

the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 18, 1989.

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Filed in Office of Secretary of State April 27, 1989.

CHAPTER 175

[House Bill No. 1358]

ADMINISTRATIVE PROCEDURE ACT—MODIFICATIONS AND CONFORMING AMENDMENTS

AN ACT Relating to modifications in the Administrative Procedure Act and necessary conforming amendments; amending RCW 34.05.010, 34.05.030, 34.05.080, 34.05.220, 34.05.310, 34.05.315, 34.05.320, 34.05.335, 34.05.340, 34.05.350, 34.05.380, 34.05.413, 34.05.422, 34.05.425, 34.05.428, 34.05.440, 34.05.446, 34.05.449, 34.05.461, 34.05.464, 34.05.470, 34.05.473, 34.05.485, 34.05.488, 34.05.550, 34.05.566, 34.05.570, 34.05.574, 34.05.586, 34.08.040, 34.08.050, 34.12.020, 34.12.060, 34.12.120, 42.17.260, 2.10.200, 7.24.146, 7.68.110, 9.46.095, 9.46.140, 15.13.350, 15.14.080, 15.30.090, 15.32.584, 15.35.240, 15.36.115, 15.36.595, 15.37.080, 15.53.9036, 15.80.590, 16.49.454, 16.58.070, 16.65.445, 16.74.370, 17.10.080, 17.21.050, 18.08.450, 18.20.060, 18.27.104, 18.43.110, 18.46.050, 18.51.065, 18.54.050, 18.85.271, 18.85.343, 18.130.060, 18.130.100, 18.130.110, 18.130.190, 19.85.030, 19.85.040, 19.85.050, 24.34.020, 26.19.020, 26.23.110, 26.23.120, 28B.15.013, 28B.50.864, 28B.50.873, 28B.85.090, 28C.10.120, 35.68.076, 39.19.030, 40.07.020, 41.40.414, 41.40.420, 42.17.020, 42.17.170, 42.17.395, 42.17.397, 42.21.020, 42.30.140, 43.20A.605, 43.20B.340, 43.20B.430, 43.20B.630, 43.20B.740, 43.21B.110, 43.21B.160, 43.21B.180, 43.21B.240, 43.51.040, 43.51.340, 43.60A.070, 43.131.080, 46.10.220, 46.20.331, 48.03.070, 48.17.540, 48.62.050, 49.60.250, 49.60.260, 50.32.040, 50.32.090, 50.32.140, 51.48.131, 51.48.140, 66.08.150, 67.70.060, 68.05.310, 69.30.080, 70.38.115, 70.41.030, 70.41.130, 70.77.370, 70.90.210, 70.96A.090, 70.98.050, 70.98.130, 70.105B.070, 70.119A.040, 70.150.040, 71.12.500, 71A.10.050, 71A.10.060, 71A.10.070, 71A.16.040, 71A.18.040, 71A.20.080, 72.66.044, 74.08.080, 74.09.210, 74.13.036, 74.13.127, 74.15.130, 74.18.120, 74.20A.020, 74.20A.055, 74.20A.060, 74.20A.080, 74.20A.120, 74.20A.270, 74.20A.290, 74.21.100, 74.46.780, 75.20.130, 75.20.140, 76.04.630, 76.09.080, 76.09.220, 76.09.230, 78.44.170, 78.52.463, 78.52.470, 79.72.040, 79.90.105, 79.94.210, 80.50.075, 80.50.090, 80.50.100, 82.03.160, 82.03.180, 82.34.040, 84.26.130, 84.33.200, 90.14.200, 90.48.230, 90.58.120, 90.58.180, and 90.58.190; adding a new section to chapter 34.05 RCW; adding a new section to chapter 7.16 RCW; adding new sections to chapter 43.20A RCW; repealing RCW 18.20.070, 18.46.100, 34.04.115, 34.05.538, 69.30.090, 69.30.100, 70.41.140, 74.08.070, 74.09.536, and 74.12.270; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 5, chapter 10, Laws of 1982 as amended by section 101, chapter 288, Laws of 1988 and RCW 34.05.010 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding((s))" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the ((issuance)) entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change

is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, ~~((the issuance, denial, or suspension of a license,))~~ the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision ~~((of the department of natural resources))~~ in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the ~~((grant)) issuance, denial, ((renewal,)) revocation, suspension, ((annulment, withdrawal,)) or modification of a license.~~

(10) (a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(11) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(12) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(13) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(14) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(15) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or

administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.230, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(16) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(17) "Rule making" means the process for formulation and adoption of a rule.

(18) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company.

Sec. 2. Section 15, chapter 234, Laws of 1959 as last amended by section 103, chapter 288, Laws of 1988 and RCW 34.05.030 are each amended to read as follows:

(1) This chapter shall not apply to:

(a) The state militia, or

(b) The board of clemency and pardons, or

(c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through (~~34.05.594~~) 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the state personnel board, the higher education personnel board, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through ~~((34.05.494))~~ 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act, shall be subject to the entire act.

Sec. 3. Section 108, chapter 288, Laws of 1988 and RCW 34.05.080 are each amended to read as follows:

(1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In ~~((any rule-making or))~~ an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. ~~((In an adjudicative proceeding, such))~~ The notice may be given by the presiding or reviewing officer involved in the proceeding. ~~((In a rule-making proceeding, the notice may be given in the notice of proposed rule-making.))~~

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor.

Sec. 4. Section 2, chapter 234, Laws of 1959 as last amended by section 202, chapter 288, Laws of 1988 and RCW 34.05.220 are each amended to read as follows:

(1) In addition to other rule-making requirements imposed by law:

(a) Each agency ~~((staff))~~ may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. ~~((Rules for the conduct of adjudicative proceedings shall be those which are))~~ If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

Sec. 5. Section 301, chapter 288, Laws of 1988 and RCW 34.05.310 are each amended to read as follows:

(1) In addition to seeking information by other methods, an agency (~~(may)~~), before publication of a notice of a proposed rule adoption under RCW 34.05.320, is encouraged to solicit comments from the public on a subject of possible rule making under active consideration within the agency, by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.

(2) Each agency may appoint committees to comment, before publication of a notice of proposed rule adoption under RCW 34.05.320, on the subject of a possible rule-making action under active consideration within the agency.

(3) Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible or proposed rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency.

Sec. 6. Section 302, chapter 288, Laws of 1988 and RCW 34.05.315 are each amended to read as follows:

(1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain (~~(a listing of the subject of each rule currently being prepared by the agency for proposal under RCW 34.05.320; the name and address of agency personnel responsible for the proposal; and an indication of the present status of the proposal)~~) the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until (~~(it is terminated)~~) the proposed rule is withdrawn under RCW 34.05.335(~~(3)~~) or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(~~(b)~~) (b) The subject of the proposed rule;

(~~(c)~~) (c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(~~(d)~~) (d) The place where written submissions about the proposed rule may be inspected;

(~~(e)~~) (e) The time during which written submissions will be accepted;

~~((e))~~ (f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, ~~((indexing;))~~ publication, and its effective date.

Sec. 7. Section 1, chapter 84, Laws of 1977 ex. sess. as last amended by section 303, chapter 288, Laws of 1988 and RCW 34.05.320 are each amended to read as follows:

(1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A summary of the rule and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make; and

(k) A copy of the small business economic impact statement, if applicable.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the ~~((statement))~~ notice on file and available for public inspection and shall forward three copies of the notice ~~((and the statement))~~ to the rules review committee.

(3) No later than three days after its publication in the state register, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person who has made a ~~((timely))~~ request to the agency for

a mailed copy of such notices. An agency may charge for the actual cost of providing individual mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing.

Sec. 8. Section 11, chapter 186, Laws of 1980 as amended by section 306, chapter 288, Laws of 1988 and RCW 34.05.335 are each amended to read as follows:

(1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with RCW 34.05.320.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted and filed with the code reviser within one hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the ~~((text of the rules))~~ proposed rule without ~~((filing the text))~~ refiling it in accordance with RCW 34.05.320. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register.

Sec. 9. Section 307, chapter 288, Laws of 1988 and RCW 34.05.340 are each amended to read as follows:

(1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may ~~((reject))~~ withdraw the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and RCW 34.05.330, the agency shall initiate rule-making proceedings upon the proposed amendments within the time provided in RCW 34.05.330.

Sec. 10. Section 3, chapter 234, Laws of 1959 as last amended by section 309, chapter 288, Laws of 1988 and RCW 34.05.350 are each amended to read as follows:

(1) If an agency for good cause finds:

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

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not

be adopted in sequence unless conditions have changed or the agency has ((published)) filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

Sec. 11. Section 4, chapter 234, Laws of 1959 as last amended by section 315, chapter 288, Laws of 1988 and RCW 34.05.380 are each amended to read as follows:

(1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent register of filed rules open to public inspection. In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the ((rule)) order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it.

Sec. 12. Section 402, chapter 288, Laws of 1988 and RCW 34.05.413 are each amended to read as follows:

(1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding. An agency may require by rule that an application ((for an adjudicative proceeding)) be in writing and that it be filed at a specific address ((and)), in a specified manner, and within specified time limits. The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

Sec. 13, Section 8, chapter 237, Laws of 1967 as last amended by section 405, chapter 288, Laws of 1988 and RCW 34.05.422 are each amended to read as follows:

(1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify((~~annul, withdraw, or amend~~)) a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Sec. 14. Section 406, chapter 288, Laws of 1988 and RCW 34.05.425 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

~~((7))~~ (8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual.

Sec. 15. Section 407, chapter 288, Laws of 1988 and RCW 34.05.428 are each amended to read as follows:

(1) A party to an ~~((adjudicatory))~~ adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

Sec. 16. Section 411, chapter 288, Laws of 1988 and RCW 34.05.440 are each amended to read as follows:

(1) ~~((An agency may provide forms for and, by rule, may provide procedures for and impose time limits upon, submission of requests for hearing.))~~ Failure of a party to ~~((request a hearing))~~ file an application for an adjudicative proceeding within the time limit or limits established by ((the)) statute or agency rule constitutes a ((waiver)) default and results in the loss of that party's right to ((hearing)) an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any. ((There shall be a minimum of twenty days from notice of an opportunity to request a hearing before a party is deemed to have waived his or her right to a hearing under this subsection.))

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

Sec. 17. Section 10, chapter 237, Laws of 1967 as amended by section 413, chapter 288, Laws of 1988 and RCW 34.05.446 are each amended to read as follows:

(1) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.

(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.

(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In

exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) ~~((Subpoenas issued and))~~ Discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) Subpoenas issued under this section may be enforced under section 30(1) of this act.

(6) The subpoena powers created by this section shall be state-wide in effect.

~~((6))~~ (7) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

Sec. 18. Section 414, chapter 288, Laws of 1988 and RCW 34.05.449 are each amended to read as follows:

(1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order (~~issued~~) entered by the presiding officer pursuant to applicable rules (~~adopted by the chief administrative law judge~~). A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

Sec. 19. Section 418, chapter 288, Laws of 1988 and RCW 34.05.461 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8) Initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(9) The presiding officer shall cause copies of (~~initial and final orders to be delivered to~~) the order to be served on each party and (~~to~~) the agency (~~head~~).

Sec. 20. Section 419, chapter 288, Laws of 1988 and RCW 34.05.464 are each amended to read as follows:

(1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files (~~exceptions to~~) a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As (~~provided~~) authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party.

Sec. 21. Section 421, chapter 288, Laws of 1988 and RCW 34.05.470 are each amended to read as follows:

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting

the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing. ~~((The petition shall be deemed to have been denied if not disposed of within twenty days.~~

~~(3) No petition for reconsideration may stay the effectiveness of an order.~~

~~(4) The agency head may extend the time limits in this section for good cause, with due consideration that the rights of the parties will not be prejudiced by the extension and that extension will be in the public interest.))~~

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or ~~((an extension of time limits pursuant to))~~ a notice provided for in subsection ((4)) (3)(b) of this section is not subject to judicial review.

Sec. 22. Section 422, chapter 288, Laws of 1988 and RCW 34.05.473 are each amended to read as follows:

(1) Unless a later date is stated in an order or a stay is granted, an order is effective when ~~((signed))~~ entered, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with RCW 34.05.461 is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with RCW 34.05.479.

Sec. 23. Section 426, chapter 288, Laws of 1988 and RCW 34.05.485 are each amended to read as follows:

(1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

(a) The agency head;

(b) One or more members of the agency head;

(c) One or more administrative law judges; or

(d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall ~~((give))~~ serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is ~~((a proposed))~~ an initial order. If no review is taken of the ~~((proposed))~~ initial order as authorized by RCW 34.05.488 and 34.05.491, the ~~((proposed))~~ initial order shall be the final order.

Sec. 24. Section 427, chapter 288, Laws of 1988 and RCW 34.05.488 are each amended to read as follows:

Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after ~~((furnishing))~~ service of the written statement required by RCW 34.05.485(3).

Sec. 25. Section 511, chapter 288, Laws of 1988 and RCW 34.05.550 are each amended to read as follows:

(1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy ~~((during the pendency of judicial review))~~.

(2) After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health, safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms.

Sec. 26. Section 515, chapter 288, Laws of 1988 and RCW 34.05.566 are each amended to read as follows:

(1) Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies ~~((for))~~ of the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(b) ~~((As provided by RCW 34.05.570; or~~

~~ce))~~ In accordance with any ~~((other))~~ provision of law.

(6) Additions to the record pursuant to RCW 34.05.562 must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record.

Sec. 27. Section 13, chapter 234, Laws of 1959 as last amended by section 516, chapter 288, Laws of 1988 and RCW 34.05.570 are each amended to read as follows:

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to ~~((RCW 34.05.538))~~ this subsection or ((by review of other agency action)) in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. ~~((The agency shall be made a party to the proceeding.))~~ The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(c) In a ~~((declaratory judgment))~~ proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that it violates constitutional provisions ~~((or))~~ exceeds the statutory authority of the agency ((or)), was adopted without compliance with statutory rule-making procedures, or could not conceivably have been the product of a rational decision-maker.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order ~~((, other than a rule,))~~ is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) ~~((The persons entering the order were subject to disqualification))~~ A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

Sec. 28. Section 517, chapter 288, Laws of 1988 and RCW 34.05.574 are each amended to read as follows:

(1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, (~~affirm or~~) set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action.

Sec. 29. Section 520, chapter 288, Laws of 1988 and RCW 34.05.586 are each amended to read as follows:

(1) ~~((In a proceeding for civil enforcement))~~ Except as expressly provided in this section, a respondent may ((only)) not assert as a defense in a proceeding for civil enforcement any fact or issue that the respondent had an opportunity to assert before the agency or a reviewing court and did not, or upon which the final determination of the agency or a reviewing court was adverse to the respondent. A respondent may assert as a defense only the following:

(a) That the rule or order is invalid under RCW 34.05.570(3) (a) ((or), (b), (c), (d), (g), or (h))~~((The court may only consider issues and receive evidence within the limitations provided by RCW 34.05.554, 34.05.558, and 34.05.562)), but only when the respondent did not know and was under no duty to discover, or could not reasonably have discovered, facts giving rise to this issue;~~

(b) That the ~~((rule or order does not apply to the party or that the party has not violated the rule or order, and))~~ interest of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action after the respondent has exhausted the last foreseeable opportunity for seeking relief from the agency or from a reviewing court;

(c) That the order does not apply to the respondent or that the respondent has not violated the order; or

(d) A defense specifically authorized by statute to be raised in a civil enforcement proceeding.

(2) The limitations of subsection (1) of this section do not apply to the extent that:

(a) The agency action sought to be enforced is a rule and the respondent has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue; or

(b) The agency action sought to be enforced is an order and the respondent was not notified actually or constructively of the related adjudicative proceeding in substantial compliance with this chapter.

(3) The court, to the extent necessary for the determination of the matter, may ~~((consider new issues or))~~ take new evidence.

NEW SECTION. Sec. 30. A new section is added to chapter 34.05 RCW to read as follows:

(1) If a person fails to obey an agency subpoena issued in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the agency or attorney issuing the subpoena may petition the superior court of any county where the hearing is being conducted, where the subpoenaed person resides or is found, or where subpoenaed documents are located, for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

(2) Agencies with statutory authority to issue investigative subpoenas may petition for enforcement of such subpoenas in accordance with subsection (1) of this section. The agency may petition the superior court of any county where the subpoenaed person resides or is found, or where subpoenaed documents are located. If it appears to the court that the subpoena was properly issued, that the investigation is being conducted for a lawfully authorized purpose, and that the testimony or documents required to be produced are adequately specified and relevant to the investigation, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and failing to obey this order the person shall be dealt with as for contempt of court.

(3) Petitions for enforcement of agency subpoenas are not subject to RCW 34.05.578 through 34.05.590.

Sec. 31. Section 5, chapter 240, Laws of 1977 ex. sess. and RCW 34-.08.040 are each amended to read as follows:

The publication of any information in the Washington State Register shall be deemed to be official notice of such information, and publication in the register of such information and materials shall be certified to be the true and correct copy of such rules or other information as filed in the code reviser's office. The code reviser shall certify, to any court of record, the publication of any notice or information, and attached to such certification shall be the agency's declaration of compliance with the provisions of the

Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter ~~((34.04))~~ 34.05 RCW) ~~((or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate)), and this chapter.~~

Sec. 32. Section 6, chapter 240, Laws of 1977 ex. sess. and RCW 34.08.050 are each amended to read as follows:

For the purposes of the state register and this chapter, an institution of higher education, as defined in RCW ~~((28B.19.020(+))~~ 34.05.010, shall be considered to be a state agency.

Sec. 33. Section 2, chapter 67, Laws of 1981 as amended by section 1, chapter 189, Laws of 1982 and RCW 34.12.020 are each amended to read as follows:

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

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

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

(3) "Hearing" means ~~((a "contested case"))~~ an adjudicative proceeding within the meaning of RCW ~~((34.04.010(3))~~ 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.

(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to ~~((adjudicate contested cases))~~ conduct adjudicative proceedings, except those in the legislative or judicial branches, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the state personnel board, the higher education personnel board, the public employment relations commission, the personnel appeals board, and the board of tax appeals.

Sec. 34. Section 6, chapter 67, Laws of 1981 as last amended by section 7, chapter 141, Laws of 1984 and RCW 34.12.060 are each amended to read as follows:

When an administrative law judge presides at a hearing under this chapter and a majority of the officials of the agency who are to render the final decision have not heard substantially all of the oral testimony and read all exhibits submitted by any party, it shall be the duty of such judge, or in the event of his unavailability or incapacity, of another judge appointed by the chief administrative law judge, to issue an initial decision or proposal for decision including findings of fact and conclusions of law in accordance with RCW ~~((34.04.110))~~ 34.05.461 or 34.05.485. However, this section does not apply to a state patrol disciplinary hearing conducted under RCW 43.43.090.

Sec. 35. Section 12, chapter 67, Laws of 1981 and RCW 34.12.120 are each amended to read as follows:

~~((1))~~ The governor shall appoint ~~((a))~~ the chief administrative law judge ~~((to take office no later than the thirtieth day after April 25, 1981. In the interim period between appointment and July 1, 1982, the chief administrative law judge shall specifically plan and administer as efficiently as possible the initial implementation of this chapter and of RCW 34.04.020 and 34.04.022 as now or hereafter amended, and shall develop and submit a plan and budget for financing the office after July 1, 1982.~~

~~(2) During this interim period, the chief administrative law judge may hire support staff and purchase facilities and equipment necessary to the task).~~

Sec. 36. Section 26, chapter 1, Laws of 1973 as last amended by section 3, chapter 403, Laws of 1987 and RCW 42.17.260 are each amended to read as follows:

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (5) of this section, RCW 42.17.310, 42.17.315, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.17.310 and 42.17.315, an agency shall delete identifying details in a manner consistent with RCW 42.17.310 and 42.17.315 when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is

asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(3) ~~((Am))~~ A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(4) By July 1, 1990, each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(5) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

~~((5))~~ (6) This chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act.

Sec. 37. Section 20, chapter 267, Laws of 1971 ex. sess. and RCW 2.10.200 are each amended to read as follows:

A hearing shall be held by ~~((members of the retirement board))~~ the department of retirement systems, or ~~((its duty))~~ an authorized representative~~((s))~~, in the county of the residence of the claimant at a time and place designated by the ~~((retirement board))~~ director. Such hearings shall be de novo and shall conform to the provisions of chapter ~~((34.04))~~ 34.05 RCW~~((, as now or hereafter amended)).~~ The retirement ~~((board shall be entitled to))~~ system may appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the ~~((retirement board shall be))~~ director is governed by the provisions of chapter ~~((34.04 RCW as now law or hereafter amended))~~ 34.05 RCW.

NEW SECTION. Sec. 38. A new section is added to chapter 7.16 RCW to read as follows:

This chapter does not apply to state agency action reviewable under chapter 34.05 RCW.

Sec. 39. Section 2, chapter 14, Laws of 1937 and RCW 7.24.146 are each amended to read as follows:

This chapter shall apply to all actions and proceedings now pending in the courts of record of the state of Washington seeking relief under the terms of the uniform declaratory judgments act [this chapter]; and all judgments heretofore rendered; and all such actions and proceedings heretofore instituted and now pending in said courts of record of the state of Washington, seeking such relief, are hereby validated, and the respective courts of record in said actions shall have jurisdiction and power to proceed in said actions and to declare the rights, status and other legal relations sought to have been declared in said pending actions and proceedings in accordance with the provisions of said chapter. This chapter does not apply to state agency action reviewable under chapter 34.05 RCW.

Sec. 40. Section 11, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 7, chapter 302, Laws of 1977 ex. sess. and RCW 7.68-.110 are each amended to read as follows:

The provisions contained in chapter 51.52 RCW (~~as now or hereafter amended~~) relating to appeals shall govern appeals under this chapter: PROVIDED, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal, or other action shall apply to this chapter: PROVIDED FURTHER, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW (~~34.04.130 and 34.04.140 as now or hereafter amended~~) 34.05.510 through 34.05.598, and the department shall have the same right of review from a decision of the board of industrial insurance appeals as does the claimant.

Sec. 41. Section 17, chapter 139, Laws of 1981 and RCW 9.46.095 are each amended to read as follows:

No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: PROVIDED, That an appeal from (~~a contested case of~~) an adjudicative proceeding involving a final decision of the commission to deny, suspend, or revoke a license shall be governed by chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act.

Neither the commission nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done, or omitted to be done, by the commission or any member of the commission, or any employee of the commission, in the performance of his or her duties and in the administration of this title.

Sec. 42. Section 14, chapter 218, Laws of 1973 1st ex. sess. as last amended by section 16, chapter 67, Laws of 1981 and RCW 9.46.140 are each amended to read as follows:

(1) The commission or its authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the commission's or administrative law judge's motion or

upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, who may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in RCW (~~34.04.090 (6) and (8), 34.04.100, and 34.04.105~~) 34.05.446, 34.05.449, and 34.05.452.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter (~~34.04~~) 34.05 RCW.

Sec. 43. Section 11, chapter 33, Laws of 1971 ex. sess. and RCW 15.13.350 are each amended to read as follows:

The director may, whenever he determines that an applicant or licensee has violated any provisions of this chapter, and complying with the notice and hearing requirement and all other provisions of chapter (~~34.04 RCW, as enacted or hereafter amended, concerning contested cases~~) 34.05 RCW concerning adjudicative proceedings, deny, suspend, or revoke any license issued or which may be issued under the provisions of this chapter.

Sec. 44. Section 8, chapter 83, Laws of 1961 and RCW 15.14.080 are each amended to read as follows:

The director may, subsequent to obtaining real property in a remote area for the purpose of establishing a Washington state crop improvement nursery, establish a planting stock area for the purpose of maintaining genetic qualities of planting stock and their freedom from plant pests. Such a planting stock area may be established only in areas where no commercial production of the planting stock to be planted in such Washington state crop improvement nursery is planted. No planting stock area shall be established until the director has published in a newspaper of general circulation, his intent to establish such planting stock area in the county or counties where it is to be located, once each week for three successive weeks, and that a public hearing will be held, within ten days subsequent to the last publication of such notice, for the purpose of determining the feasibility of establishing such a planting stock area. Such hearings shall be

subject in addition to the foregoing requirements, to the provisions of chapter (~~34.04 RCW as enacted or hereafter amended concerning contested cases~~) 34.05 RCW concerning adjudicative proceedings. The director may in addition to the notice by publication use any other media to inform the public of his intent to establish a planting stock area.

Sec. 45. Section 9, chapter 29, Laws of 1961 and RCW 15.30.090 are each amended to read as follows:

All hearings for a denial, suspension, or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter (~~34.04 RCW, concerning contested cases, as enacted or hereafter amended~~) 34.05 RCW concerning adjudicative proceedings.

Sec. 46. Section 15.32.584, chapter 11, Laws of 1961 as amended by section 8, chapter 58, Laws of 1963 and RCW 15.32.584 are each amended to read as follows:

The initial application for a dairy technician's license shall be accompanied by the payment of a license fee of ten dollars. Where such license is renewed and it is not necessary that an examination be given the fee for renewal of the license shall be five dollars. All dairy technicians' licenses shall be renewed on or before January 1, 1964 and every two years thereafter. The director is authorized to deny, suspend, or revoke any dairy technician's license subject to a hearing if the licensee has failed to comply with the provisions of this chapter, or has exhibited in the discharge of his functions any gross carelessness or lack of qualification, or has failed to comply with the rules and regulations adopted under authority of this chapter. All hearings for the suspension, denial, or revocation of such license shall be subject to the provisions of chapter (~~34.04 RCW as enacted or hereafter amended; concerning contested cases~~) 34.05 RCW concerning adjudicative proceedings.

Sec. 47. Section 24, chapter 230, Laws of 1971 ex. sess. as amended by section 1, chapter 164, Laws of 1987 and RCW 15.35.240 are each amended to read as follows:

The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter (~~34.04 RCW; concerning contested cases, as enacted or hereafter amended~~) 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 24.32 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued.

Sec. 48. Section 1, chapter 226, Laws of 1984 and RCW 15.36.115 are each amended to read as follows:

(1) If the results of an antibiotic or pesticide residue test are above the actionable level as determined by procedures set forth in the current edition of "Standard Methods for the Examination of Dairy Products," a producer holding a grade A permit is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the permit on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a (~~contested case~~) hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters (~~34.04~~) 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter (~~34.04~~) 34.05 RCW. Tests performed for antibiotic or pesticide residues by a state or certified industry laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic or pesticide residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic or pesticide residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Additional samples shall be taken as soon as possible and tested as soon as feasible for antibiotic or pesticide residue by the department or a certified laboratory. After the notice has been received by the producer and the results of a test of such an additional sample indicate that residues are above the actionable level or levels referred to in subsection (1) of this section, the producer's milk may not be sold until a sample is shown to be below the actionable levels established for the residues.

Sec. 49. Section 19, chapter 203, Laws of 1986 and RCW 15.36.595 are each amended to read as follows:

(1) The director of agriculture shall adopt rules imposing a civil penalty for violations of the standards for component parts of fluid dairy products which are established by RCW 15.36.030 or adopted pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand dollars and shall be such as is necessary to achieve proper enforcement of the standards. The rules shall be adopted before January 1, 1987, and shall become effective on July 1, 1987.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a ~~((contested case))~~ hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters ~~((34.04))~~ 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter ~~((34.04))~~ 34.05 RCW. Tests performed for the component parts of milk products by a state laboratory of a milk sample collected by a department official shall be admitted as prima facie evidence of the amounts of milk components in the product.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department.

(4) All penalties received or recovered from violations of this section shall be remitted by the violator to the department and deposited in the revolving fund of the Washington state dairy products commission. One-half of the funds received shall be used for purposes of education with the remainder one-half to be used for dairy processing ~~((and/or))~~ or marketing research, or both. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department.

Sec. 50. Section 8, chapter 285, Laws of 1961 and RCW 15.37.080 are each amended to read as follows:

All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provisions of chapter ~~((34.04 RCW, concerning contested cases, as enacted or hereafter amended))~~ 34.05 RCW concerning adjudicative proceedings.

Sec. 51. Section 15, chapter 31, Laws of 1965 ex. sess. as amended by section 6, chapter 257, Laws of 1975 1st ex. sess. and RCW 15.53.9036 are each amended to read as follows:

All hearings for a denial, suspension, or revocation of any registration provided for in this chapter shall be subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW (the Administrative Procedure Act) concerning ~~((contested cases, as enacted or hereafter amended))~~ adjudicative proceedings.

Sec. 52. Section 30, chapter 100, Laws of 1969 ex. sess. and RCW 15.80.590 are each amended to read as follows:

The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter ~~((34.04))~~ 34.05 RCW (Administrative Procedure Act) ~~((as enacted or hereafter amended, concerning contested cases))~~ concerning adjudicative proceedings.

Sec. 53. Section 2, chapter 91, Laws of 1961 as amended by section 2, chapter 77, Laws of 1987 and RCW 16.49.454 are each amended to read as follows:

No person shall operate a custom slaughtering establishment without first establishing the need for such an establishment. In addition to the requirements under RCW 16.49.440, applications to operate custom slaughtering establishments shall contain the following:

- (1) The location of the facility to be used.
- (2) The day or days of intended operation.
- (3) The distance to the closest official establishment.
- (4) Whether the facility already exists or is to be constructed.
- (5) Any other matters that the director may require.

Upon receipt of such application the director shall provide for a hearing to be held in the area where the applicant intends to operate a custom slaughtering establishment. Such hearing shall be subject to the provisions of chapter ~~((34.04 RCW as enacted or hereafter amended concerning contested cases))~~ 34.05 RCW concerning adjudicative proceedings. Upon the director's determination that such a custom slaughtering establishment is necessary in the area applied for and that the applicant has satisfied all other requirements of this chapter relating to custom slaughtering establishments including minimum facility requirements as prescribed by the director, the director shall issue a limited license to such applicant to operate such an establishment. When and if an official establishment is located and operated in the area, the director may deny renewal of the limited license subject to a hearing.

Sec. 54. Section 7, chapter 181, Laws of 1971 ex. sess. and RCW 16.58.070 are each amended to read as follows:

The director is authorized to deny, suspend, or revoke a license in accord with the provisions of chapter ~~((34.04))~~ 34.05 RCW if he finds that there has been a failure to comply with any requirement of this chapter or rules and regulations adopted hereunder. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter ~~((34.04 RCW concerning contested cases))~~ 34.05 RCW concerning adjudicative proceedings.

Sec. 55. Section 7, chapter 182, Laws of 1961 and RCW 16.65.445 are each amended to read as follows:

The director shall hold public hearings upon a proposal to promulgate any new or amended regulations and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other ~~((contested case))~~ adjudicative proceeding, and shall comply in all respects with chapter ~~((34.04))~~ 34.05 RCW, ~~((f))~~ the Administrative Procedure Act ~~((as now enacted or hereafter amended))~~.

Sec. 56. Section 36, chapter 146, Laws of 1969 ex. sess. and RCW 16.74.370 are each amended to read as follows:

If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the director, such person may request a hearing ~~((as provided for contested cases))~~ under chapter ~~((34.04 RCW, as now or hereafter amended))~~ 34.05 RCW, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business or to the superior court for Thurston county.

Sec. 57. Section 8, chapter 113, Laws of 1969 ex. sess. as last amended by section 8, chapter 438, Laws of 1987 and RCW 17.10.080 are each amended to read as follows:

(1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) At the hearing any person may request the inclusion of any plant to the lists to be adopted by the state noxious weed control board. Any hearing held pursuant to this section shall conform to the Administrative Procedure

Act, chapter ((34.04)) 34.05 RCW: PROVIDED, That adding a weed to or deleting a weed from the list shall constitute a substantial change as provided for in RCW ((34.04.025(2))) 34.05.340.

The state noxious weed control board shall send a copy of the lists to each activated county noxious weed control board, to each regional noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board. The record of hearing shall include the written findings of the board for the inclusion of each plant on the list. Such findings shall be made available upon request to any interested person.

Sec. 58. Section 5, chapter 249, Laws of 1961 as amended by section 4, chapter 158, Laws of 1985 and RCW 17.21.050 are each amended to read as follows:

All hearings for the imposition of a civil penalty and/or the suspension, denial, or revocation of a license issued under the provisions of this chapter shall be subject to the provisions of chapter ~~((34.04 RCW as enacted or hereafter amended, concerning contested cases))~~ 34.05 RCW concerning adjudicative proceedings.

Sec. 59. Section 16, chapter 37, Laws of 1985 and RCW 18.08.450 are each amended to read as follows:

(1) The board may revoke or suspend a certificate of registration or a certificate of authorization to practice architecture in this state, or otherwise discipline a registrant or person authorized to practice architecture, as provided in this chapter.

(2) Proceedings for the revocation, suspension, refusal to issue, or imposition of a monetary fine may be initiated by the board on its own motion based on the complaint of any person. A copy of the charge or charges, along with a notice of the time and place of the hearing before the board shall be served on the registrant as provided for in chapter ~~((34.04))~~ 34.05 RCW.

(3) All procedures related to hearings on such charges shall be in accordance with ~~((rules for a contested case in chapter 34.04))~~ provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

(4) If, after such hearing, the majority of the board vote in favor of finding the registrant guilty, the board shall take such disciplinary action as it deems appropriate under this chapter.

(5) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

Sec. 60. Section 6, chapter 253, Laws of 1957 as amended by section 5, chapter 213, Laws of 1985 and RCW 18.20.060 are each amended to read as follows:

The department or the department and authorized department jointly, as the case may be, ~~((after notice and opportunity for hearing to the applicant or license holder, is authorized to))~~ may deny, suspend, or revoke a license in any case in which it finds there has been a failure or refusal to comply with the requirements established under this chapter or the ~~((regulations promulgated pursuant thereto:~~

~~Notice of denial, suspension, or revocation shall be given by registered mail, or by personal service in the manner of service of summons in a civil action, which notice shall set forth the particular reasons for the proposed denial, suspension or revocation and shall fix a date not less than twenty days from the date of mailing or service, during which the applicant or licensee may in writing request a hearing on the denial, suspension, or revocation. If the applicant or licensee fails to request a hearing within that time, the department or the department and authorized department jointly may deny, suspend or revoke the license without further notice or action. The order of denial, suspension or revocation shall be mailed to the applicant or license holder by registered mail or personally served on him in the manner of service of summons in a civil action.~~

~~If the applicant or licensee requests a hearing within such time the department shall fix a time for the hearing and shall give the applicant or licensee or such person's attorney, written notice thereof.~~

~~The procedure governing hearings shall be in accordance with rules promulgated by the department and such hearing shall be informal and summary, except that a record shall be kept of the testimony taken on behalf of the applicant or licensee and the department, which need not be transcribed unless an appeal is taken therefrom. The department shall render its decision within a reasonable time after the hearing and issue its order, which shall be served on the applicant or licensee or such person's attorney, and the order shall become final unless an appeal is taken therefrom))~~ rules adopted under it. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 61. Section 5, chapter 362, Laws of 1987 and RCW 18.27.104 are each amended to read as follows:

(1) If, upon investigation, the director or the director's designee has probable cause to believe that a person holding a registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor who is not otherwise exempted from this chapter, has violated RCW 18.27.100 by unlawfully advertising for work covered by this chapter in an alphabetical or classified directory, the department may issue a citation ~~((under chapter 34.04 RCW))~~ containing an order of correction. Such order shall require the violator to cease the unlawful advertising.

(2) If the person to whom a citation is issued under subsection (1) of this section notifies the department in writing that he or she contests the citation, the department shall afford an opportunity for ~~((a hearing,))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, within thirty days after receiving the notification.

Sec. 62. Section 14, chapter 283, Laws of 1947 as last amended by section 3, chapter 102, Laws of 1986 and RCW 18.43.110 are each amended to read as follows:

The board shall have the exclusive power to fine and reprimand the registrant and suspend or revoke the certificate of registration of any registrant who is found guilty of:

The practice of any fraud or deceit in obtaining a certificate of registration; or

Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All procedures related to hearings on such charges shall be in accordance with ~~((rules for a contested case, chapter 34.04))~~ provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

If, after such hearing, a majority of the board vote in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper.

Fines imposed by the board shall not exceed one thousand dollars for each offense.

In addition to the imposition of civil penalties under this section, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120.

Sec. 63. Section 6, chapter 168, Laws of 1951 as amended by section 9, chapter 213, Laws of 1985 and RCW 18.46.050 are each amended to read as follows:

The department (~~((after notice and opportunity for hearing to the applicant or licensee is authorized to))~~) may deny, suspend, or revoke a license in any case in which it finds that there has been failure or refusal to comply with the requirements established under this chapter or the rules adopted under it.

~~((Notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty days from the date of mailing or service at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of such hearing or upon default of the applicant or licensee, the department shall make a determination specifying its findings and conclusions. A copy of the determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending, or denying the license or application shall become final thirty days after it is mailed or served, unless the applicant or licensee, within such thirty day period, appeals the decision.~~

~~The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party:))~~ Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 64. Section 16, chapter 99, Laws of 1975 1st ex. sess. as amended by section 19, chapter 2, Laws of 1981 1st ex. sess. and RCW 18.51.065 are each amended to read as follows:

~~((All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.04 RCW:))~~ Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. Section 96 of this act governs notice of a civil fine and provides the right to an adjudicative proceeding.

Sec. 65. Section 5, chapter 25, Laws of 1963 as last amended by section 48, chapter 158, Laws of 1979 and RCW 18.54.050 are each amended to read as follows:

The board must meet at least once yearly or more frequently upon call of the chairman or the director of licensing at such times and places as the chairman or the director of licensing may designate by giving three days' notice or as otherwise required by ~~((the administrative procedure act, chapter 34.04 RCW as now or hereafter amended))~~ RCW 42.30.075.

Sec. 66. Section 25, chapter 222, Laws of 1951 as last amended by section 8, chapter 205, Laws of 1988 and RCW 18.85.271 are each amended to read as follows:

If the director shall decide, after such hearing, that the evidence supports the accusation by a preponderance of evidence, the director may impose sanctions authorized under RCW 18.85.040. In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the address of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in ~~((a contested case))~~ an adjudicative proceeding, whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW. Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision.

Sec. 67. Section 2, chapter 261, Laws of 1977 ex. sess. and RCW 18.85.343 are each amended to read as follows:

(1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether or not the order will become permanent.

At the time the temporary cease and desist order is served, the licensee shall be notified that he is entitled to request a hearing for the sole purpose of determining whether or not the public interest imperatively requires that the temporary cease and desist order be continued or modified pending the outcome of the hearing to determine whether or not the order will become

permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the licensee requests a later hearing. A licensee may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as ((~~a contested case~~)) an adjudicative proceeding.

Sec. 68. Section 6, chapter 279, Laws of 1984 as amended by section 3, chapter 150, Laws of 1987 and RCW 18.130.060 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050, the director has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with respect to matters and cases delegated to the committee by the board. Final decisions may be appealed as provided in chapter ((34.04)) 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency ((~~hearing or contested case~~)) adjudicative proceeding as authorized by RCW ((34.04.105(4))) 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority.

Sec. 69. Section 10, chapter 279, Laws of 1984 and RCW 18.130.100 are each amended to read as follows:

The procedures governing ((~~contested cases~~)) adjudicative proceedings before agencies under chapter ((34.04)) 34.05 RCW, the Administrative Procedure Act, govern all hearings before the disciplining authority. The

disciplining authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter (~~(34.04)~~) 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions.

Sec. 70. Section 11, chapter 279, Laws of 1984 and RCW 18.130.110 are each amended to read as follows:

(1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW (~~(34.04.120)~~), the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter 42.17 RCW.

Sec. 71. Section 19, chapter 279, Laws of 1984 as last amended by section 7, chapter 150, Laws of 1987 and RCW 18.130.190 are each amended to read as follows:

(1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the director shall have the same authority as provided the director under RCW 18.130.050. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed

practice and may be enforced by civil contempt. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the director, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account.

Sec. 72. Section 3, chapter 6, Laws of 1982 and RCW 19.85.030 are each amended to read as follows:

In the adoption of any rule pursuant to RCW (~~34.04.025~~ which) 34.05.320 that will have an economic impact on more than twenty percent of all industries, or more than ten percent of any one industry, the adopting agency:

(1) Shall reduce the economic impact of the rule on small business by doing one or more of the following when it is legal and feasible in meeting the stated objective of the statutes which are the basis of the proposed rule:

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

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

(c) Establish performance rather than design standards;

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

(2) Shall prepare a small business economic impact statement in accordance with RCW 19.85.040 and file such statement with the code reviser along with the notice required under RCW (~~34.04.025~~) 34.05.320;

(3) May request from the (~~office of small~~) business assistance center available statistics which the agency can use in the preparation of the small business economic impact statement.

Sec. 73. Section 4, chapter 6, Laws of 1982 and RCW : 9.85.040 are each amended to read as follows:

A small business economic impact statement shall analyze the costs of compliance for businesses required to comply with the provisions of a rule

adopted pursuant to RCW (~~(34.04.025)~~) 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs, and compare to the greatest extent possible the cost of compliance for small business with the cost of compliance for the ten percent of firms which are the largest businesses required to comply with the proposed new or amendatory rules. The small business economic impact statement shall use one or more of the following as a basis for comparing costs:

- (1) Cost per employee;
- (2) Cost per hour of labor;
- (3) Cost per one hundred dollars of sales;
- (4) Any combination of (1), (2), or (3).

Sec. 74. Section 5, chapter 6, Laws of 1982 and RCW 19.85.050 are each amended to read as follows:

(1) Within one year after June 10, 1982, each agency shall publish and deliver to the office of financial management and to all persons who make requests of the agency for a copy of a plan to periodically review all rules then in effect and which have been issued by the agency which have an economic impact on more than twenty percent of all industries or ten percent of the businesses in any one industry. Such plan may be amended by the agency at any time by publishing a revision to the review plan and delivering such revised plan to the office of financial management and to all persons who make requests of the agency for the plan. The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic impact on small businesses as described by this chapter. The plan shall provide for the review of all such agency rules in effect on June 10, 1982, within ten years of that date.

(2) In reviewing rules to minimize any significant economic impact of the rule on small businesses as described by this chapter, and in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and, to the extent feasible, with local governmental rules; and
- (e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) Each year each agency shall publish a list of rules which are to be reviewed pursuant to this section during the next twelve months and deliver a copy of the list to the office of financial management and all persons who

make requests of the agency for the list. The list shall include a brief description of the legal basis for each rule as described by RCW ((~~34.04.026(1)(a) or 34.04.026(1)(b)~~) 34.05.360, and shall invite public comment upon the rule.

Sec. 75. Section 2, chapter 187, Laws of 1967 and RCW 24.34.020 are each amended to read as follows:

If the attorney general (~~(shall have)~~) has reason to believe that any such association as provided for in RCW 24.34.010 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

Such hearing, and any appeal which may be made from such hearing, shall be conducted and held subject to and in conformance with the provisions for (~~(contested cases)~~) adjudicative proceedings and judicial review in chapter (~~(34.04)~~) 34.05 RCW, (~~(f)~~) the Administrative Procedure Act(~~(; as now enacted or hereafter amended)~~).

Sec. 76. Section 3, chapter 275, Laws of 1988 and RCW 26.19.020 are each amended to read as follows:

(1) (a) Except as provided in (b) of this subsection, in any proceeding under this title or Title 13 or 74 RCW in which child support is at issue, support shall be determined and ordered according to the child support schedule adopted pursuant to RCW 26.19.040.

(b) If approved by a majority vote of the superior court judges of a county, the superior court may adopt by local court rule an economic table that shall be used by the superior court of that county, instead of the economic table adopted by the commission, to determine the appropriate amount of child support. The economic table adopted by the superior court shall not vary by more than twenty-five percent from the economic table adopted by the commission and shall not vary the economic table for combined monthly net income of two thousand five hundred dollars or less.

(2) An order for child support shall be supported by written findings of fact upon which the support determination is based.

(3) All income and resources of each parent's household shall be disclosed and shall be considered by the court or (~~(administrative law judge)~~) the presiding or reviewing officer when the child support obligation of each parent is determined.

(4) Worksheets in the form approved by the commission shall be completed and filed in every proceeding in which child support is determined. Variations of the worksheets shall not be accepted.

(5) Unless specific reasons for deviation are set forth in the written findings of fact or order and are supported by the evidence, the court or ~~((administrative law judge))~~ the presiding or reviewing officer shall order each parent to pay the amount of child support determined using the standard calculation.

(6) The court or ~~((administrative law judge))~~ the presiding or reviewing officer shall review the worksheets and the order for adequacy of the reasons set forth for any deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Reasons that may support a deviation from the standard calculation include: Possession of wealth, shared living arrangements, extraordinary debts that have not been voluntarily incurred, extraordinarily high income of a child, a significant disparity of the living costs of the parents due to conditions beyond their control, and special needs of disabled children. A deviation may be supported by tax planning considerations only if the child would not receive a lesser economic benefit. Agreement of the parties, by itself, is not adequate reason for deviation.

Sec. 77. Section 11, chapter 435, Laws of 1987 and RCW 26.23.110 are each amended to read as follows:

The department shall establish, by regulation, a process that may be utilized when a support order does not state the obligation to pay current and future support as a fixed dollar amount, or if there is a dispute about the amount of the support debt owed under a support order. This process is authorized in order to facilitate enforcement of the support order, and is intended to implement and effectuate the terms of the order rather than to modify those terms.

The process shall provide for a notice to be served on the responsible parent by personal service or any form of mailing requiring a return receipt. The notice shall contain an initial finding of the amount of current and future support that should be paid and/or the amount of the support debt owed under the support order. ~~((A copy of the notice of hearing shall be mailed to the person to whom support is payable under the support order.))~~

The notice shall direct the responsible parent to appear and show cause ~~((at a hearing held by the department))~~ in an adjudicative proceeding governed by chapter 34.05 RCW, the Administrative Procedure Act, why the amount of current and future support to be paid and/or the amount of the support debt is incorrect and should not be ordered. The notice shall provide that the responsible parent has twenty days from the date of the service of the notice to ~~((request an administrative hearing))~~ file an application for an adjudicative proceeding or initiate an action in superior court. If the responsible parent does not ~~((request a hearing))~~ file an application for an adjudicative proceeding or initiate an action in superior court, the amount

of current and future support and/or the amount of the support debt stated in the notice shall be subject to collection action.

If the responsible parent does not initiate such an action in superior court, and serve notice of the action on the department within the twenty-day period, the responsible parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in chapter 34.05 RCW ((34.04.130)).

The ~~((administrative hearing))~~ adjudicative proceeding shall be ~~((a contested hearing under chapter 34.04 RCW and shall be conducted in accordance with the rules and regulations))~~ held pursuant to this section, chapter 34.05 RCW, and rules adopted by the department ((and the office of administrative hearings)). A copy of the notice of hearing shall be mailed to the person to whom support is payable under the support order.

An ~~((administrative))~~ adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the amounts established in the order were based. The amount of current and future support and/or the amount of the support debt determined under this section shall be subject to collection under this chapter and other applicable state statutes.

The regulation shall also provide for an annual review of the support order if either the office of support enforcement or the responsible parent requests such a review.

Sec. 78. Section 12, chapter 435, Laws of 1987 and RCW 26.23.120 are each amended to read as follows:

(1) Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by the Washington state support registry, the office of support enforcement, or under chapter 74.20 RCW shall be private and confidential and shall only be subject to public disclosure as provided in this section.

(2) The secretary of the department of social and health services shall adopt rules which specify the individuals or agencies to whom this information and these records may be disclosed, the purposes for which the information may be disclosed, and the procedures to obtain the information or records. The rules adopted under this section shall provide for disclosure of the information and records, under appropriate circumstances, which shall include, but not be limited to:

(a) When authorized or required by federal statute or regulation governing the support enforcement program;

(b) To the person the subject of the records or information, unless the information is exempt from disclosure under RCW 42.17.310;

(c) To government agencies, whether state, local, or federal, and including law enforcement agencies, prosecuting agencies, and the executive

branch, if the records or information are needed for child support enforcement purposes;

(d) To the parties in a judicial or (~~formal administrative~~) adjudicative proceeding upon a specific written finding by the presiding officer that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to a court order for support for purposes relating to the enforcement or modification of the order;

(g) Disclosure of information or records when necessary to the efficient administration of the support enforcement program or to the performance of functions and responsibilities of the support registry and the office of support enforcement as set forth in state and federal statutes; or

(h) Disclosure of the information or records when authorized under RCW 74.04.060.

(3) Prior to disclosing address information to a party to a child custody order, a notice shall be mailed, if appropriate under the circumstances, to the last known address of the party whose address has been requested. The notice shall advise the party that a request for disclosure has been made and will be complied with unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child.

(4) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(5). Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

(5) It shall be unlawful for any person or agency in violation of this section to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists of names for commercial or political purposes or the use of any information for purposes other than those purposes specified in this section. A violation of this section shall be a gross misdemeanor as provided in chapter 9A.20 RCW.

Sec. 79. Section 3, chapter 273, Laws of 1971 ex. sess. as last amended by section 63, chapter 370, Laws of 1985 and RCW 28B.15.013 are each amended to read as follows:

(1) The establishment of a new domicile in the state of Washington by a person formerly domiciled in another state has occurred if such person is physically present in Washington primarily for purposes other than educational and can show satisfactory proof that such person is without a present

intention to return to such other state or to acquire a domicile at some other place outside of Washington.

(2) Unless proven to the contrary it shall be presumed that:

(a) The domicile of any person shall be determined according to the individual's situation and circumstances rather than by marital status or sex.

(b) A person does not lose a domicile in the state of Washington by reason of residency in any state or country while a member of the civil or military service of this state or of the United States, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas if that person returns to the state of Washington within one year of discharge from said service with the intent to be domiciled in the state of Washington; any resident dependent student who remains in this state when such student's parents, having theretofore been domiciled in this state for a period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution, remove from this state, shall be entitled to continued classification as a resident student so long as such student's attendance (except summer sessions) at an institution in this state is continuous.

(3) To aid the institution in deciding whether a student, parent, legally appointed guardian or the person having legal custody of a student is domiciled in the state of Washington primarily for purposes other than educational, the rules and regulations adopted by the higher education coordinating board shall include but not be limited to the following:

(a) Registration or payment of Washington taxes or fees on a motor vehicle, mobile home, travel trailer, boat, or any other item of personal property owned or used by the person for which state registration or the payment of a state tax or fee is required will be a factor in considering evidence of the establishment of a Washington domicile.

(b) Permanent full time employment in Washington by a person will be a factor in considering the establishment of a Washington domicile.

(c) Registration to vote for state officials in Washington will be a factor in considering the establishment of a Washington domicile.

(4) After a student has registered at an institution such student's classification shall remain unchanged in the absence of satisfactory evidence to the contrary. A student wishing to apply for a change in classification shall reduce such evidence to writing and file it with the institution. In any case involving an application for a change from nonresident to resident status, the burden of proof shall rest with the applicant. Any change in classification, either nonresident to resident, or the reverse, shall be based upon written evidence maintained in the files of the institution and, if approved, shall take effect the semester or quarter such evidence was filed with the institution: PROVIDED, That applications for a change in classification shall be accepted up to the thirtieth calendar day following the first day of

instruction of the quarter or semester for which application is made. (~~Any determination of classification shall be considered a ruling on a contested case subject to court review only under procedures prescribed by chapter 28B.19 RCW.~~)

Sec. 80. Section 42, chapter 283, Laws of 1969 ex. sess. as amended by section 24, chapter 62, Laws of 1973 and RCW 28B.50.864 are each amended to read as follows:

Any faculty member dismissed pursuant to RCW 28B.50.850 through 28B.50.869 shall have a right to appeal the final decision of the appointing authority in accordance with RCW (~~28B.19.150 as now or hereafter amended~~) 34.05.510 through 34.05.598.

Sec. 81. Section 1, chapter 13, Laws of 1981 2nd ex. sess. and RCW 28B.50.873 are each amended to read as follows:

The state board for community college education may declare a financial emergency under the following conditions: (1) Reduction of allotments by the governor pursuant to RCW 43.88.110(2), or (2) reduction by the legislature from one biennium to the next or within a biennium of appropriated funds based on constant dollars using the implicit price deflator. When a district board of trustees determines that a reduction in force of tenured or probationary faculty members may be necessary due to financial emergency as declared by the state board, written notice of the reduction in force and separation from employment shall be given the faculty members so affected by the president or district president as the case may be. Said notice shall clearly indicate that separation is not due to the job performance of the employee and hence is without prejudice to such employee and need only state in addition the basis for the reduction in force as one or more of the reasons enumerated in subsections (1) and (2) of this section.

Said tenured or probationary faculty members will have a right to request a formal hearing when being dismissed pursuant to subsections (1) and (2) of this section. The only issue to be determined shall be whether under the applicable policies, rules or collective bargaining agreement the particular faculty member or members advised of severance are the proper ones to be terminated. Said hearing shall be initiated by filing a written request therefor with the president or district president, as the case may be, within ten days after issuance of such notice. At such formal hearing the tenure review committee provided for in RCW 28B.50.863 may observe the formal hearing procedure and after the conclusion of such hearing offer its recommended decision for consideration by the hearing officer. Failure to timely request such a hearing shall cause separation from service of such faculty members so notified on the effective date as stated in the notice, regardless of the duration of any individual employment contract.

~~((Said))~~ The hearing required by this section shall be ((a formal hearing)) an adjudicative proceeding pursuant to chapter 34.05 RCW, ((28B.19.120)) the Administrative Procedure Act, conducted by a hearing officer

appointed by the board of trustees and shall be concluded by the hearing officer within sixty days after written notice of the reduction in force has been issued. Ten days written notice of the formal hearing will be given to faculty members who have requested such a hearing by the president or district president as the case may be. The hearing officer within ten days after conclusion of such formal hearing shall prepare findings, conclusions of law and a recommended decision which shall be forwarded to the board of trustees for its final action thereon. Any such determination by the hearing officer under this section shall not be subject to further tenure review committee action as otherwise provided in this chapter.

Notwithstanding any other provision of this section, at the time of a faculty member or members request for formal hearing said faculty member or members may ask for participation in the choosing of the hearing officer in the manner provided in RCW 28A.58.455(4), said employee therein being a faculty member for the purposes hereof and said board of directors therein being the board of trustees for the purposes hereof: PROVIDED, That where there is more than one faculty member affected by the board of trustees' reduction in force such faculty members requesting hearing must act collectively in making such request: PROVIDED FURTHER, That costs incurred for the services and expenses of such hearing officer shall be shared equally by the community college and the faculty member or faculty members requesting hearing.

When more than one faculty member is notified of termination because of a reduction in force as provided in this section, hearings for all such faculty members requesting formal hearing shall be consolidated and only one such hearing for the affected faculty members shall be held, and such consolidated hearing shall be concluded within the time frame set forth herein.

Separation from service without prejudice after formal hearing under the provisions of this section shall become effective upon final action by the board of trustees.

It is the intent of the legislature by enactment of this section and in accordance with RCW 28B.52.035, to modify any collective bargaining agreements in effect, or any conflicting board policies or rules, so that any reductions in force which take place after December 21, 1981, whether in progress or to be initiated, will comply solely with the provisions of this section: PROVIDED, That any applicable policies, rules, or provisions contained in a collective bargaining agreement related to lay-off units, seniority and re-employment rights shall not be affected by the provisions of this paragraph.

Nothing in this section shall be construed to affect the right of the board of trustees or its designated appointing authority not to renew a probationary faculty appointment pursuant to RCW 28B.50.857.

Sec. 82. Section 9, chapter 136, Laws of 1986 and RCW 28B.85.090 are each amended to read as follows:

(1) A person claiming loss of tuition or fees as a result of an unfair business practice may file a complaint with the board. The complaint shall set forth the alleged violation and shall contain information required by the board. A complaint may also be filed with the board by an authorized staff member of the board or by the attorney general.

(2) The board shall investigate any complaint under this section and may attempt to bring about a settlement. The board may hold a (~~contested case~~) hearing pursuant to the Administrative Procedure Act, chapter (~~34-04~~) 34.05 RCW, in order to determine whether a violation has occurred. If the board prevails, the degree-granting institution shall pay the costs of the administrative hearing.

(3) If, after the hearing, the board finds that the institution or its agent engaged in or is engaging in any unfair business practice, the board shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties under RCW 28B.85.100. If the board finds that the complainant has suffered loss as a result of the act or practice, the board may order full or partial restitution for the loss. The complainant is not bound by the board's determination of restitution and may pursue any other legal remedy.

Sec. 83. Section 12, chapter 299, Laws of 1986 and RCW 28C.10.120 are each amended to read as follows:

(1) A person claiming loss of tuition or fees as a result of an unfair business practice may file a complaint with the agency. The complaint shall set forth the alleged violation and shall contain information required by the agency. A complaint may also be filed with the agency by an authorized staff member of the agency or by the attorney general.

(2) The agency shall investigate any complaint under this section and may attempt to bring about a settlement. The agency may hold a (~~contested case~~) hearing pursuant to the Administrative Procedure Act, chapter (~~34.04~~) 34.05 RCW, in order to determine whether a violation has occurred. If the agency prevails, the private vocational school shall pay the costs of the administrative hearing.

(3) If, after the hearing, the agency finds that the private vocational school or its agent engaged in or is engaging in any unfair business practice, the agency shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties under RCW 28C.10.130. If the agency finds that the complainant has suffered loss as a result of the act or practice, the agency may order full or partial restitution for the loss. The complainant is not bound by the agency's determination of restitution and may pursue any other legal remedy.

Sec. 84. Section 2, chapter 137, Laws of 1977 ex. sess. and RCW 35-.68.076 are each amended to read as follows:

~~((By January 1, 1978;)) The department of general administration shall, pursuant to chapter ~~((34.04)) 34.05~~ RCW, the Administrative Procedure Act, adopt several suggested model design, construction, or location standards to aid counties, cities, and towns in constructing curb ramps to allow reasonable access to the crosswalk for physically handicapped persons without uniquely endangering blind persons. The department of general administration shall consult with handicapped persons, blind persons, counties, cities, and the state building code ~~((advisory))~~ council in adopting the suggested standards. ~~((In addition, the department of general administration shall, within thirty days of September 21, 1977 and pursuant to RCW 34:04.030, adopt a suggested design or construction standard for curb ramps which may be used by counties, cities, or towns to comply with RCW 35:68.075 in the interval between September 21, 1977 and the adoption of further suggested model standards:))~~~~

Sec. 85. Section 3, chapter 120, Laws of 1983 as amended by section 3, chapter 328, Laws of 1987 and RCW 39.19.030 are each amended to read as follows:

There is hereby created the office of minority and women's business enterprises. The governor shall appoint a director for the office, subject to confirmation by the senate. The director may employ a deputy director and a confidential secretary, both of which shall be exempt under chapter 41.06 RCW, and such staff as are necessary to carry out the purposes of this chapter.

The office shall consult with the minority and women's business enterprises advisory committee to:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector;

(2) Develop a comprehensive plan insuring that qualified minority and women-owned and controlled businesses are provided an opportunity to participate in public contracts for public works and goods and services;

(3) Identify barriers to equal participation by qualified minority and women-owned and controlled businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned and controlled businesses for each state agency and educational institution to be administered on a contract-by-contract basis or on a class-of-contracts basis;

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. No business is entitled to certification under this chapter unless it meets the

definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

(6) Develop, implement, and operate a system of monitoring compliance with this chapter;

(7) Adopt rules under chapter ~~((34.04 or 28B.19 RCW, as appropriate;))~~ 34.05 RCW, the Administrative Procedure Act, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632, and its implementing regulations as guidance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; and (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050;

(8) Submit an annual report to the governor and the legislature outlining the progress in implementing this chapter;

(9) Investigate complaints of violations of this chapter with the assistance of the involved agency or educational institution; and

(10) Cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective minority, socially and economically disadvantaged and women business enterprise programs to carry out the purposes of this chapter. However, the power which may be exercised by the office under this subsection permits investigation and imposition of sanctions only if the investigation relates to a possible violation of chapter 39.19 RCW, and not to violation of local ordinances, rules, regulations, however denominated, adopted by political subdivisions of the state.

Sec. 86. Section 2, chapter 232, Laws of 1977 ex. sess. as amended by section 50, chapter 151, Laws of 1979 and RCW 40.07.020 are each amended to read as follows:

The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Director" means the director of financial management.

(2) "State agency" includes every state office, department, division, bureau, board, commission, committee, higher education institution, community college, and agency of the state and all subordinate subdivisions of such agencies in the executive branch financed in whole or in part from funds held in the state treasury, but does not include the offices of executive officials elected on a state-wide basis, agricultural commodity commissions, the legislature, the judiciary, or agencies of the legislative or judicial branches of state government.

(3) (a) "State publication" means publications of state agencies and shall include any annual and biennial reports, any special report required by

law, state agency newsletters, periodicals and magazines, and other printed informational material intended for general dissemination to the public or to the legislature.

(b) "State publication" may include such other state agency printed informational material as the director may prescribe by rule or regulation, in the interest of economy and efficiency, after consultation with the governor, the state librarian, and any state agencies affected.

(c) "State publication" does not include:

(i) Business forms, preliminary draft reports, working papers, or copies of testimony and related exhibit material prepared solely for purposes of a presentation to a committee of the state legislature;

(ii) Typewritten correspondence and interoffice memoranda, and staff memoranda and similar material prepared exclusively as testimony or exhibits in any proceeding in the courts of this state, the United States, or before any administrative entity;

(iii) Any notices of intention to adopt rules under RCW ~~((34.04.025(1)(a) as now existing or hereafter amended))~~ 34.05.320;

(iv) Publications relating to a multistate program financed by more than one state or by federal funds or private subscriptions; or

(v) News releases sent exclusively to the news media.

(4) "Print" includes all forms of reproducing multiple copies with the exception of typewritten correspondence and interoffice memoranda.

Sec. 87. Section 23, chapter 200, Laws of 1953 as amended by section 15, chapter 128, Laws of 1969 and RCW 41.40.414 are each amended to read as follows:

Following its receipt of a notice for hearing in accordance with RCW 41.40.412, a hearing shall be held by ~~((members of the retirement board, or its))~~ the director or a duly authorized representative(s), in the county of the residence of the claimant at a time and place designated by the ~~((retirement board))~~ director. Such hearing shall be conducted and governed in all respects by the provisions of chapter ~~((34.04))~~ 34.05 RCW ~~((which relates to agency hearings in contested cases))~~.

Sec. 88. Section 14, chapter 50, Laws of 1951 as last amended by section 16, chapter 128, Laws of 1969 and RCW 41.40.420 are each amended to read as follows:

Judicial review of any final decision and order by the ~~((retirement board shall be))~~ director is governed by the provisions of chapter ~~((34.04 RCW as now or hereafter amended))~~ 34.05 RCW.

Sec. 89. Section 2, chapter 1, Laws of 1973 as last amended by section 5, chapter 34, Laws of 1984 and RCW 42.17.020 are each amended to read as follows:

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board,

commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Ballot proposition" means any "measure" as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(3) "Campaign depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(4) "Campaign treasurer" and "deputy campaign treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(5) "Candidate" means any individual who seeks election to public office. An individual shall be deemed to seek election when he first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(b) Announces publicly or files for office.

(6) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(7) "Commission" means the agency established under RCW 42.17.350.

(8) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(9) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(10) "Contribution" includes a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services for less than full consideration, but does not include interest on moneys deposited in a political committee's

account, ordinary home hospitality and the rendering of "part-time" personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of twenty-five dollars personally paid for by the worker. "Part-time" services, for the purposes of this chapter, means services in addition to regular full-time employment, or, in the case of an un-employed person, services not in excess of twenty hours per week, excluding weekends. For the purposes of this chapter, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fund-raising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this chapter, by the actual cost of consumables furnished in connection with the purchase of the tickets, and only the excess over the actual cost of the consumables shall be deemed a contribution.

(11) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(12) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(13) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(14) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported, or payment of service charges against a political committee's campaign account.

(15) "Final report" means the report described as a final report in RCW 42.17.080(2).

(16) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household.

(17) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(18) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure ((acts, chapter 34.04 RCW and chapter 28B.19)) Act, chapter 34.05 RCW.

(19) "Lobbyist" includes any person who lobbies either in his own or another's behalf.

(20) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he is compensated for acting as a lobbyist.

(21) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(22) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(23) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.

(24) "Political committee" means any person (except a candidate or an individual dealing with his own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(25) "Public office" means any federal, state, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(26) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(27) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(28) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires.

Sec. 90. Section 17, chapter 1, Laws of 1973 as last amended by section 1, chapter 423, Laws of 1987 and RCW 42.17.170 are each amended to read as follows:

(1) Any lobbyist registered under RCW 42.17.150 and any person who lobbies shall file with the commission periodic reports of his activities signed by the lobbyist. The reports shall be made in the form and manner prescribed by the commission. They shall be due monthly and shall be filed within fifteen days after the last day of the calendar month covered by the report.

(2) Each such monthly periodic report shall contain:

(a) The totals of all expenditures for lobbying activities made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer during the period covered by the report. As used in this section, "lobbying activities" includes, but is not limited to, the development of legislation or rules, the development of support for or opposition to legislation or rules, and attempts to influence the development of legislation or rules. Such totals for lobbying activities shall be segregated according to financial category, including compensation; food and refreshments; living accommodations; advertising; travel; contributions; and other expenses or services. Each individual expenditure of more than twenty-five dollars for entertainment shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such entertainment including any portion thereof attributable to the lobbyist's participation therein but without allocating any portion of such expenditure to individual participants.

Notwithstanding the foregoing, lobbyists are not required to report the following:

(i) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(ii) Any expenses incurred for his or her own living accommodations;

(iii) Any expenses incurred for his or her own travel to and from hearings of the legislature;

(iv) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

(b) In the case of a lobbyist employed by more than one employer, the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(c) An itemized listing of each such expenditure in the nature of a contribution of money or of tangible or intangible personal property to any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition, or for or on behalf of any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition. All contributions made to, or for the benefit of, any candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition shall be identified by date, amount, and the name of the candidate, elected official, or officer or employee of any agency, or any political committee supporting or opposing any ballot proposition receiving, or to be benefited by each such contribution.

(d) The subject matter of proposed legislation or other legislative activity or rule-making under chapter ~~((34.04 RCW and chapter 28B.19))~~ 34.05 RCW, ~~((f))~~the state Administrative Procedure Act, ~~((acts))~~ Act, and the state agency considering the same, which the lobbyist has been engaged in supporting or opposing during the reporting period.

(e) Such other information relevant to lobbying activities as the commission shall by rule prescribe. Information supporting such activities as are required to be reported is subject to audit by the commission.

Sec. 91. Section 12, chapter 112, Laws of 1975-'76 2nd ex. sess. as last amended by section 12, chapter 367, Laws of 1985 and RCW 42.17.395 are each amended to read as follows:

(1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such determination.

(2) The commission, in cases where it chooses to determine whether an actual violation of this chapter has occurred, shall hold a ~~((contested case))~~ hearing pursuant to the Administrative Procedure Act, ~~((f))~~chapter ~~((34.04))~~ 34.05 RCW, ~~((f))~~, to make such determination. Any order that the commission issues under this section shall be pursuant to such hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17.360.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17.390(1) (b), (c), (d), or (e): PROVIDED, That no individual penalty assessed by the commission may exceed one thousand dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed two thousand five hundred dollars.

(5) An order issued by the commission under this section shall be subject to judicial review under the Administrative Procedure Act, ~~((f))~~chapter ~~((34.04))~~ 34.05 RCW~~((7))~~. If the commission's order is not satisfied and no petition for review is filed within thirty days as provided in RCW ~~((34.04-130))~~ 34.05.542, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17.397~~((as now or hereafter amended))~~.

Sec. 92. Section 13, chapter 112, Laws of 1975-'76 2nd ex. sess. as amended by section 17, chapter 147, Laws of 1982 and RCW 42.17.397 are each amended to read as follows:

The following procedure shall apply in all cases where the commission has petitioned a court of competent jurisdiction for enforcement of any order it has issued pursuant to this chapter:

(1) A copy of the petition shall be served by certified mail directed to the respondent at his last known address. The court shall issue an order directing the respondent to appear at a time designated in the order, not less than five days from the date thereof, and show cause why the commission's order should not be enforced according to its terms.

(2) The commission's order shall be enforced by the court if the respondent does not appear, or if the respondent appears and the court finds, pursuant to a hearing held for that purpose:

(a) That the commission's order is unsatisfied; and

(b) That the order is regular on its face; and

(c) That the respondent's answer discloses no valid reason why the commission's order should not be enforced or that the respondent had an appropriate remedy by review under RCW ~~((34.04-130))~~ 34.05.570(3) and failed to avail himself of that remedy without valid excuse.

(3) Upon appropriate application by the respondent, the court may, after hearing and for good cause, alter, amend, revise, suspend, or postpone all or part of the commission's order. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) The court's order of enforcement, when entered, shall have the same force and effect as a civil judgment.

(5) Notwithstanding RCW 34.05.578 through 34.05.590, this section is the exclusive method for enforcing an order of the commission.

Sec. 93. Section 2, chapter 150, Laws of 1965 ex. sess. as amended by section 106, chapter 81, Laws of 1971 and RCW 42.21.020 are each amended to read as follows:

"Public official" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state and includes judges of the superior court, the court of appeals, and justices of the supreme court, members of the legislature together with the secretary and sergeant at arms of the senate and the clerk and sergeant at arms of the house of representatives, elective and appointive state officials, and such employees of the supreme court, of the legislature, and of the state offices as are engaged in supervisory, policy making, or policy enforcing work.

"Candidate" means any individual who declares himself to be a candidate for an elective office and who if elected thereto would meet the definition of public official herein set forth.

"Regulatory agency" means any state board, commission, department, or officer authorized by law to make rules or to ~~((adjudicate contested cases))~~ conduct adjudicative proceedings except those in the legislative or judicial branches.

Sec. 94. Section 14, chapter 250, Laws of 1971 ex. sess. as amended by section 4, chapter 66, Laws of 1973 and RCW 42.30.140 are each amended to read as follows:

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

(2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or

(3) Matters governed by ~~((Title 34))~~ chapter 34.05 RCW, the Administrative Procedure Act ~~((, except as expressly provided in RCW 34.04-025))~~; or

(4) That portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by such governing

body during the course of any collective bargaining, professional negotiations, grievance or mediation proceedings, or reviewing the proposals made in such negotiations or proceedings while in progress.

NEW SECTION. Sec. 95. A new section is added to chapter 43.20A RCW to read as follows:

This section governs the denial of an application for a license or the suspension, revocation, or modification of a license by the department.

(1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other manner that shows proof of receipt.

(2) Except as otherwise provided in this subsection and in subsection (4) of this section, revocation, suspension, or modification is effective twenty-eight days after the licensee or the agent receives the notice.

(a) The department may make the date the action is effective later than twenty-eight days after receipt. If the department does so, it shall state the effective date in the written notice given the licensee or agent.

(b) The department may make the date the action is effective sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the effective date and the reasons supporting the effective date in the written notice given to the licensee or agent.

(3) A license applicant or licensee who is aggrieved by a department denial, revocation, suspension, or modification has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

(4)(a) If the department gives a licensee twenty-eight or more days notice of revocation, suspension, or modification and the licensee files an appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than twenty-eight days notice of revocation, suspension, or modification and the licensee timely files a sufficient appeal, the department may implement the adverse action on the

effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause.

NEW SECTION. Sec. 96. A new section is added to chapter 43.20A RCW to read as follows:

This section governs the assessment of a civil fine against a person by the department.

(1) The department shall written give notice to the person against whom it assesses a civil fine. The notice shall state the reasons for the adverse action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in an other manner that shows proof of receipt.

(2) Except as otherwise provided in subsection (4) of this section, the civil fine is due and payable twenty-eight days after receipt. The department may make the date the fine is due later than twenty-eight days after receipt. When the department does so, it shall state the effective date in the written notice given the person against whom it assesses the fine.

(3) The person against whom the department assesses a civil fine has the right to an adjudicative proceeding. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the fine, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the person's receiving the notice of civil fine, and be served in a manner which shows proof of receipt.

(4) If the person files a timely and sufficient appeal, the department shall not implement the action until the final order has been served. The presiding or reviewing officer may permit the department to implement part or all of the action while the proceedings are pending if the appellant causes an unreasonable delay in the proceedings or for other good cause.

Sec. 97. Section 2, chapter 102, Laws of 1967 ex. sess. as last amended by section 21, chapter 41, Laws of 1983 1st ex. sess. and RCW 43.20A.605 are each amended to read as follows:

(1) The secretary shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in ~~((agency hearings and contested cases shall be))~~ adjudicative proceedings are governed by ~~((the provisions of RCW 34-04-105))~~ section 30(1) of this act.

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by ~~((the following:~~

~~(a) The secretary shall not compel the production of any papers, books, records, or documents which are in the custody of another public official or agency and within the public official's or agency's power to provide voluntarily on request.~~

~~(b) If an individual fails to obey the subpoena or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation, the secretary may petition the superior court of the county where the examination or investigation is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the agency. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and at that time and place show cause why the witness has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers. On failing to obey the order, the witness shall be dealt with as for contempt of court.~~

~~(c) Subpoenas issued under this subsection shall be served in the manner prescribed for service of a summons in a civil action or by certified mail; return receipt requested. The return receipt is prima facie evidence of service)) section 30(2) of this act.~~

Sec. 98. Section 6, chapter 127, Laws of 1967 ex. sess. as last amended by section 15, chapter 75, Laws of 1987 and RCW 43.20B.340 are each amended to read as follows:

In any case where determination is made that a person, or the estate of such person, is able to pay all, or any portion of the charges for hospitalization, and/or charges for outpatient services, a notice and finding of responsibility shall be served on such person or the court-appointed personal representative of such person. The notice shall set forth the amount the department has determined that such person, or his or her estate, is able to pay not to exceed the costs of hospitalization, and/or costs of outpatient services, as fixed in accordance with the provisions of RCW 43.20B.325, or as otherwise limited by the provisions of RCW 43.20B.355 and 43.20B.325 through 43.20B.350. The responsibility for the payment to the department shall commence ~~((thirty))~~ twenty-eight days after service of such notice and finding of responsibility which finding of responsibility shall cover the period

from the date of admission of such mentally ill person to a state hospital, and for the costs of hospitalization, and/or the costs of outpatient services, accruing thereafter. The notice and finding of responsibility shall be served upon all persons found financially responsible in the manner prescribed for the service of summons in a civil action or may be served by certified mail, return receipt requested. The return receipt signed by addressee only is prima facie evidence of service. An ~~((appeal may be made to))~~ application for an adjudicative proceeding may be filed with the secretary, or the secretary's designee within ~~((thirty))~~ twenty-eight days from the date of service of such notice and finding of responsibility ~~((, upon the giving of))~~. The application must be written ((notice of appeal to)) and served on the secretary by registered or certified mail, or by personal service. If no ~~((appeal))~~ application is ((taken)) filed, the notice and finding of responsibility shall become final. If an ~~((appeal))~~ application is ((taken)) filed, the execution of notice and finding of responsibility shall be stayed pending the ~~((decision of such appeal. Appeals may be heard in any county seat most))~~ final adjudicative order. The hearing shall be conducted in a local department office or other location in Washington convenient to the appellant. ((The hearing of appeal may be presided over by an administrative law judge appointed under chapter 34.12 RCW, and the proceedings shall be recorded either manually or by a mechanical device. At the conclusion of such hearing, the administrative law judge shall make findings of fact and conclusions and recommended determination of responsibility. Thereafter, the secretary, or the secretary's designee, may either affirm, reject, or modify the findings, conclusions, and determination of responsibility made by the administrative law judge. Judicial review of the secretary's determination of responsibility in the superior court, the court of appeals, and the supreme court may be taken in accordance with the provisions of)) The proceeding is governed by the Administrative Procedure Act, chapter ((34.04)) 34.05 RCW.

Sec. 99. Section 5, chapter 141, Laws of 1967 as last amended by section 905, chapter 176, Laws of 1988 and RCW 43.20B.430 are each amended to read as follows:

In all cases where a determination is made that the estate of a resident of a residential habilitation center is able to pay all or any portion of the charges, a notice and finding of responsibility shall be served on the guardian of the resident's estate, or if no guardian has been appointed then to the resident, the resident's spouse, or other person acting in a representative capacity and having property in his or her possession belonging to a resident. The notice shall set forth the amount the department has determined that such estate is able to pay, not to exceed the charge as fixed in accordance with RCW 43.20B.420, and the responsibility for payment to the department shall commence ~~((thirty))~~ twenty-eight days after personal service of such notice and finding of responsibility. Service shall be in the manner prescribed for the service of a summons in a civil action or may be served

by certified mail, return receipt requested. The return receipt signed by addressee only is prima facie evidence of service. An ~~((appeal))~~ application for an adjudicative proceeding from the determination of responsibility may be made to the secretary by the guardian of the resident's estate, or if no guardian has been appointed then by the resident, the resident's spouse, or other person acting in a representative capacity and having property in his or her possession belonging to a resident of a state school, within such ~~((thirty))~~ twenty-eight day period ~~((upon))~~. The application must be written ~~((notice of appeal being))~~ and served ~~((upon))~~ on the secretary by registered or certified mail, or by personal service. If no ~~((appeal))~~ application is ~~((taken))~~ filed, the notice and finding of responsibility shall become final. If an ~~((appeal))~~ application is ~~((taken))~~ filed, the execution of notice and finding of responsibility shall be stayed pending the ~~((decision of such appeal. Appeals may be heard in any county seat most))~~ final adjudicative order. The hearing shall be conducted in a local department office or other location in Washington convenient to the appellant. ~~((The hearing of appeals may be presided over by an administrative law judge appointed under chapter 34.12 RCW and the proceedings shall be recorded either manually or by a mechanical device. Any such appeal shall be a "contested case" as defined in RCW 34.04.010, and practice and procedure shall be governed by the provisions of RCW 43.20B.410 through 43.20B.455, the rules and regulations of the department, and))~~ The proceeding is governed by the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

Sec. 100. Section 1, chapter 163, Laws of 1981 as amended by section 18, chapter 201, Laws of 1982 and RCW 43.20B.630 are each amended to read as follows:

(1) Any person who owes a debt to the state for an overpayment of public assistance and/or food stamps shall be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of notice to the debtor of the debt owed. Service of the notice shall be in the manner prescribed for the service of a summons in a civil action. The notice shall include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from public assistance and/or food stamps; a statement that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from public assistance and/or food stamps or the receipt of the notice of debt, whichever is later. This does not preclude the department from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial

assistance programs: PROVIDED, That subject to federal legal requirement, deductions shall not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the department or error on the part of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2) ~~((Any debtor who alleges defenses to the debt or disputes the stated amount of the))~~ A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of public assistance or food stamps has the right to ~~((request in writing a hearing))~~ an adjudicative proceeding pursuant to RCW ((74.08.070)) 74.08.080. If no ~~((such request))~~ application is ~~((made))~~ filed, the debt will be subject to collection action as authorized under this chapter. If a timely ~~((request))~~ application is ~~((made))~~ filed, the execution of collection action on the debt shall be stayed pending the ~~((decision of the hearing))~~ final adjudicative order or termination of the debtor from public assistance and/or food stamps, whichever occurs later. ((The right to an appeal shall be governed by RCW 74.08.070, 74.08.080, and the Administrative Procedure Act, chapter 34.04 RCW:))

Sec. 101. Section 5, chapter 102, Laws of 1973 1st ex. sess. as amended by section 35, chapter 75, Laws of 1987 and RCW 43.20B.740 are each amended to read as follows:

Any person feeling ~~((himself))~~ aggrieved by the action of the department of social and health services in impounding his or her time loss compensation as provided in RCW 43.20B.720 through 43.20B.745 shall have the right to an ~~((administrative hearing, which hearing may be conducted by an examiner designated by the secretary for such purpose))~~ adjudicative proceeding.

Any such person who desires a hearing shall, within ~~((thirty))~~ twenty-eight days after the notice to withhold and deliver has been mailed to or served upon the director of the department of labor and industries and said appellant, file with the secretary ~~((a notice of appeal from said action))~~ an application for an adjudicative proceeding.

The ~~((hearings conducted))~~ proceeding shall be ~~((in accordance with))~~ governed by chapter ~~((34.04))~~ 34.05 RCW, ~~((f))~~ the Administrative Procedure Act ~~((3))~~.

Sec. 102. Section 41, chapter 62, Laws of 1970 ex. sess. as amended by section 10, chapter 109, Laws of 1987 and RCW 43.21B.110 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 70.94.431, 70.105.080, 70.107.050, 90.03.600, 90.48.144, and 90.48.350.

(b) Orders issued pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 90.14.130, and 90.48.120.

(c) The issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, or the modification of the conditions or the terms of a waste disposal permit.

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

(e) Any other decision by the department or an air authority which pursuant to law must be decided as ~~((a contested case under chapter 34-04))~~ an adjudicative proceeding under chapter 34.05 RCW.

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

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

(b) Hearings conducted by the department pursuant to RCW 70.94-.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

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

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter ~~((34-04))~~ 34.05 RCW.

Sec. 103. Section 46, chapter 62, Laws of 1970 ex. sess. as amended by section 3, chapter 69, Laws of 1974 ex. sess. and RCW 43.21B.160 are each amended to read as follows:

In all appeals involving a formal hearing, the hearings board or its hearing examiners shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter ~~((34-04))~~ 34.05 RCW, the Administrative Procedure Act; and the hearings board, and each member thereof, or its hearing examiners, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter ~~((34-04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings. In the case of appeals within the scope of this ~~((1970 act))~~ chapter, the hearings board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director as the hearings board, or any member thereof, may deem necessary or appropriate: PROVIDED, That any communication, oral or written, from the staff of the director to the hearings board or its hearing examiners, shall be presented only in an open hearing.

Sec. 104. Section 48, chapter 62, Laws of 1970 ex. sess. and RCW 43-21B.180 are each amended to read as follows:

Judicial review of a decision of the hearings board shall be de novo except when the decision has been rendered pursuant to a formal hearing elected under the provisions of this ~~((1970 act))~~ chapter, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598. The director shall have the same right of review from a decision made pursuant to RCW 43.21B.110 as does any person.

Sec. 105. Section 54, chapter 62, Laws of 1970 ex. sess. as amended by section 9, chapter 109, Laws of 1987 and RCW 43.21B.240 are each amended to read as follows:

The department and air authorities shall not have authority to hold ~~((public hearings on contested cases))~~ adjudicative proceedings pursuant to the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW. Such hearings shall be held by the pollution control hearings board.

Sec. 106. Section 4, chapter 10, Laws of 1979 as amended by section 1, chapter 89, Laws of 1980 and RCW 43.51.040 are each amended to read as follows:

The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt, promulgate, issue, and enforce rules ~~((and regulations))~~ pertaining to the use, care, and administration of state parks and parkways ~~((, which shall become effective ten days after adoption))~~. The commission shall cause a copy of the rules ~~((and regulations))~~ to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule ~~((or regulation))~~ posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules ~~((and regulations))~~ as shall be ~~((prescribed))~~ adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than forty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or lease: PROVIDED

FURTHER, That television station leases shall be subject to the provisions of RCW 43.51.063, only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights of way for state highways. Option agreements executed under authority of this subdivision shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions, or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

Sec. 107. Section 8, chapter 209, Laws of 1975 1st ex. sess. as last amended by section 16, chapter 36, Laws of 1988 and RCW 43.51.340 are each amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One representative of the department of natural resources, one representative of the department of wildlife, and one representative of the Washington state association of counties, each of whom shall be appointed by the director of the particular department or association.

(3) The terms of the members appointed under subsection (2) (a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 43.51.310 for travel expenses as provided in RCW 43.03.050 and 43.03.060 (~~as now or hereafter amended~~)).

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. The chairman of the committee shall be chosen under (~~rules~~) procedures adopted by the committee. The committee shall adopt any other (~~rules~~) procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

(7) The winter recreation advisory committee and its powers and duties shall terminate on June 30, 1991.

Sec. 108. Section 8, chapter 115, Laws of 1975-'76 2nd ex. sess. and RCW 43.60A.070 are each amended to read as follows:

In addition to other powers and duties, the director is authorized:

(1) To cooperate with officers and agencies of the United States in all matters affecting veterans affairs;

(2) To accept grants, donations, and gifts on behalf of this state for veterans affairs from any person, corporation, government, or governmental agency, made for the benefit of a former member of the armed forces of this or any other country;

(3) To be custodian of all the records and files of the selective service system in Washington that may be turned over to this state by the United States or any department, bureau, or agency thereof; and to adopt and promulgate such rules and regulations as may be necessary for the preservation of such records and the proper use thereof in keeping with their confidential nature;

(4) To act without bond as conservator of the estate of a beneficiary of the veterans administration when the director determines no other suitable person will so act;

(5) To extend on behalf of the state of Washington such assistance as the director shall determine to be reasonably required to any veteran and to the dependents of any such veteran;

(6) To adopt rules (~~and regulations~~) pursuant to chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act, with respect to all matters of administration to carry into effect the purposes of this section. Such proposed rules (~~and regulations~~) shall be submitted by the department at the time of filing notice with the code reviser as required by RCW (~~34.04-025~~) 34.05.320 to the respective legislative committees of the senate and of the house of representatives dealing with the subject of veteran affairs legislation through the offices of the secretary of the senate and chief clerk of the house of representatives.

Sec. 109. Section 8, chapter 289, Laws of 1977 ex. sess. as amended by section 3, chapter 27, Laws of 1983 1st ex. sess. and RCW 43.131.080 are each amended to read as follows:

(1) Following receipt of the final report from the legislative budget committee, the appropriate committees of reference in the senate and the house of representatives shall each hold a public hearing, unless a joint hearing is held, to consider the final report and any related data. The committees shall also receive testimony from representatives of the state agency or agencies involved, which shall have the burden of demonstrating a public need for its continued existence; and from the governor or the governor's designee, and other interested parties, including the general public.

(2) When requested by either of the presiding members of the appropriate senate and house committees of reference, a regulatory entity under review shall mail an announcement of any hearing to the persons it regulates who have requested notice of agency rule-making proceedings as provided in RCW (~~34.04.025(1)(a), as now existing or hereafter amended~~) 34.05.320, or who have requested notice of hearings held pursuant to the provisions of this section. On request of either presiding member, such mailing shall include an explanatory statement not exceeding one page in length prepared and supplied by the member's committee.

(3) The presiding members of the senate committee on ways and means and the house committee on appropriations may designate one or more liaison members to each committee of reference in their respective chambers for purposes of participating in any hearing and in subsequent committee of reference discussions and to seek a coordinated approach between the committee of reference and the committee they represent in a liaison capacity.

(4) Following any hearing under subsection (1) of this section by the committees of reference, such committees may hold additional meetings or hearings to come to a final determination as to whether a state agency has demonstrated a public need for its continued existence or whether modifications in existing procedures are needed. In the event that a committee of

reference concludes that a state agency shall be reestablished or modified or its functions transferred elsewhere, it shall make such determination as a bill. No more than one state agency shall be reestablished or modified in any one bill.

Sec. 110. Section 1201, chapter 330, Laws of 1987 as amended by section 26, chapter 36, Laws of 1988 and RCW 46.10.220 are each amended to read as follows:

(1) There is created in the Washington state parks and recreation commission a snowmobile advisory committee to advise the commission regarding the administration of this chapter.

(2) The purpose of the committee is to assist and advise the commission in the planned development of snowmobile facilities and programs.

(3) The committee shall consist of:

(a) Six interested snowmobilers, appointed by the commission; each such member shall be a resident of one of the six geographical areas throughout this state where snowmobile activity occurs, as defined by the commission;

(b) Three representatives of the nonsnowmobiling public, appointed by the commission; and

(c) One representative of the department of natural resources, one representative of the department of wildlife, and one representative of the Washington state association of counties; each of whom shall be appointed by the director of such department or association.

(4) Terms of the members appointed under (3)(a) and (b) of this section shall commence on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term: PROVIDED, That the first such members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(5) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 (~~as now or hereafter amended~~). Expenditures under this subsection shall be from the snowmobile account created by RCW 46.10.075.

(6) The committee may meet at times and places fixed by the committee. The committee shall meet not less than twice each year and additionally as required by the committee chairman or by majority vote of the committee. One of the meetings shall be coincident with a meeting of the commission at which the committee shall provide a report to the commission. The chairman of the committee shall be chosen under (~~rules~~) procedures adopted by the committee from those members appointed under (3)(a) and (b) of this section.

(7) The Washington state parks and recreation commission shall serve as recording secretary to the committee. A representative of the department of licensing shall serve as an ex officio member of the committee and shall be notified of all meetings of the committee. The recording secretary and the ex officio member shall be nonvoting members.

(8) The committee shall adopt ~~((rules))~~ procedures to govern its proceedings.

Sec. 111. Section 3, chapter 189, Laws of 1982 and RCW 46.20.331 are each amended to read as follows:

The director may appoint a designee, or designees, to preside over hearings in ~~((contested cases which))~~ adjudicative proceedings that may result in the denial, restriction, suspension, or revocation of a driver's license or driving privilege, or in the imposition of requirements to be met prior to issuance or reissuance of a driver's license, under Title 46 RCW. The director may delegate to any such designees the authority to render the final decision of the department in such ~~((cases))~~ proceedings. Chapter 34.12 RCW shall not apply to such ~~((cases))~~ proceedings.

Sec. 112. Section .03.07, chapter 79, Laws of 1947 as last amended by section 15, chapter 237, Laws of 1967 and RCW 48.03.070 are each amended to read as follows:

(1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW ~~((34.04.105))~~ 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and ~~((contested case))~~ adjudicative proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) Enforcement of subpoenas shall be in accord with ~~((subsection (5) of RCW 34.04.105))~~ section 30 of this act.

Sec. 113. Section .17.54, chapter 79, Laws of 1947 as last amended by section 14, chapter 248, Laws of 1988 and RCW 48.17.540 are each amended to read as follows:

(1) The commissioner may revoke or refuse to renew any license issued under this chapter, or any surplus line broker's license, immediately and

without hearing, upon sentencing of the licensee for conviction of a felony by final judgment of any court of competent jurisdiction, if the facts giving rise to such conviction demonstrate the licensee to be untrustworthy to maintain any such license.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By order given to the licensee not less than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) By an order on hearing made as provided in chapter 34.05 RCW, ((34.04.120)) the Administrative Procedure Act, effective not less than ten days after the date of the ((giving)) service of the order, subject to the right of the licensee to appeal to the superior court.

(3) The commissioner may temporarily suspend such license by an order ((given to)) served upon the licensee not less than three days prior to the effective date thereof, provided the order contains a notice of revocation and includes a finding that the public safety or welfare imperatively requires emergency action. Such suspension shall continue only until proceedings for revocation are concluded. The commissioner also may temporarily suspend such license in cases where proceedings for revocation are pending if he or she finds that the public safety or welfare imperatively requires emergency action.

Sec. 114. Section 5, chapter 256, Laws of 1979 ex. sess. and RCW 48-.62.050 are each amended to read as follows:

Prior to the establishment of a joint self-insurance pool by any organization of local governmental entities that is organized under RCW 48.62-.040 for the purpose of self-insuring through a contributing trust, approval of the establishment of such self-insurance pool shall be obtained from the state risk manager pursuant to RCW 43.19.19362 in accordance with the following procedure:

(1) A proposed plan of organization and operation, including the following elements shall be submitted;

(a) A financial plan specifying:

(i) The coverage to be offered by the self-insurance pool, setting forth the deductible level and the maximum level of claims which the pool will self-insure;

(ii) The amount of cash reserves to be set aside for the payment of claims;

(iii) The amount of insurance to be purchased over and above the amount of claims to be satisfied directly from the organization's resources;

(iv) The amount of stop-loss coverage to be purchased in the event that the joint self-insurance pool's resources are exhausted in a given fiscal period; and

(v) Certification that the participating local governmental entities in the self-insurance pool are apprised of the limitations of coverage provided and the availability of additional coverage which may be purchased individually by the participants in the pool;

(b) A plan of management setting forth the means of fulfilling the requirements of RCW 48.62.090(1), the means of establishing the governing authority of the organization, and the frequency of actuarial studies to establish the periodic contribution rates for each of the participants; and

(c) A plan specifying the conditions and responsibilities of the participants, including procedures for entry into and withdrawal from the pool and the allocation of contingent liabilities pursuant to RCW 48.62.060.

(2) Within sixty days after receipt of the aforementioned plan, the state risk manager shall determine whether the organization proposing to create a joint self-insurance pool has complied with the procedures and provisions contained in RCW 48.62.050(1), and has made provision for professional management of the joint self-insurance pool pursuant to RCW 48.62.090(1), and has provided for the insurance coverages required in RCW 48.62.090 (2) and (3), and that participants in the proposed joint self-insurance pool have been informed of the deductibles and limitations established pursuant to RCW 48.62.090(4). If the state risk manager determines that these criteria have been met, he shall approve the plan of operation of the proposed joint self-insurance pool, and such organization shall be authorized to commence operation.

(3) If approval is denied, the state risk manager shall specify in detail the reasons for denial and the manner in which the proposed joint self-insurance pool fails to meet the requirements of this section and RCW 48.62.090(1) through (4) and make comments and suggestions as to means by which such deficiencies could be corrected. The provisions of RCW (~~34.04.090~~) 34.05.410 through 34.05.494 shall apply with regard to such basis for denial and a review thereof. If the risk manager fails to act within the time limit established in subsection (2) of this section the plan of operation of the proposed joint self-insurance pool shall be deemed approved.

Sec. 115. Section 17, chapter 270, Laws of 1955 as last amended by section 23, chapter 185, Laws of 1985 and RCW 49.60.250 are each amended to read as follows:

(1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to

answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed one thousand dollars, and including a requirement for report of the matter on compliance.

(6) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW (~~(34.04.130 or 34.04.133)~~) 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(7) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(8) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law

judge concludes that the complaint was frivolous, unreasonable, or groundless.

(9) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure.

Sec. 116. Section 21, chapter 37, Laws of 1957 as last amended by section 47, chapter 202, Laws of 1988 and RCW 49.60.260 are each amended to read as follows:

(1) The commission shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission shall cause a notice of the petition to be sent by ~~((registered))~~ certified mail to all parties or their representatives.

(2) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(3) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission shall immediately serve the person with a copy of the court order and the petition.

(4) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and

(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW ~~((34.04.130))~~ 34.05.510 through 34.05-.598, and the person has given no valid excuse for failing to use that remedy.

(5) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases.

Sec. 117. Section 120, chapter 35, Laws of 1945 as last amended by section 3, chapter 61, Laws of 1987 and RCW 50.32.040 are each amended to read as follows:

In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(3) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice (~~(- This provision supersedes the twenty-day notice provision of RCW 34.04.090 as to such cases)~~) in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner.

Sec. 118. Section 125, chapter 35, Laws of 1945 as amended by section 15, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.32.090 are each amended to read as follows:

Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in chapter 34.05 RCW (~~(34.04.10, shall)~~), becomes final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general.

Sec. 119. Section 130, chapter 35, Laws of 1945 as amended by section 18, chapter 158, Laws of 1973 1st ex. sess. and RCW 50.32.140 are each amended to read as follows:

RCW (~~(34.04.130)~~) 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals.

Sec. 120. Section 7, chapter 315, Laws of 1985 as amended by section 3, chapter 316, Laws of 1987 and RCW 51.48.131 are each amended to read as follows:

A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW (~~(34.04.130 and 34.04.140)~~) 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers.

Sec. 121. Section 34, chapter 43, Laws of 1972 ex. sess. as amended by section 8, chapter 315, Laws of 1985 and RCW 51.48.140 are each amended to read as follows:

If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW (~~(51.48.030)~~) 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in

RCW (~~(34.04.130)~~) 34.05.510 through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk.

Sec. 122. Section 62, chapter 62, Laws of 1933 ex. sess. as amended by section 23, chapter 237, Laws of 1967 and RCW 66.08.150 are each amended to read as follows:

The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be (~~(a contested case)~~) an adjudicative proceeding and subject to the applicable provisions of chapter (~~(34.04 RCW as amended by this 1967 amendatory act)~~) 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to thirty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined.

Sec. 123. Section 6, chapter 7, Laws of 1982 2nd ex. sess. and RCW 67.70.060 are each amended to read as follows:

(1) The director or the director's authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW ((34.04.090 (6) and (8), 34.04.100, and 34.04.105)).

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter ((34.04)) 34.05 RCW.

Sec. 124. Section 31, chapter 21, Laws of 1979 as amended by section 26, chapter 331, Laws of 1987 and RCW 68.05.310 are each amended to read as follows:

The board or its authorized representative shall give a cemetery authority notice of its intention to suspend, revoke, or refuse to renew a certificate of authority or a prearrangement sales license, and shall grant the cemetery authority a hearing, in the manner required for ~~((contested cases))~~ adjudicative proceedings under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, before the order of suspension, revocation, or refusal may become effective.

No cemetery authority whose prearrangement sales license has been suspended, revoked, or refused shall be authorized to enter into prearrangement contracts. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund.

Sec. 125. Section 8, chapter 144, Laws of 1955 as amended by section 71, chapter 141, Laws of 1979 and RCW 69.30.080 are each amended to read as follows:

~~((Any order issued by))~~ The department ((which denies or revokes)) may deny, revoke, suspend, or modify a certificate of approval ((for a shellfish growing area or establishment shall be in writing and shall contain a statement of the grounds upon which said denial or revocation is based. A copy of the department's order shall be sent by registered mail to the person whose name appears on the certificate of approval or application therefor. Said order shall become final fifteen days after the date of mailing, provided the person aggrieved by such order does not, within ten days of the date of mailing of such order, apply in writing to the secretary for a fair hearing. Upon such application, the department shall fix a time for such hearing and shall give the person aggrieved a notice of the time fixed for such a hearing. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the state board of health. The secretary shall render his decision affirming, modifying or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final fifteen days after the date of mailing)), license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 126. Section 11, chapter 161, Laws of 1979 ex. sess. as last amended by section 22, chapter 288, Laws of 1984 and RCW 70.38.115 are each amended to read as follows:

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary of the department in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The relationship of the health services being reviewed to the applicable health plans;

(b) The need that the population served or to be served by such services has for such services;

(c) The availability of less costly or more effective alternative methods of providing such services;

(d) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served, including findings and recommendations of the Washington state hospital commission in the case of applications submitted by hospitals. An application by a hospital shall be denied if the state hospital commission does not recommend approval, unless the secretary provides the commission with a written statement setting forth the reason or reasons, and citing the applicable subsection or subsections of this section, for approving an application that the commission has determined to be not feasible;

(e) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

(f) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(g) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(h) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(i) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(j) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past; and

(k) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the hospital commission.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) The decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in

which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or a designated regional health council shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, recordkeeping and related matters.

(10) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked (~~shall be afforded an opportunity for administrative review in accordance with chapter 34.04 RCW and a hearing shall be held within one hundred twenty days of a request therefor. An administrative law judge shall review the decision of the secretary's designee and render a proposed decision for consideration by the secretary in accordance with chapter 34.12 RCW or remand the matter to the secretary's designee for further consideration. The secretary's final decision is subject to review by the superior court as provided in chapter 34.04 RCW:~~

~~(11) The department may establish procedures and criteria for reconsideration of decisions:~~

~~(12)) has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.~~

(11) An amended certificate of need shall be required for the following modifications of an approved project:

(a) A new service;

- (b) An expansion of a service beyond that originally approved;
- (c) An increase in bed capacity;
- (d) A significant reduction in the scope of a project without a commensurate reduction in the cost of the project, or a cost increase (as represented in bids on a construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the project with the review criteria pertaining to financial feasibility and cost containment.

~~((13))~~ (12) An application for a certificate of need for a capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

Sec. 127. Section 3, chapter 267, Laws of 1955 as last amended by section 17, chapter 213, Laws of 1985 and RCW 70.41.030 are each amended to read as follows:

The department~~((:))~~ shall establish and adopt such minimum standards~~((:))~~ and rules ~~((and regulations))~~ pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules ~~((and regulations))~~ from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. ~~((All rules and regulations to become effective shall be filed with the office of the code reviser.~~

~~The department shall conduct fair hearing procedures as provided in RCW 70.41.130.))~~

Sec. 128. Section 13, chapter 267, Laws of 1955 as amended by section 22, chapter 213, Laws of 1985 and RCW 70.41.130 are each amended to read as follows:

The department is authorized to deny, suspend, ~~((or))~~ revoke, or modify a license or provisional license ~~((in the manner prescribed herein))~~ in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards~~((:))~~ or rules ~~((and regulations established hereunder. The department shall issue an order to the applicant or licensee giving notice of any rejection, revocation, or suspension, which order shall become final thirty days after the date of mailing. PROVIDED, That the applicant or licensee does not within thirty days from the date of mailing of the department's order or rejection, revocation, or suspension of license, make written application to the department for a hearing upon receipt of which the department shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed therefor. The procedure governing hearings authorized by this section shall~~

~~be in accordance with rules promulgated by the department. The department shall render its decision affirming, modifying, or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final thirty days after the date of mailing)) adopted under this chapter. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.~~

Sec. 129. Section 51, chapter 228, Laws of 1961 as amended by section 29, chapter 230, Laws of 1982 and RCW 70.77.370 are each amended to read as follows:

Any applicant who has been denied a license is entitled to a hearing in accordance with the provisions of chapter ~~((48.04))~~ 34.05 RCW, the Administrative Procedure Act.

Sec. 130. Section 12, chapter 236, Laws of 1986 and RCW 70.90.210 are each amended to read as follows:

(1) Any person aggrieved by an order ~~((or action))~~ of the department ~~((may request a hearing under the administrative procedure act, chapter 34.04 RCW. Notice shall be provided by the department as required under chapter 34.04 RCW for contested cases))~~ or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. Section 96 of this act governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order ~~((or action))~~ of a local health officer ~~((may request a hearing which shall be held consistent with))~~ or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements.

Sec. 131. Section 9, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.090 are each amended to read as follows:

(1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment

facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment facilities, and its approval revoked or suspended.

(5) The ~~((division, after holding a hearing,))~~ department may suspend, revoke, limit, ~~((or))~~ restrict, or modify an approval, or ~~((without hearing,))~~ refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder. Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(6) ~~((The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.~~

(7)) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

Sec. 132. Section 5, chapter 207, Laws of 1961 as last amended by section 1, chapter 383, Laws of 1985 and RCW 70.98.050 are each amended to read as follows:

(1) The department of social and health services is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of social and health services shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a state-wide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent state-wide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

~~((c)-(e))~~ (e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) In connection with any ~~((contested case))~~ adjudicative proceeding as defined by RCW ~~((34.04.010))~~ 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information.

Sec. 133. Section 13, chapter 207, Laws of 1961 and RCW 70.98.130 are each amended to read as follows:

In any proceeding under this chapter for the issuance or modification or repeal of rules (~~and regulations~~) relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, ((34.04.020)) the Administrative Procedure Act.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW ((34.04.030)) 34.05.350 without notice or hearing, (~~issue a regulation or order~~) adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW ((34.04.030)) 34.05.350, such (~~regulations or orders shall be~~) rules are effective immediately.

Sec. 134. Section 7, chapter 2, Laws of 1987 3rd ex. sess. and RCW 70.105B.070 are each amended to read as follows:

(1) Whenever the department has reason to believe that a release or threatened release of a hazardous substance will require remedial action, it shall notify potentially liable persons with respect to the release or threatened release, and provide them with a reasonable opportunity to propose a settlement agreement providing for remedial action. Whenever the department considers it to be in the public interest, the department shall expedite such an agreement with parties whose contribution of hazardous substances is insignificant in amount and toxicity.

(2) (~~Within nine months after October 16, 1987,)~~ The department shall adopt rules under chapter ((34.04)) 34.05 RCW, the Administrative Procedure Act, to implement this section. At a minimum the rules shall:

(a) Provide procedures by which potentially liable persons may propose one or more remedial actions;

(b) Provide procedures for public notice and an opportunity to comment on proposed settlements;

(c) Establish reasonable deadlines and time periods for activities under this subsection; and

(d) Ensure that agreements providing for voluntary cleanups attain the cleanup levels required under RCW 70.105B.060.

(3) Where the department and one or more potentially liable persons are unable to reach agreement for remedial action that will provide a final cleanup remedy, the persons may submit a final offer of a proposed settlement agreement, together with any material supporting the proposal. The department shall consider the offer and material submitted, as well as public comments provided on the offer, and shall issue a decision accepting or rejecting the offer. Where the department accepts the offer, it shall be entered as a consent decree pursuant to the procedures of subsection (5) of this section. Where the department rejects the offer, it shall state in writing its reasons for rejection. This review process shall not be considered ((a

~~contested case~~) an adjudicative proceeding for the purpose of the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

(4) The person or persons proposing an agreement rejected by the department under subsection (3) of this section have a right to review only as provided in RCW 70.105B.130.

(5) Where the department and potentially liable persons reach an agreement providing for voluntary remedial action, it shall be filed with the appropriate superior court as a proposed consent decree. The court shall allow at least thirty days for public comments before the proposed decree is entered, and the department shall file with the court any written comments received on the proposed decree.

(6) A person who has resolved its liability to the state under this section is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons, but it reduces the total potential liability of the others to the state by the amount of the settlement.

(7) The director may enter into a settlement agreement that requires the department to provide a specified amount of money from the state toxics control account to help defray the costs of implementing the plan. These funds may be provided only in circumstances where the director finds it would expedite or enhance cleanup operations or achieve greater fairness with respect to the payment of remedial action costs. In determining whether public funding will achieve greater fairness, the director shall consider the extent to which public funding will prevent or mitigate economic hardship. The director shall adopt rules providing criteria and priorities governing public funding of remedial action costs under this subsection. The amount of public funding in an agreement under this section shall be determined solely in the discretion of the director and is not subject to review. The department may recover the amount of public funding provided under this subsection from a potentially liable person who has not entered into a settlement agreement under this section or fulfilled all obligations under the agreement. For purposes of such a recovery action, the amount shall be considered as remedial action costs paid by the department.

Sec. 135. Section 4, chapter 271, Laws of 1986 and RCW 70.119A.040 are each amended to read as follows:

(1) In addition to or as an alternative to any other penalty provided by law, every person who commits any of the acts or omissions in RCW 70.119A.030 shall be subjected to a penalty in an amount of not more than five thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in

the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing ~~((either by certified mail with return receipt requested or by personal service;))~~ to the person ~~((incurring the same from the department, describing))~~ against whom the civil fine is assessed and shall describe the violation ~~((with reasonable particularity))~~. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within ~~((fifteen))~~ fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner ~~((and under such rules))~~ as it may deem proper. ~~((Any penalty imposed by this section shall be subject to review by the office of administrative hearings in accordance with chapter 34.12 RCW;))~~ When an application for remission on mitigation is made, a penalty incurred under this section is due twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

~~((3) Any))~~ (5) A penalty imposed by ~~((this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review is filed directly to the office of administrative hearings within thirty days of the imposition of the penalty. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the office of administrative hearings shall become due and payable thirty days after receipt of the notice setting forth the decision.~~

~~(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable,)) a final order after an adjudicative proceeding is due upon service of the final order.~~

~~(6) The attorney general((, upon the request of the secretary of the department, shall)) may bring an action in the name of the ((state of Washington)) department in the superior court of Thurston county, or of any county in which such violator may do business, to ((recover such)) collect a penalty. ((In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided:~~

~~(5)) (7) All penalties imposed under this section shall be payable to the state treasury and credited to the general fund.~~

Sec. 136. Section 4, chapter 244, Laws of 1986 and RCW 70.150.040 are each amended to read as follows:

The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than sixty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal that a public body's annual costs will be lower under its proposal than they would be if the public body financed, constructed, owned, operated, and maintained facilities required for service.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body,

which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority shall designate persons or entities (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received. The designee shall not be a member of the legislative authority.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority's designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents shall be referred to as the selected respondents in this section. The designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall also allow the designee to make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If the negotiation is unsuccessful, the legislative authority may authorize the designee to commence negotiations with any other selected respondent. On completion of this process, the designee shall report to the legislative authority on his or her recommendations and the reasons for them.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The hearing shall be conducted in the same manner as ~~((a) a contested case under~~

~~chapter 34.04~~) an adjudicative proceeding under chapter 34.05 RCW. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design of water pollution control facilities shall be done in accordance with chapter 39.80 RCW.

(8) A service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed and approved by the department of ecology to ensure that the purposes of chapter 90.48 RCW are implemented.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider.

Sec. 137. Section 71.12.500, chapter 25, Laws of 1959 as amended by section 136, chapter 141, Laws of 1979 and RCW 71.12.500 are each amended to read as follows:

The department of social and health services may at any time examine and ascertain how far a licensed establishment is conducted in compliance with the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license ((after notice and hearing)). Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

Sec. 138. Section 105, chapter 176, Laws of 1988 and RCW 71A.10.050 are each amended to read as follows:

(1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following ((adverse decisions)) department actions:

((1)) (a) A denial of an application for eligibility under RCW 71A.16.040;

((2)) (b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

((3)) (c) A denial, reduction, or termination of a service; ((and

((4)) (d) A claim that the person owes a debt to the state for an overpayment((:));

~~((5))~~ (e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The ~~((hearing))~~ adjudicative proceeding is governed by the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

Sec. 139. Section 106, chapter 176, Laws of 1988 and RCW 71A.10.060 are each amended to read as follows:

(1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing (~~a request~~) an application with the secretary within thirty days of receipt of the notice, the person who made the request (~~may have a hearing~~) has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent.

Sec. 140. Section 107, chapter 176, Laws of 1988 and RCW 71A.10.070 are each amended to read as follows:

(1) Whenever this title places on the secretary the duty to consult, the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing (~~a request~~) an application with the secretary within thirty days of receipt of the notice, the person who made the request (~~shall have~~) has the right to (~~a hearing~~) an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent.

Sec. 141. Section 404, chapter 176, Laws of 1988 and RCW 71A.16-.040 are each amended to read as follows:

(1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application((;)) and to the applicant, if the applicant is a person other than the person who submitted the application for services. The notice shall also include ~~((notice of))~~ a statement advising the recipient of the right to ((hearing provided by)) an adjudicative proceeding under RCW 71A.10.050 and ((notice of)) the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title.

Sec. 142. Section 603, chapter 176, Laws of 1988 and RCW 71A.18-.040 are each amended to read as follows:

(1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to ~~((a hearing))~~ an adjudicative proceeding.

(5) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section.

Sec. 143. Section 708, chapter 176, Laws of 1988 and RCW 71A.20.080 are each amended to read as follows:

Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after ~~((notice to and consultation with the resident, and with any available parent, guardian, or other court-appointed personal representative of such person.~~

~~If the resident, parent of a resident who is a minor, or guardian or other court-appointed personal representative of the resident believes that the specific placement decision is not in the best interests of the resident, he or she may request a hearing before an administrative law judge appointed under chapter 34.12 RCW. A hearing before an administrative law judge under this section shall be conducted as a contested case under chapter 34.04 RCW. At the hearing, the administrative law judge shall make an initial decision determining whether the specific placement decision is in the best interests of the resident and was otherwise proper. The burden of proof shall be on the department to show that the specific placement decision is in the best interests of the resident. Any review of the administrative law judge's initial decision by the secretary when he or she makes the final decision shall be done on the same basis as specified under RCW 34.04.130 (5) and (6) for superior court review of an administrative decision and in addition findings and inferences to be sustained must be supported by substantial evidence. The secretary cannot delegate the authority to make the final decision. Any person aggrieved by the final administrative decision is entitled to judicial review in accordance with the provisions of chapter 34.04 RCW governing judicial review in a contested case except that if substantial rights have been prejudiced, administrative findings, inferences, conclusions, or decisions may be reversed, modified, or remanded if not supported by substantial evidence rather than requiring them to be arbitrary or capricious))~~ consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement

advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the specific placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement.

Sec. 144. Section 16, chapter 20, Laws of 1973 and RCW 72.66.044 are each amended to read as follows:

Any proceeding involving an application for a furlough shall not be deemed (~~a "contested case"~~) an adjudicative proceeding under the provisions of chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act.

Sec. 145. Section 74.08.080, chapter 26, Laws of 1959 as last amended by section 58, chapter 202, Laws of 1988 and RCW 74.08.080 are each amended to read as follows:

~~((In the event an appellant feels himself aggrieved by the decision rendered in the hearing provided for in RCW 74.08.070, he shall have the right to petition the superior court for judicial review in accordance with the provisions of chapter 34.04 RCW, as now or hereafter amended. Either party may seek appellate review of the decision of the superior court: PROVIDED, That))~~ (1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for aid to families with dependent children or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3)(a) When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected ((of the appellant)) from the person and no bond shall be required on any ((review under this chapter)) appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorney's fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application for assistance or thirty days after the application for aid to families with dependent children or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the ((initial departmental county)) local community services office decision.

Sec. 146. Section 2, chapter 152, Laws of 1979 ex. sess. as amended by section 7, chapter 283, Laws of 1987 and RCW 74.09.210 are each amended to read as follows:

(1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or

attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A willful false statement;
- (b) By willful misrepresentation, or by concealment of any material facts; or
- (c) By other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. Section 96 of this act governs notice of a civil fine and provides the right to an adjudicative proceeding.

~~(3) ((All orders of the department assessing civil penalties shall become final twenty days after the same have been served unless a hearing is requested.~~

~~(4))~~ A criminal action need not be brought against a person for that person to be civilly liable under this section.

~~((5))~~ (4) In all proceedings under this section, service, ~~((hearings,))~~ adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act.

~~((6))~~ (5) Civil penalties shall be deposited in the general fund upon their receipt.

Sec. 147. Section 82, chapter 155, Laws of 1979 as last amended by section 70, chapter 505, Laws of 1987 and RCW 74.13.036 are each amended to read as follows:

(1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall, by January 1, 1986, develop a plan and procedures, in cooperation with the state-wide advisory committee, to insure

the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the alternative residential placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

The plan and procedures required under this subsection shall be submitted to the appropriate standing committees of the legislature by January 1, 1986.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

~~(4) ((The secretary shall develop procedures in accordance with chapter 34.04 RCW for addressing violations and misunderstandings concerning the implementation of chapters 13.32A and 13.34 RCW.~~

~~(5))~~ The secretary shall submit a quarterly report to the appropriate local government entities.

~~((6))~~ (5) Where appropriate, the department shall request opinions from the attorney general regarding correct construction of these laws.

Sec. 148. Section 10, chapter 63, Laws of 1971 ex. sess. as amended by section 141, chapter 7, Laws of 1985 and RCW 74.13.127 are each amended to read as follows:

Voluntary amendments of any support agreement entered into pursuant to ~~((RCW 26.32.115 before January 1, 1985, or))~~ RCW 26.33.320 and

74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act.

~~((The secretary shall seek voluntary amendment of any such agreement before invoking the additional procedures provided for in this section:~~

~~Whenever the secretary, having found an adoptive parent declines to agree to a voluntary amendment, wishes to enter an order increasing or decreasing the level of a payment or payments for the support of an adoptive child under RCW 26.33.320 and 74.13.100 through 74.13.145, he shall notify the adoptive parent of the action the secretary proposed to take in writing by certified mail or personal service stating the grounds upon which the secretary proposes such action:~~

~~Within thirty days from the receipt of such notice the adoptive parent or parents may serve upon the official of the department sending such notice a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, such officer shall fix a hearing date, which date shall be not later than thirty-five days from the receipt by him of such request for hearing. The matter shall be heard on such date or on such date to which the matter is continued by agreement of the parties. Such official shall also notify the committee designated by the secretary to advise him on child welfare of the filing of such request not less than twenty-five days before the hearing date. If the adoptive parent agrees, a member of such committee may attend the hearing:~~

~~If no request for hearing is made within the time specified, the proposed action shall be taken and the agreement between the adoptive parent and the state shall be deemed amended accordingly.~~

~~It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of the decision:~~

~~The secretary shall promulgate and publish rules governing the conduct of such hearings, including provision for confidentiality:~~

~~In all other respects such proceedings shall be conducted by the department pursuant to RCW 74.08.070 and regulations issued pursuant thereto. The adoptive parent shall have a right of appeal as provided in RCW 74.08.080. If the decision of the secretary or the superior court is~~

~~made in favor of the appellant, adoption support shall be paid from the effective date of the action or decision appealed from.~~

~~Except as otherwise specifically provided for in this section the rules adopted by the secretary and the manner of carrying on the proceedings shall be in accord with the provisions of Title 34 RCW:))~~

Sec. 149. Section 13, chapter 172, Laws of 1967 as last amended by section 12, chapter 118, Laws of 1982 and RCW 74.15.130 are each amended to read as follows:

~~((+))~~ An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses(;

~~(2) Whenever the secretary shall have reasonable cause to believe that grounds for denial, suspension or revocation of a license exist or that a licensee has failed to qualify for renewal of a license he shall notify the licensee in writing by certified mail, stating the grounds upon which it is proposed that the license be denied, suspended, revoked or not renewed.~~

~~Within thirty days from the receipt of notice of the grounds for denial, suspension, revocation or lack of renewal, the licensee may serve upon the secretary a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, the secretary shall fix a date upon which the matter may be heard. If no request for hearing is made within the time specified, the license shall be deemed denied, suspended or revoked. It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of his decision. The secretary shall promulgate and publish rules governing the conduct of hearings.~~

~~Except as specifically provided above, the rules adopted and the hearings conducted shall be in accordance with Title 34 RCW (Administrative Procedure Act)). Section 95 of this act governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.~~

Sec. 150. Section 12, chapter 194, Laws of 1983 and RCW 74.18.120 are each amended to read as follows:

(1) Any person aggrieved by a decision, action, or inaction of the department or its agents may request, and shall receive from the department, an administrative review and redetermination of that decision, action, or inaction.

(2) After completion of an administrative review, an applicant or client aggrieved by a decision, action, or inaction of the department or its agents

may request, and shall be granted, an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter ~~((34.04))~~ 34.05 RCW by an administrative law judge.

(3) Final decisions of administrative hearings shall be the subject of appeal under RCW ~~((34.04.130))~~ 34.05.510 through 34.05.598.

(4) In the event of an appeal from the final decision of an administrative hearing in which the department has overruled the proposed decision by an administrative law judge, the following terms shall apply for an appeal under RCW ~~((34.04.130))~~ 34.05.510 through 34.05.598: (a) Upon request a copy of the transcript and evidence from the administrative hearing shall be made available without charge to the appellant; (b) the appellant shall not be required to post bond or pay any filing fee; and (c) an appellant receiving a favorable decision upon appeal shall be entitled to reasonable attorney's fees and costs.

Sec. 151. Section 2, chapter 164, Laws of 1971 ex. sess. as last amended by section 4, chapter 276, Laws of 1985 and RCW 74.20A.020 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

(1) "Department" means the state department of social and health services.

(2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.

(3) "Dependent child" means any person under the age of twenty—one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation.

(6) "Administrative order" means any determination, finding, decree, or order for support ~~((issued by the department))~~ pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist and continue as provided for in RCW 26.16.205 until the relationship is terminated by death or dissolution of marriage.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico.

Sec. 152. Section 25, chapter 183, Laws of 1973 1st ex. sess. as last amended by section 10, chapter 275, Laws of 1988 and RCW 74.20A.055 are each amended to read as follows:

(1) The secretary may, in the absence of a superior court order, serve on the responsible parent or parents a notice and finding of financial responsibility requiring a responsible parent or parents to appear and show cause in ~~((a hearing held by the department))~~ an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future for such period of time as the child or children of said responsible parent or parents are in need. ~~((Said))~~ The hearing shall be held pursuant to RCW 74.20A.055, chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and the rules ~~((and regulations))~~ of the department~~((, which shall provide for a fair hearing))~~.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days

from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than twenty days from the date of service to ~~((request in writing a hearing, which request))~~ file an application for an adjudicative proceeding. The application shall be served upon the department by registered or certified mail or personally. If no such ((request)) application is made, the notice and finding of responsibility shall become final, and the debt created therein shall be subject to collection action as authorized under this chapter. If a timely ((request)) application is made, the execution of notice and finding of responsibility shall be stayed pending the ((decision on such hearing)) entry of the final administrative order. If no timely written ~~((request for a hearing))~~ application has previously been made, the responsible parent may petition the secretary or the secretary's designee at any time for ~~((a hearing))~~ an adjudicative proceeding as provided for in this section upon a showing of good cause for the failure to make a timely ~~((request for hearing))~~ application. The filing of the petition for ~~((a hearing))~~ an adjudicative proceeding after the twenty-day period shall not affect any collection action previously taken under this chapter. The granting of ~~((a request for the hearing shall))~~ an application after the twenty-day period operates as a stay on any future collection action, pending ~~((the final decision of the secretary or the secretary's designee on the hearing))~~ entry of the final administrative order. Moneys withheld as a result of collection action in effect at the time of the granting of the ~~((request for the hearing))~~ application after the twenty-day period shall be delivered to the department and shall be held in trust by the department pending ~~((the final order of the secretary or during the pendency of any appeal to the courts made under chapter 34.04 RCW))~~ entry of the final administrative order. The department may petition the ~~((administrative law judge))~~ presiding or reviewing officer to set temporary current and future support to be paid beginning with the month in which the ~~((petition for an untimely hearing))~~ application after the twenty-day period is granted. The ~~((administrative law judge))~~ presiding or reviewing officer shall order payment of temporary current and future support if appropriate in an amount determined pursuant to the child support schedule adopted under RCW 26.19.040. In the event the responsible parent does not make payment of the temporary current and future support as ordered by the ~~((hearing examiner))~~ presiding or reviewing officer, the department may take collection action pursuant to chapter 74.20A RCW during the pendency of the ~~((hearing))~~ adjudicative proceeding or thereafter

to collect any amounts owing under the order. Temporary current and future support paid, or collected, during the pendency of the ~~((hearing or appeal))~~ adjudicative proceeding shall be disbursed to the custodial parent or as otherwise appropriate when received by the department. If the final ~~((decision of the department, or of the courts on appeal;))~~ administrative order is that the department has collected from the responsible parent other than temporary current or future support, an amount greater than such parent's past support debt, the department shall promptly refund any such excess amount to such parent.

(3) Hearings may be held in the county of residence or other place convenient to the responsible parent. ~~((Any such hearing shall be a "contested case" as defined in RCW 34.04.010:))~~ The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future for such period of time as the child or children of the responsible parent are in need, all computable on the basis of the need alleged. The notice and finding shall also include a statement of the name of the recipient or custodian and the name of the child or children for whom need is alleged; and/or a statement of the amount of periodic future support payments as to which financial responsibility is alleged.

(4) The notice and finding shall include a statement that the responsible parent may object to all or any part of the notice and finding, and ~~((request a hearing))~~ file an application for an adjudicative proceeding to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future.

The notice and finding shall include a statement that, if the responsible parent fails in timely fashion to ~~((request a hearing))~~ file an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt shall be subject to collection action; a statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt.

(5) If ~~((a hearing is requested, it shall be promptly scheduled, in no more than thirty days. The hearing, including a hearing on prospective modification, shall be conducted by an administrative law judge appointed under chapter 34.12 RCW:~~

~~After evidence has been presented at hearings conducted by the administrative law judge, the administrative law judge shall enter an initial decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The administrative law judge shall file the original of the~~

~~initial decision and order, signed by the administrative law judge, with the secretary or the secretary's designee. Copies of the initial decision and order shall be mailed by the administrative law judge to the department and to the appellant by certified mail to the last known address of each party. Within thirty days of filing, either the appellant or the department may file with the secretary or the secretary's designee a written petition for review of the initial decision and order. The petition for review shall set forth in detail the basis for the requested review and shall be mailed by the petitioning party to the other party by certified or registered mail to the last known address of the party.~~

~~The petition shall be based on any of the following causes materially affecting the substantial rights of the petitioner:~~

~~(a) Irregularity in the proceedings of the administrative law judge or adverse party, or any order of the administrative law judge, or abuse of discretion, by which the moving party was prevented from having a fair hearing;~~

~~(b) Misconduct of the prevailing party;~~

~~(c) Accident or surprise which ordinary prudence could not have guarded against;~~

~~(d) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the hearing;~~

~~(e) That there is no evidence or reasonable inference from the evidence to justify the decision, or that it is contrary to law;~~

~~(f) Error in mathematical computation;~~

~~(g) Error in law occurring at the hearing and objected to at the time by the party making the application;~~

~~(h) That the moving party is unable to perform according to the terms of the order without further clarification;~~

~~(i) That substantial justice has not been done;~~

~~(j) Fraud or misstatement of facts by any witness, which materially affects the debt;~~

~~(k) Clerical mistakes in the decision arising from oversight or omission;~~

~~or~~

~~(l) That the decision and order entered because the responsible parent failed to appear at the hearing should be vacated and the matter be remanded for a hearing upon showing of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.~~

~~In the event no petition for review is made as provided in this subsection by any party, the initial decision and order of the administrative law judge is final as of the date of filing and becomes the decision and order of the secretary. No appeal may be taken therefrom to the courts and the debt created is subject to collection action as authorized by this chapter.~~

~~After the receipt of a petition for review, the secretary or the secretary's designee shall consider the initial decision and order, the petition or petitions for review, the record or any part thereof, and such additional evidence and argument as the secretary or the secretary's designee may in his or her discretion allow. The secretary or the secretary's designee may remand the proceedings to the administrative law judge for additional evidence or argument. The secretary or the secretary's designee may deny review of the initial decision and order and thereupon deny the petition or petitions at which time the initial decision and order shall be final as of the date of the denial and all parties shall forthwith be notified, in writing, of the denial, by certified mail to the last known address of the parties. Unless the petition is denied, the secretary or the secretary's designee shall review the initial decision and order and shall make the final decision and order of the department. The final decision and order shall be in writing and shall contain findings of fact and conclusions of law as to each contested issue of fact and law. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal by certified mail to the last known address of the party. The decision and order shall authorize collection action, as appropriate, under this chapter.~~

~~(6) The administrative law judge in his or her initial decision, or the secretary or the secretary's designee in review of the initial decision,)) an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule adopted under RCW 26.19.040 in making these determinations, the ((administrative law judge, and the secretary or the secretary's designee,)) presiding or reviewing officer shall comply with RCW 26.19.020 (4), (5), and (6).~~

~~If the responsible parent fails to ((appear at)) attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the ((administrative law judge)) presiding officer shall enter an initial decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. ((Within thirty days of entry of said decision and order, the responsible parent may petition the secretary or the secretary's designee to vacate said decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.~~

~~(7)) (6) The final ((decision entered pursuant to this section shall be entered as a decision and)) order ((and shall limit the support debt to the amounts stated in said decision: PROVIDED, That said decision)) establishing liability and/or future periodic support payments shall be superseded~~

upon entry of a superior court order for support to the extent the superior court order is inconsistent with the ~~((hearing))~~ administrative order ~~((or decision))~~: PROVIDED ~~((FURTHER))~~, That in the absence of a superior court order, either the responsible parent or the department may petition the secretary or his designee for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances, to require the other party to appear and show cause why the ~~((de-
cision))~~ order previously entered should not be prospectively modified. Said order to appear and show cause together with a copy of the petition and affidavit upon which the order is based shall be served in the manner of a summons in a civil action or by certified mail, return receipt requested, on the other party by the petitioning party. ~~((A hearing shall be set not less than fifteen nor more than thirty days from the date of service, unless ex-
tended for good cause shown.))~~ Prospective modification may be ordered, but only upon a showing of good cause and material change of circumstances. ~~((The decision and order for prospective modification entered by the administrative law judge shall be an initial decision subject to review by the secretary or the secretary's designee as provided for in this section.~~

~~((8))~~ (7) The ~~((administrative law judge, in making the initial decision and the secretary or the secretary's designee in the final decision determin-
ing liability and/or future periodic support payments,))~~ presiding or re-
viewing officer shall order support payments under the child support schedule adopted under RCW 26.19.040.

~~((9))~~ (8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by ~~((the administrative law judge, or the secretary or sec-
retary's designee))~~ a presiding or reviewing officer.

~~((10))~~ (9) "Need" as used in this section shall mean the necessary costs of food, clothing, shelter, and medical attendance for the support of a dependent child or children. The amount determined by reference to the child support schedule adopted under RCW 26.19.040, shall be a rebuttable presumption of the alleged responsible parent's ability to pay and the need of the family: PROVIDED, That such responsible parent shall be presumed to have no ability to pay child support under this chapter from any income received from aid to families with dependent children, supplemental security income, or continuing general assistance.

Sec. 153. Section 6, chapter 164, Laws of 1971 ex. sess. as last amended by section 5, chapter 171, Laws of 1979 ex. sess. and RCW 74.20A.060 are each amended to read as follows:

Twenty-one days after receipt or refusal of notice of debt under provisions of RCW 74.20A.040, or twenty-one days after service of notice and finding of financial responsibility, or as otherwise appropriate under RCW 74.20A.055, or as appropriate under RCW 74.20A.270 a lien may be asserted by the secretary upon the real or personal property of the debtor. The

claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located. A lien against earnings shall attach and be effective subject to service requirements of RCW 74.20A.070 upon filing with the county auditor of the county in which the employer does business or maintains an office or agent for the purpose of doing business.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless a written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state or unless a determination has been made in ~~((a fair hearing))~~ an adjudicative proceeding pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied.

Sec. 154. Section 8, chapter 164, Laws of 1971 ex. sess. as last amended by section 6, chapter 276, Laws of 1985 and RCW 74.20A.080 are each amended to read as follows:

Twenty-one days after service of a notice of debt as provided for in RCW 74.20A.040, or twenty-one days after service of the notice and finding of financial responsibility or as otherwise appropriate under RCW 74.20A.055, or as appropriate under RCW 74.20A.270, the secretary is hereby authorized to issue to any person, firm, corporation, association, political subdivision, or department of the state, an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to said debtor. The order to withhold and deliver shall state the amount of the support debt accrued, and shall state in summary the terms of RCW 74.20A.090 and 74.20A.100. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made is hereby required to answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the

matters inquired of therein. The secretary may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. In the event there is in the possession of any such person, firm, corporation, association, political subdivision, or department of the state any property which may be subject to the claim of the department of social and health services, such property shall be withheld immediately upon receipt of the order to withhold and deliver and shall, after the twenty day period, upon demand, be delivered forthwith to the secretary. The secretary shall hold said property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary. Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement of the order to withhold and deliver. Delivery to the secretary shall serve as full acquittance and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter. The foregoing is subject to the exemptions contained in RCW 74.20A.090.

The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for ~~((a hearing))~~ judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for support moneys.

Any person, firm, corporation, association, or political subdivision, or department of the state required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver.

Sec. 155. Section 12, chapter 164, Laws of 1971 ex. sess. as amended by section 3, chapter 41, Laws of 1983 1st ex. sess. and RCW 74.20A.120 are each amended to read as follows:

In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of a lien or order to withhold and deliver or any other notice or document authorized by this chapter shall only be effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

If the department initiates collection action under this chapter against a community bank account, the debtor or the debtor's spouse, upon service on the department of a timely (~~request, shall have~~) application, has a right to (~~a contested hearing under~~) an adjudicative proceeding governed by chapter ((34.04)) 34.05 RCW, the Administrative Procedure Act, to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200.

Sec. 156. Section 18, chapter 171, Laws of 1979 ex. sess. as last amended by section 14, chapter 276, Laws of 1985 and RCW 74.20A.270 are each amended to read as follows:

The secretary may issue a notice of support debt to any person, firm, corporation, association, or political subdivision of the state of Washington or any officer or agent thereof who has violated RCW 74.20A.100, who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW, if the support moneys have not been remitted to the department as required by law.

The notice shall describe the claim of the department, stating the legal basis for the claim and shall provide sufficient detail to enable the person, firm, corporation, association, or political subdivision or officer or agent thereof upon whom service is made to identify the support moneys in issue or the specific violation of RCW 74.20A.100 that has occurred. The notice

may also make inquiry as to relevant facts necessary to the resolution of the issue.

The notice may be served by certified mail, return receipt requested, or in the manner of a summons in a civil action. Upon service of the notice all moneys not yet disbursed or spent or like moneys to be received in the future are deemed to be impounded and shall be held in trust pending answer to the notice and any ~~((hearing which is requested))~~ adjudicative proceeding.

The notice shall be answered under oath and in writing within twenty days of the date of service, which answer shall include true answers to the matters inquired of in the notice. The answer shall also either acknowledge the department's right to the moneys or ~~((request an administrative hearing))~~ application for an adjudicative proceeding to contest the allegation that RCW 74.20A.100 has been violated, or determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and the rules of the department ~~((and shall be a contested case as provided for in chapter 34.04 RCW))~~. The burden of proof to establish ownership of the support moneys claimed, including but not limited to moneys not yet disbursed or spent, is on the department.

If no answer is made within the twenty days, the department's claim shall be assessed and determined and subject to collection action as a support debt pursuant to chapter 74.20A RCW. Any such debtor may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for ~~((a hearing))~~ an adjudicative proceeding upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending ~~((final decision of the secretary or the secretary's designee or the courts on any appeal made pursuant to chapter 34.04 RCW))~~ the final administrative order. Any moneys held and/or taken by collection action prior to the date of any such stay and any support moneys claimed by the department, including moneys to be received in the future to which the department may have a claim, shall be held in trust pending the final ~~((decision and appeal; if any))~~ order, to be disbursed in accordance with the final ~~((decision))~~ order. The secretary or the secretary's designee shall condition the stay to provide for the trust.

If the ~~((hearing))~~ petition is granted ~~((it shall be an administrative hearing))~~ the issue in the proceeding is limited to the determination of the ownership of the moneys claimed in the notice of debt. The right to ~~((the hearing))~~ an adjudicative proceeding is conditioned upon holding of any funds not yet disbursed or expended or to be received in the future in trust

pending the final order in these proceedings (~~((or during any appeal made to the courts))~~). The (~~((secretary or the secretary's designee))~~) presiding or reviewing officer shall enter an appropriate order providing for the terms of the trust.

~~((The hearing shall be a contested case as provided for in chapter 34.04 RCW and shall be held pursuant to this section, chapter 34.04 RCW, and the rules of the department. The hearing shall be promptly scheduled within thirty days from the date of receipt of the answer by the department. The hearing shall be conducted by a duly qualified hearing examiner appointed for that purpose. Hearings may be held in the county of residence of the debtor or other place convenient to the debtor.))~~

If the debtor fails to (~~(appear at)~~) attend or participate in the hearing or other stage of an adjudicative proceeding, the (~~(hearing examiner))~~ presiding officer shall, upon showing of valid service, enter an (~~((initial decision and))~~) order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action. (~~((Within thirty days of entry of the decision and order the debtor may petition the secretary or the secretary's designee to vacate the decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.~~

~~The hearing and review process shall be as provided for in RCW 74.20A.055:))~~

If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in (~~(these proceedings))~~) an adjudicative proceeding, the judgment shall supersede the final administrative order (~~(in these proceedings))~~). Any debt determined by the superior court in excess of the amount determined by the final administrative order (~~(in these proceedings))~~) shall be the property of the department as assigned under 42 U.S.C. 602(A)(26)(a), RCW 74.20.040, 74.20A.250, 74.20.320, or 74.20.330. The department may, despite any final administrative order (~~(in these proceedings))~~), take action pursuant to chapter(~~(s)~~) 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

If public assistance moneys have been paid to a parent for the benefit of that parent's minor dependent children, debt under this chapter shall not be incurred by nor at any time be collected from that parent because of that payment of assistance. Nothing in this section prohibits or limits the department from acting pursuant to RCW 74.20.320 and this section to assess a debt against a recipient or ex-recipient for receipt of support moneys paid in satisfaction of the debt assigned under RCW 74.20.330 which have been assigned to the department but were received by a recipient or ex-recipient from another responsible parent and not remitted to the department. To collect these wrongfully retained funds from the recipient, the department may not take collection action in excess of ten percent of the grant payment

standard during any month the public assistance recipient remains in that status unless required by federal law. Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section.

Sec. 157. Section 21, chapter 171, Laws of 1979 ex. sess. and RCW 74.20A.290 are each amended to read as follows:

Whenever any person (~~requests an administrative hearing~~) files an application for an adjudicative proceeding under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it shall be the responsibility of the person to notify the department of the person's mailing address at the time the (~~request for hearing~~) application for an adjudicative proceeding is made and also to notify the department of any subsequent change of mailing address during the pendency of the (~~action~~) administrative proceeding and any (~~appeal made therefrom to the courts~~) judicial review. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and (~~34.04~~) 34.05 RCW.

Sec. 158. Section 10, chapter 434, Laws of 1987 and RCW 74.21.100 are each amended to read as follows:

The executive committee shall direct the department of social and health services and the employment security department to adopt rules providing due process of law protections to applicants for and recipients of family independence program benefits. The requirements shall confer protections no less than those which the federal statutes and regulations confer on participants in the food stamp, aid to families with dependent children, and work incentive programs. The protections shall include, but are not limited to, the following:

(1) The departments shall provide adequate advance written notice to applicants or enrollees of any agency action to deny, award, reduce, terminate, increase, or suspend benefits or to change the manner or form of payment or of any agency action requiring the enrollee to take any action. Adequate notice includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific rules supporting the action, an explanation of the individual's right to (~~request~~) file an (administrative fair hearing) application for an adjudicative proceeding, how to (~~request one~~) file an application, and the circumstances under which assistance is continued pending (~~such a hearing if requested~~) the adjudicative proceeding if an application for one is filed.

(2) Advance notice must be mailed to enrollees at least ten days prior to the date on which the proposed action would become effective.

(3) An applicant or enrollee aggrieved by an action or decision of the departments, including requiring or denying participation in a work, training, or education activity, has the right to ~~((request a fair hearing to be conducted by the office of administrative hearings in accordance with))~~ file an application for an adjudicative proceeding under RCW 74.08.080 and chapters 34.05 and 34.12 ((and 34.04)) RCW. The aggrieved person is entitled to all fair hearing rights ~~((provided under RCW 74.08.070))~~ and to the right of judicial review therefrom as provided in RCW 74.08.080.

(4) When an enrollee ~~((requests a hearing))~~ files an application for an adjudicative proceeding during the advance notice period, the departments shall not implement the challenged action until a written ~~((decision))~~ adjudicative order is rendered after a hearing. The advance notice period is the period prior to the effective date of the proposed action or ten days from the date of adequate written notice, whichever is later. Any assistance received pending a hearing or ~~((hearing decision))~~ adjudicative order may be considered to be an overpayment if the ~~((decision))~~ adjudicative order is against the enrollee.

(5) Financial, food stamp, and medical assistance shall be furnished to eligible individuals in a timely manner and shall be continued regularly to all eligible individuals until they are found to be ineligible. Applications should be disposed of as soon as possible in accordance with 7 C.F.R. Sec. 273.2 (g) and (i) and 45 C.F.R. Sec. 206.10 and no later than thirty days from the date of application unless good cause applies. Prior to denial or termination of family independence program cash or noncash benefits, each family's eligibility for financial assistance, medical assistance, and food stamp benefits shall be determined.

Sec. 159. Section 78, chapter 177, Laws of 1980 as amended by section 40, chapter 67, Laws of 1983 1st ex. sess. and RCW 74.46.780 are each amended to read as follows:

(1) Within ~~((thirty))~~ twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request in writing that the secretary review such determination. The request shall be signed by the contractor or the licensed administrator of the facility, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which the contractor intends to rely to support its position shall be included with the request.

(2) After receiving a request meeting the above criteria, the secretary or his designee will contact the contractor to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than ninety days after a properly completed request is received unless both parties agree in writing to a specified later date.

(3) The contractor and appropriate representatives of the department shall attend the conference. In addition, representatives selected by the contractor may attend and participate. The contractor shall provide to the department in advance of the conference any documentation on which it intends to rely to support its contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than ~~((thirty))~~ twenty-eight days after the initial session unless both parties agree in writing to a specific later date.

(4) A written decision by the secretary will be furnished to the contractor within sixty days after the conclusion of the conference.

(5) If the contractor desires review of an adverse decision of the secretary, it shall within ~~((thirty))~~ twenty-eight days following receipt of such decision ~~((request a fair hearing in writing in accordance with the provisions of chapter 34.04 RCW. A request for fair hearing shall satisfy the criteria for a review request as set forth in subsection (1) of this section))~~ file a written application for an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

Sec. 160. Section 4, chapter 173, Laws of 1986 as last amended by section 3, chapter 272, Laws of 1988 and RCW 75.20.130 are each amended to read as follows:

(1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it, and that finding and decision shall be effective upon being signed by two or more board members and upon being filed at the hydraulic appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by either the department of fisheries or the department of wildlife under the authority granted in RCW 75.20.103 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020.

(6) (a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 75.20.103 may seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW pertaining to procedures in ~~((contested cases))~~ adjudicative proceedings.

Sec. 161. Section 5, chapter 173, Laws of 1986 and RCW 75.20.140 are each amended to read as follows:

(1) In all appeals over which the hydraulic appeals board has jurisdiction, a party taking an appeal may elect either a formal or informal hearing. Such election shall be made according to the rules of practice and procedure to be adopted by the hydraulic appeals board. In the event that appeals are taken from the same decision, order, or determination, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals, the hydraulic appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter ~~((34.04))~~ 34.05 RCW.

(3) In all appeals involving a formal hearing, the hydraulic appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter ~~((34.04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings.

(4) All proceedings, including both formal and informal hearings, before the hydraulic appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(5) Judicial review of a decision of the hydraulic appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598.

Sec. 162. Section 37, chapter 100, Laws of 1986 and RCW 76.04.630 are each amended to read as follows:

There is created a landowner contingency forest fire suppression account which shall be a separate account in the state treasury. This account shall be for the purpose of paying emergency fire costs incurred or approved by the department in the suppression of forest fires. When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from such general fund appropriations as may be available for emergency fire suppression costs. Moneys spent from this account shall be

by appropriation. The department shall transmit to the state treasurer for deposit in the landowner contingency forest fire suppression account any moneys paid out of the account which are later recovered, less reasonable costs of recovery, which moneys may be expended for purposes set forth herein during the current biennium, without reappropriation.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating landowners at rates to be established by the department, but not to exceed ten cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in the account of two million dollars: PROVIDED, That the department may establish a minimum assessment for ownership parcels containing less than thirty acres. The maximum assessment for these parcels shall not exceed the fees levied on a thirty-acre parcel. There shall be no assessment on each parcel of privately owned lands of less than two acres or on each parcel of tax exempt lands of less than ten acres. The assessments with respect to forest lands in western and eastern Washington may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made, and may be collected as directed by the department in the same manner as forest fire protection assessments. This account shall be held by the state treasurer who is authorized to invest so much of the account as is not necessary to meet current needs. Any interest earned on moneys from the account shall be deposited in and remain a part of the account, and shall be computed as part of the same in determining the balance thereof. Interfund loans to and from this account are authorized at the then current rate of interest as determined by the state treasurer, provided that the effect of the loan is considered for purposes of determining the assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or any interested party, serves a request for a hearing before the department. The hearing shall constitute ~~((a-contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and any appeal therefrom shall be to the superior court of Thurston county.

Sec. 163. Section 8, chapter 137, Laws of 1974 ex. sess. as amended by section 5, chapter 200, Laws of 1975 1st ex. sess. and RCW 76.09.080 are each amended to read as follows:

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

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

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

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

(2) The stop work order shall set forth:

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

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

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

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

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be ~~((a contested case))~~ an adjudicative proceeding within the meaning of chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

Sec. 164. Section 22, chapter 137, Laws of 1974 ex. sess. as last amended by section 109, chapter 287, Laws of 1984 and RCW 76.09.220 are each amended to read as follows:

(1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.240: PROVIDED, That such

compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department.

(8) (a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his request with the department and the attorney general. The attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW pertaining to procedures in ~~((contested cases))~~ adjudicative proceedings.

Sec. 165. Section 23, chapter 137, Laws of 1974 ex. sess. and RCW 76.09.230 are each amended to read as follows:

(1) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter ~~((34.04))~~ 34.05 RCW.

(3) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter ~~((34.04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings.

(4) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598.

Sec. 166. Section 18, chapter 64, Laws of 1970 ex. sess. and RCW 78.44.170 are each amended to read as follows:

Appeals from determinations made under this chapter shall be made under the provisions of the Administrative Procedure Act (chapter ~~((34.04))~~ 34.05 RCW), ~~((as now or hereafter amended))~~ and shall be considered ~~((a contested case))~~ an adjudicative proceeding within the meaning of the Administrative Procedure Act, ~~((f))~~ chapter ~~((34.04))~~ 34.05 RCW ~~((h))~~.

Sec. 167. Section 29, chapter 253, Laws of 1983 and RCW 78.52.463 are each amended to read as follows:

(1) Any operation or activity that is in violation of applicable laws, rules, orders, or permit conditions is subject to suspension by order of the committee. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the committee has

first notified the operator or owner of the violations and the operator or owner has failed to comply with the directions contained in the notification within ten days of service of the notice: PROVIDED, That the committee may issue the suspension order immediately without notice if the violations are or may cause substantial harm to adjacent property, persons, or public resources, or has or may result in the pollution of waters in violation of any state or federal law or rule. A suspension shall remain in effect until the violations are corrected or other directives are complied with unless declared invalid by the committee after hearing or an appeal. The suspension order and notification, where applicable, shall specify the violations and the actions required to be undertaken to be in compliance with such laws, rules, orders, or permit conditions. The order and notification may also require remedial actions to be undertaken to restore, prevent, or correct activities or conditions which have resulted from the violations. The order and notification may be directed to the operator or owner or both.

(2) The suspension order constitutes a final and binding order unless the owner or operator to whom the order is directed requests a hearing before the committee within fifteen days after service of the order. Such a request shall not in itself stay or suspend the order and the operator or owner shall comply with the order immediately upon service. The committee or its chairman have the authority to stay or suspend in whole or in part the suspension order pending a hearing if so requested. The hearing shall constitute ~~((a contested case hearing))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act.

Sec. 168. Section 50, chapter 146, Laws of 1951 as amended by section 27, chapter 253, Laws of 1983 and RCW 78.52.470 are each amended to read as follows:

Any person adversely affected by any order of the committee may, within thirty days from the effective date of such order, apply for a hearing with respect to any matter determined therein. No cause for action arising out of any order of the committee shall accrue in any court to any person unless the person makes application for a hearing as herein provided. Such application shall set forth specifically the ground on which the applicant considers the order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made in conformity to a decision resulting from a hearing which abrogates, changes, or modifies the original order shall have the same force and effect as an original. Such hearing shall constitute ~~((a contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and shall be conducted in accordance with its provisions.

Sec. 169. Section 4, chapter 161, Laws of 1977 ex. sess. and RCW 79.72.040 are each amended to read as follows:

(1) The management program for the system shall be administered by the department. The department shall have the responsibility for coordinating the development of the program between affected state agencies and participating local governments, and shall develop and adopt rules (~~and regulations~~), in accord with chapter (~~34.04~~) 34.05 RCW, the Administrative Procedure Act, for each portion of the system, which shall implement the management policies. In developing rules (~~and regulations~~) for a specific river in the system, the department shall hold at least one public hearing in the general locale of the river under consideration. The hearing may constitute the hearing required by chapter 34.05 RCW. The department shall cause a brief summary of the proposed rules (~~and regulations~~) to be published twice in a newspaper of general circulation in the area (~~which~~) that includes the river to be considered in the period of time between two and four weeks prior to the public hearing. In addition to the foregoing required publication, the department shall also provide notice of the hearings, rules, (~~regulations,~~) and decisions of the department to radio and television stations and major local newspapers in the areas (~~which~~) that include the river to be considered.

(2) In addition to any other powers granted to carry out the intent of this chapter, the department is authorized, subject to approval by majority vote of the members of the committee, to: (a) Purchase, within the river area, real property in fee or any lesser right or interest in real property including, but not limited to scenic easements and future development rights, visual corridors, wildlife habitats, unique ecological areas, historical sites, camping and picnic areas, boat launching sites, and/or easements abutting the river for the purpose of preserving or enhancing the river or facilitating the use of the river by the public for fishing, boating and other water related activities; and (b) purchase, outside of a river area, public access to the river area.

The right of eminent domain shall not be utilized in any purchase made pursuant to this section.

(3) The department is further authorized to: (a) Acquire by gift, devise, grant, or dedication the fee, an option to purchase, a right of first refusal or any other lesser right or interest in real property and upon acquisition such real property shall be held and managed within the scenic river system; and (b) accept grants, contributions, or funds from any agency, public or private, or individual for the purposes of this chapter.

(4) The department is hereby vested with the power to obtain injunctions and other appropriate relief against violations of any provisions of this chapter and any rules (~~and regulations~~) adopted under this section or agreements made under the provisions of this chapter.

Sec. 170. Section 2, chapter 2, Laws of 1983 2nd ex. sess. and RCW 79.90.105 are each amended to read as follows:

The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on such areas if used exclusively for private recreational purposes and the area is not subject to prior rights. This permission is subject to applicable local regulation governing construction, size, and length of the dock. This permission may be revoked by the department upon finding of public necessity which is limited to the protection of waterward access or ingress rights of other landowners or public health and safety. The revocation may be appealed as ~~((a-contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act. Nothing in this section prevents the abutting owner from obtaining a lease if otherwise provided by law.

Sec. 171. Section 106, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.94.210 are each amended to read as follows:

(1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest: PROVIDED, That the purpose of this section is to remove the prohibition contained in RCW 79.94.150 regarding the sale of second class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.94.150, the department of natural resources may sell second class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board of natural resources has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum depth of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days of the date the department notified the owner regarding the price. The board of tax appeals shall review such cases in ~~((a-contested case))~~ an adjudicative proceeding as described in chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW ~~((34.04.130))~~ 34.05.510 through 34.05.598.

Sec. 172. Section 17, chapter 371, Laws of 1977 ex. sess. and RCW 80.50.075 are each amended to read as follows:

(1) Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

- (a) The environmental impact of the proposed energy facility;
- (b) The area potentially affected;
- (c) The cost and magnitude of the proposed energy facility; and
- (d) The degree to which the proposed energy facility represents a change in use of the proposed site

are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study, notwithstanding the provisions of RCW 80.50.071; nor

(b) Hold ~~((a contested case hearing))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section.

Sec. 173. Section 9, chapter 45, Laws of 1970 ex. sess. and RCW 80.50.090 are each amended to read as follows:

(1) The council shall conduct a public hearing in the county of the proposed site within sixty days of receipt of an application for site certification: PROVIDED, That the place of such public hearing shall be as close as practical to the proposed site.

(2) The council must determine at the initial public hearing whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as ~~((a contested case))~~ an adjudicative proceeding under chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

Sec. 174. Section 10, chapter 45, Laws of 1970 ex. sess. as last amended by section 8, chapter 371, Laws of 1977 ex. sess. and RCW 80.50.100 are each amended to read as follows:

(1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(a) Approve the application and execute the draft certification agreement; or

(b) Reject the application; or

(c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the (~~contested case~~) adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

Sec. 175. Section 45, chapter 26, Laws of 1967 ex. sess. as amended by section 6, chapter 222, Laws of 1988 and RCW 82.03.160 are each amended to read as follows:

In all appeals involving a formal hearing the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter ~~((34.04))~~ 34.05 RCW; and the board, and each member thereof, or its tax referees, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter ~~((34.04))~~ 34.05 RCW relating to ~~((contested cases))~~ adjudicative proceedings. The board, or its tax referees, shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(2), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: PROVIDED, HOWEVER, That any communication, oral or written, from the staff of the director to the board or its tax referees shall be presented only in open hearing.

Sec. 176. Section 47, chapter 26, Laws of 1967 ex. sess. as amended by section 9, chapter 46, Laws of 1982 1st ex. sess. and RCW 82.03.180 are each amended to read as follows:

Judicial review of a decision of the board of tax appeals shall be de novo in accordance with the provisions of RCW 82.32.180 or 84.68.020 as applicable except when the decision has been rendered pursuant to a formal hearing elected under RCW 82.03.140 or 82.03.190, in which event judicial review may be obtained only pursuant to RCW ~~((34.04.130 and 34.04.140))~~ 34.05.510 through 34.05.598: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the rights of a taxpayer conferred by RCW 82.32.180 and 84.68.020 to sue for tax refunds: AND PROVIDED FURTHER, That no review from a decision made pursuant to RCW 82.03.130(1) may be obtained by a taxpayer unless within the petition period provided by RCW ~~((34.04.130))~~ 34.05.542 the taxpayer shall have first paid in full the contested tax, together with all penalties and interest thereon, if any. The director of revenue shall have the same right of review from a decision made pursuant to RCW 82.03.130(1) as does a taxpayer; and the director of revenue and all parties to an appeal under RCW 82.03.130(5) shall have the right of review from a decision made pursuant to RCW 82.03.130(5).

Sec. 177. Section 4, chapter 139, Laws of 1967 ex. sess. and RCW 82.34.040 are each amended to read as follows:

The department may adopt such rules ~~((and regulations))~~ as it deems necessary for the administration of this chapter subject to the provisions of RCW ~~((34.04.020 through 34.04.060))~~ 34.05.310 through 34.05.395. Such rules ~~((and regulations))~~ shall not abridge the authority of the appropriate control agency as provided in this chapter or any other law.

Sec. 178. Section 13, chapter 449, Laws of 1985 and RCW 84.26.130 are each amended to read as follows:

Any decision by a local review board on an application for classification as historic property eligible for special valuation may be appealed to superior court under RCW (~~(34.04.130)~~) 34.05.510 through 34.05.598 in addition to any other remedy at law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization.

Sec. 179. Section 9, chapter 187, Laws of 1974 ex. sess. as last amended by section 25, chapter 204, Laws of 1984 and RCW 84.33.200 are each amended to read as follows:

(1) The legislature shall review the system of distribution and allocation of all timber excise tax revenues in January~~(:)~~ 1975 and each year thereafter to provide a uniform and equitable distribution and allocation of such revenues to the state and local taxing districts.

(2) In order to allow legislative review of the rules (~~and regulations~~) to be adopted by the department of revenue establishing the stumpage values provided for in RCW 84.33.091, such rules (~~and regulations~~) shall be effective not less than sixty days after transmitting to the staffs of the senate and house ways and means committees (or their successor committees) the same proposed rules (~~and regulations as shall~~) as have been previously filed with the office of the code reviser pursuant to RCW (~~(34.04.025(1)(a))~~) 34.05.320.

(3) In the event that a permanent timber tax rate is not set in 1979, a joint timber tax advisory committee shall be established. The joint advisory committee shall be composed of members of the house of representatives and the senate and co-chaired by a member of the house revenue committee and a member of the senate ways and means committee. The joint advisory committee shall recommend a rate level and distribution system on or before the convening of the forty-seventh legislature.

(4) The department of revenue and the department of natural resources shall make available to the revenue committees of the senate and house of representatives of the state legislature information and data, as it may be available, pertaining to the status of forest land grading throughout the state, the collection of timber excise tax revenues, the distribution and allocation of timber excise tax revenues to the state and local taxing districts, and any other information as may be necessary for the proper legislative review and implementation of the timber excise tax system, and in addition, the departments shall provide an annual report of such matters in January of each year to such committees.

Sec. 180. Section 20, chapter 233, Laws of 1967 as amended by section 6, chapter 216, Laws of 1979 ex. sess. and RCW 90.14.200 are each amended to read as follows:

(1) All matters relating to the implementation and enforcement of this chapter by the department of ecology shall be carried out in accordance with chapter ~~((34.04))~~ 34.05 RCW, ~~((as it now exists or hereafter shall be amended))~~ the Administrative Procedure Act, except where the provisions of this chapter expressly conflict ~~((herewith))~~ with chapter 34.05 RCW. Proceedings held pursuant to RCW 90.14.130 ~~((hereof))~~ are ~~((²contested cases²))~~ adjudicative proceedings within the meaning of chapter ~~((34.04))~~ 34.05 RCW. Final decisions of the department of ecology in these proceedings are subject to review in accordance with chapter 43.21B RCW.

(2) RCW 90.14.130 provides nonexclusive procedures for determining a relinquishment of water rights under RCW 90.14.160, 90.14.170, and 90.14.180. RCW 90.14.160, 90.14.170, and 90.14.180 may be applied in, among other proceedings, general adjudication proceedings initiated under RCW 90.03.110 or 90.44.220: PROVIDED, That nothing herein shall apply to litigation involving determinations of the department of ecology under RCW 90.03.290 relating to the impairment of existing rights.

Sec. 181. Section 21, chapter 13, Laws of 1967 and RCW 90.48.230 are each amended to read as follows:

The provisions of chapter ~~((34.04 RCW, as it now exists or may be hereafter amended, shall))~~ 34.05 RCW, the Administrative Procedure Act, apply to all rule making and ~~((contested cases))~~ adjudicative proceedings authorized by or arising under the provisions of this chapter.

Sec. 182. Section 12, chapter 286, Laws of 1971 ex. sess. as amended by section 2, chapter 182, Laws of 1975 1st ex. sess. and RCW 90.58.120 are each amended to read as follows:

All rules, regulations, master programs, designations, and guidelines, issued by the department, shall be adopted or approved in accordance with the provisions of RCW ~~((34.04.025))~~ 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the approval or adoption by the department of a master program, or portion thereof, at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county auditor and city clerk. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

Sec. 183. Section 18, chapter 286, Laws of 1971 ex. sess. as last amended by section 2, chapter 292, Laws of 1986 and RCW 90.58.180 are each amended to read as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 (~~as now or hereafter amended~~) may seek review from the shorelines hearings board by filing a request for the same within thirty days of the date of filing as defined in RCW 90.58.140(6) (~~as now or hereafter amended~~).

Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: PROVIDED, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the request for review filed pursuant to this section. The shorelines hearings board shall initially schedule review proceedings on such requests for review without regard as to whether such requests have or have not been certified or as to whether the period for the department or the attorney general to intervene has or has not expired, unless such review is to begin within thirty days of such scheduling. If at the end of the thirty day period for certification neither the department nor the attorney general has certified a request for review, the hearings board shall remove the request from its review schedule.

(2) The department or the attorney general may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines hearings board and the appropriate local government within thirty days from the date the final order was filed as provided in RCW 90.58.140(6) (~~as now or hereafter amended~~).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter (~~34.04~~) 34.05 RCW pertaining to procedures in (~~contested cases~~) adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board may be had as provided in chapter (~~34.04~~) 34.05 RCW.

(4) Local government may appeal to the shorelines hearings board any rules, regulations, or guidelines adopted or approved by the department

within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

If the board determines that ~~((said))~~ the rule, regulation, or guideline:

- (a) Is clearly erroneous in light of the policy of this chapter; or
- (b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or
- (c) Is arbitrary and capricious; or
- (d) Was developed without fully considering and evaluating all material submitted to the department by the local government; or
- (e) Was not adopted in accordance with required procedures;

the board shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government, a new rule, regulation, or guideline. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect.

(5) Rules, regulations, and guidelines shall be subject to review in superior court, if authorized pursuant to RCW ~~((34.04.070))~~ 34.05.538: PROVIDED, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section is filed within three months after the date of final decision by the shorelines hearings board.

Sec. 184. Section 19, chapter 286, Laws of 1971 ex. sess. as amended by section 3, chapter 292, Laws of 1986 and RCW 90.58.190 are each amended to read as follows:

(1) The department and each local government shall periodically review any master programs under its jurisdiction and make such adjustments thereto as are necessary. Any adjustments proposed by a local government to its master program shall be forwarded to the department for review. The department shall approve, reject, or propose modification to the adjustment. If the department either rejects or proposes modification to the master program adjustment, it shall provide substantive written comments as to why the proposal is being rejected or modified.

(2) Any local government aggrieved by the department's decision to approve, reject, or modify a proposed master program or master program adjustment may appeal the department's decision to the shorelines hearings board. In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program adjustment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's adjustment in light of the policy of RCW 90.58.020 and the applicable guidelines. In an appeal relating to shorelines of state-wide significance, the

board shall uphold the decision by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines. Review by the hearings board shall be considered (~~(a contested case)~~) an adjudicative proceeding under chapter (~~(34.04)~~) 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews. Whenever possible, the review by the hearings board shall be heard within the county where the land subject to the proposed master program or master program adjustment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to the superior court of Thurston county.

(3) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program adjustment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program adjustment.

NEW SECTION. Sec. 185. The following acts or parts of acts are each repealed:

- (1) Section 7, chapter 253, Laws of 1957 and RCW 18.20.070;
- (2) Section 11, chapter 168, Laws of 1951 and RCW 18.46.100;
- (3) Section 11, chapter 237, Laws of 1967 and RCW 34.04.115;
- (4) Section 7, chapter 234, Laws of 1959, section 8, chapter 6, Laws of 1982, section 508, chapter 288, Laws of 1988 and RCW 34.05.538;
- (5) Section 9, chapter 144, Laws of 1955, section 72, chapter 141, Laws of 1979 and RCW 69.30.090;
- (6) Section 10, chapter 144, Laws of 1955, section 73, chapter 141, Laws of 1979 and RCW 69.30.100;
- (7) Section 14, chapter 267, Laws of 1955, section 23, chapter 213, Laws of 1985 and RCW 70.41.140;
- (8) Section 74.08.070, chapter 26, Laws of 1959, section 1, chapter 172, Laws of 1969 ex. sess., section 324, chapter 141, Laws of 1979, section 1, chapter 92, Laws of 1979 ex. sess., section 34, chapter 67, Laws of 1981, section 14, chapter 6, Laws of 1981 1st ex. sess. and RCW 74.08.070;
- (9) Section 3, chapter 3, Laws of 1981 2nd ex. sess. and RCW 74.09-.536; and
- (10) Section 23, chapter 228, Laws of 1963 and RCW 74.12.270.

NEW SECTION. Sec. 186. Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing

public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990.

Passed the House April 15, 1989.

Passed the Senate March 31, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

CHAPTER 176

[Substitute House Bill No. 1056]

HERRING SPAWN ON KELP PERMITS

AN ACT Relating to herring spawn on kelp; amending RCW 15.85.020 and 75.08.230; adding a new section to chapter 75.28 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp permits shall not exceed five annually. The state therefore must use its authority to regulate the number of herring spawn on kelp permits so that the management and economic health of the herring fishery may be improved.

NEW SECTION. Sec. 2. A new section is added to chapter 75.28 RCW to read as follows:

In addition to a commercial fishing license, a herring validation, and other applicable permits required under state law, a herring spawn on kelp permit is required to commercially take herring eggs which have been deposited on vegetation of any type. All herring spawn on kelp permits shall be sold at auction to the highest bidder. Bidders are required to identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all herring validation holders thirty days' notice of the auction.

Sec. 3. Section 2, chapter 457, Laws of 1985 and RCW 15.85.020 are each amended to read as follows:

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