended by section 1, chapter 78, Laws of 1974 1st ex. sess. and RCW 62A.2-316; amending section 2-719, chapter 157, Laws of 1965 ex. sess. as amended by section 2, chapter 78, Laws of 1974 1st ex. sess. and RCW 62A.2-719; and adding a new section to Title 63 RCW.

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

Section 1. Section 2-316, chapter 157, Laws of 1965 ex. sess. as amended by section 1, chapter 78, Laws of 1974 1st ex. sess. and RCW 62A.2-316 are each amended to read as follows:

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states,