

CHAPTER 62
[Engrossed Senate Bill No. 1]
DEPARTMENT OF ECOLOGY

AN ACT Relating to state government; creating a state department of ecology and setting out its powers, duties and functions; creating an ecological commission and setting forth its powers, duties and functions; creating a pollution control hearings board and setting forth its powers, duties and functions; abolishing certain state agencies and transferring the powers, duties, and functions thereof, as well as transferring certain powers, duties, and functions of existing state agencies; amending section 1, chapter 32, Laws of 1969 and RCW 43.17-.010; amending section 2, chapter 32, Laws of 1969 and RCW 43-.17.020; repealing section 1, chapter 242, Laws of 1967 and RCW 43.27A.010; repealing section 3, chapter 242, Laws of 1967 and RCW 43.27A.030; repealing section 4, chapter 242, Laws of 1967 and RCW 43.27A.040; repealing section 5, chapter 242, Laws of 1967 and RCW 43.27A.050; repealing section 6, chapter 242, Laws of 1967 as amended by section 2, chapter 103, Laws of 1969 ex. sess. and RCW 43.27A.060; repealing section 7, chapter 242, Laws of 1967 and RCW 43.27A.070; repealing section 10, chapter 242, Laws of 1967 as amended by section 1, chapter 103, Laws of 1969 ex. sess. and RCW 43.27A-.100; repealing section 11, chapter 242, Laws of 1967 and RCW 43.27A.110; repealing section 16, chapter 242, Laws of 1967 and RCW 43.27A.140; repealing section 17, chapter 242, Laws of 1967 and RCW 43.27A.150; repealing section 18, chapter 242, Laws of 1967 and RCW 43.27A.160; repealing section 19, chapter 242, Laws of 1967 and RCW 43.27A.170; repealing section 1, chapter 188, Laws of 1961 as last amended by section 32, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.300; repealing section 2, chapter 188, Laws of 1961 and RCW 70.94.310; repealing section 3, chapter 188, Laws of 1961 as amended by sec-

tion 33, chapter 168, Laws of 1969 ex. sess. and RCW 70.94-.320; repealing section 3, chapter 216, Laws of 1945 as amended by section 2, chapter 13, Laws of 1967 and RCW 90.48-.021; repealing sections 4 and 5, chapter 216, Laws of 1945 and RCW 90.48.022 and 90.48.023; repealing section 6, chapter 216, Laws of 1945 as amended by section 3, chapter 13, Laws of 1967 and RCW 90.48.024; repealing section 7, chapter 216, Laws of 1945 as amended by section 4, chapter 13, Laws of 1967 and RCW 90.48.025; repealing section 8, chapter 216, Laws of 1945 as amended by section 5, chapter 13, Laws of 1967 and RCW 90.48.026; repealing section 9, chapter 216, Laws of 1945 and RCW 90.48.027; adding a new section to chapter 1, Laws of 1961 and to chapter 41.06 RCW; adding new chapters to Title 43 RCW; amending section 25, chapter 238, Laws of 1967 as amended by section 16, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.141; amending section 34, chapter 238, Laws of 1967 as amended by section 24, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.211; amending section 35, chapter 238, Laws of 1967 as amended by section 25, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.221; amending section 36, chapter 238, Laws of 1967 as amended by section 26, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.222; amending section 3, chapter 134, Laws of 1969 ex. sess. and RCW 70.95.030; and providing an effective date.

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

NEW SECTION. Section 1. The legislature recognizes, and declares it to be the policy of this state, that it is a fundamental and inalienable right of the people of the state of Washington to live in a healthful and pleasant environment and to benefit from the proper development and use of its natural resources. The legislature further recognizes that as the population of our state grows, the need to provide for our increasing industrial, agricultural, residen-

tial, social, recreational, economic and other needs will place an increasing responsibility on all segments of our society to plan, coordinate, restore and regulate the utilization of our natural resources in a manner that will protect and conserve our clean air, our pure and abundant waters, and the natural beauty of the state.

NEW SECTION. Sec. 2. In recognition of the responsibility of state government to carry out the policies set forth in section 1 of this 1970 amendatory act, it is the purpose of this chapter to establish a single state agency with the authority to manage and develop our air and water resources in an orderly, efficient, and effective manner and to carry out a coordinated program of pollution control involving these and related land resources. To this end a department of ecology is created by this chapter to undertake, in an integrated manner, the various water regulation, management, planning and development programs now authorized to be performed by the department of water resources and the water pollution control commission, the air regulation and management program now performed by the state air pollution control board, the solid waste regulation and management program authorized to be performed by state government as provided by chapter 70.95 RCW, and such other environmental, management protection and development programs as may be authorized by the legislature.

NEW SECTION. Sec. 3. As used in this chapter, unless the context indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology.
- (3) "Commission" means the ecological commission.

NEW SECTION. Sec. 4. There is created a department of state government to be known as the department of ecology.

NEW SECTION. Sec. 5. The executive and administrative head of the department shall be the director. The director shall be ap-

pointed by the governor with the consent of the senate. He shall have complete charge of and supervisory powers over the department. He shall be paid a salary fixed by the governor in accordance with the provisions of RCW 43.03.040. If a vacancy occurs in the position of director while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate at which time he shall present to that body his nomination for the position.

NEW SECTION. Sec. 6. The following powers, duties and functions are hereby transferred to the department of ecology created in section 4 of this 1970 amendatory act:

(1) All powers, duties and functions authorized to be performed by the water pollution control commission, or the director thereof, by the terms of chapter 90.48 RCW or otherwise, including those assigned by action of this 1970 legislature;

(2) All powers, duties and functions authorized to be performed by the department of water resources, or the director thereof, by the terms of chapter 43.27A RCW or otherwise, including those assigned by action of this 1970 legislature;

(3) All powers, duties and functions authorized to be performed with reference to air pollution by the department of health, or the director thereof, and by the state air pollution control board or its executive director, by terms of chapter 70.94 RCW, the Washington Clean Air Act, or otherwise, including those assigned by this 1970 legislature; and

(4) All powers, duties and functions authorized to be performed by the department of health, or the director of health, involving the control of pollution problems created by the disposal of solid waste, including those assigned by action of this 1970 legislature, and all powers, duties and functions to be exercised and performed by a department of ecology by the terms of chapter 70.95 RCW, including those assigned by this 1970 legislature.

NEW SECTION. Sec. 7. The administrative procedure act, chapter 34.04 RCW, shall apply to the review of decisions by the director to the same extent as it applied to decisions issued by the directors of the various departments whose powers, duties and functions are transferred by this 1970 amendatory act to the department of ecology. The administrative procedure act shall further apply to all other decisions of the director as in that act provided.

NEW SECTION. Sec. 8. The director of the department of ecology is authorized to adopt such rules and regulations as are necessary and appropriate to carry out the provisions of this chapter.

NEW SECTION. Sec. 9. All powers, duties and functions transferred to the department by the terms of this 1970 amendatory act shall be performed by the director: PROVIDED, That the director may delegate, by appropriate rule or regulation, the performance of such of his powers, duties, and functions, other than those relating to the adoption, amendment or rescission of rules and regulations, to employees of the department whenever it appears desirable in fulfilling the policy and purposes of this chapter.

NEW SECTION. Sec. 10. In order to obtain maximum efficiency and effectiveness within the department, the director may create such administrative divisions within the department as he deems necessary. The director shall appoint a deputy director as well as such assistant directors as shall be needed to administer the several divisions within the department. The deputy director shall have charge and general supervision of the department in the absence or disability of the director. In the case of a vacancy in the office of director, the deputy director shall administer the department until the governor appoints a successor to the director or an acting director. The officers appointed under this section and exempt from the provisions of the state civil service law as provided in section 11 of this 1970 amendatory act, shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation of the

state civil service law.

NEW SECTION. Sec. 11. There is added to chapter 1, Laws of 1961 and to chapter 41.06 RCW a new section to read as follows:

In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of ecology to the director, his confidential secretary, his deputy director, and not to exceed six assistant directors.

NEW SECTION. Sec. 12. The director shall have the power to employ such personnel as may be necessary for the general administration of this chapter: PROVIDED, That except as specified in section 11 of this 1970 amendatory act, such employment shall be in accordance with the rules of the state civil service law, chapter 41.06 RCW.

NEW SECTION. Sec. 13. In addition to any other powers granted the director, he may undertake studies dealing with all aspects of environmental problems involving land, water, or air: PROVIDED, That in the absence of specific legislative authority, such studies shall be limited to investigations of particular problems, and shall not be implemented by positive action: PROVIDED FURTHER, That the results of all such studies shall be submitted to the legislature prior to thirty days before the beginning of each regular session.

NEW SECTION. Sec. 14. The director in carrying out his powers and duties under this chapter shall consult with the department of health and the state board of health, or their successors, insofar as necessary to assure that those agencies concerned with the preservation of life and health may integrate their efforts to the fullest extent possible and endorse policies in common.

NEW SECTION. Sec. 15. The director, whenever it is lawful and feasible to do so, shall consult and cooperate with the federal government, as well as with other states and Canadian provinces, in the study and control of environmental problems. On behalf of the department, the director is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and

other public agencies, for the purpose of carrying out the provisions of this chapter.

NEW SECTION. Sec. 16. Whenever any records or other information furnished under the authority of this chapter to the director, the department, or any division of the department, relate to the processes of production unique to the owner or operator thereof, or may affect adversely the competitive position of such owner or operator if released to the public or to a competitor, the owner or operator of such processes or production may so certify, and request that such information or records be made available only for the confidential use of the director, the department, or the appropriate division of the department. The director shall give consideration to the request, and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of this chapter, may grant the same.

NEW SECTION. Sec. 17. There is hereby created an ecological commission. The commission shall consist of seven members to be appointed by the governor from the electors of the state who shall have a general knowledge of and interest in environmental matters. No persons shall be eligible for appointment who hold any other state, county or municipal elective or appointive office.

(a) One public member shall be a representative of organized labor and shall be selected by the governor from a list of not less than three names submitted to the governor by an organization state-wide in scope which through its affiliates embraces a cross section and a majority of organized labor of the state.

(b) One public member shall be a representative of the business community and shall be selected by the governor from a list of not less than three names submitted by the governor by an organization state-wide in scope which through its affiliates embraces a cross section and a majority of the business community of the state.

(c) One public member shall be a representative of the agricultural community and shall be selected by the governor from a list

of not less than three names submitted to the governor by an organization state-wide in scope which through its affiliates embraces a cross section and a majority of the agricultural community of the state.

(d) Four persons representing the public at large.

The members of the initial commission shall be appointed within thirty days after the effective date of this act. Of the members of the initial commission, two shall be appointed for terms ending June 30, 1974, two shall be appointed for terms ending on June 30, 1973, two shall be appointed for terms ending on June 30, 1972, and one shall be appointed for a term ending June 30, 1971. Thereafter, each member of the commission shall be appointed for a term of four years. Vacancies shall be filled within ninety days for the remainder of the unexpired term by appointment of the governor in the same manner as the original appointments. Each member of the commission shall continue in office until his successor is appointed. No member shall be appointed for more than two consecutive terms. The chairman of the commission shall be appointed from the members by the governor.

The governor may remove any commission member for cause giving him a copy of the charges against him, and an opportunity of being publicly heard in person, or by counsel in his own defense. There shall be no right of review in any court whatsoever. The director or administrator, or a designated representative, of each of the following state agencies:

- (1) The department of agriculture;
- (2) The department of commerce and economic development;
- (3) The department of fisheries;
- (4) The department of game;
- (5) The department of health;
- (6) The department of natural resources;
- (7) The state parks and recreation commission shall be given

notice of and may attend all meetings of the commissions and shall be given full opportunity to examine and be heard on all proposed

orders, regulations or recommendations.

NEW SECTION. Sec. 18. The commission shall meet quarterly at a date and place of its choice, and at such other times as shall be designated by the director or upon the written request of a majority of the commission. Members of the commission shall receive twenty-five dollars per diem for each day or major portion thereof actually spent in attending to their duties as commission members; and, in addition, they shall be entitled to reimbursement and for their travel expenses as provided in RCW 43.03.060, as now or hereafter amended.

NEW SECTION. Sec. 19. It shall be the duty of the members of the commission to provide advice and guidance to the director on each of the following:

(1) Any positions proposed to be taken by the department on behalf of the state before interstate and federal agencies or federal legislative bodies on matters relating to or affecting the quality of the environment of the state;

(2) Any comprehensive environment quality plan, program or policy proposed for adoption by the department as a state plan or policy pertaining to an environmental management activity;

(3) Any procedures for the financial assistance grants proposed to be given to municipal, regional, county or state organizations for environmental quality purposes;

(4) Any procedures for considering applications for and granting variances;

(5) Any proposal developed for submission to the legislature as a departmental request bill;

(6) Any other matter pertaining to the activities of the department submitted by the director for which advice and guidance is requested.

The director shall submit in writing to each member of the commission all rules and regulations, other than for procedural matters, proposed by him for adoption in accordance with the procedures

of chapter 34.04 RCW. Unless, within thirty days of such notification, five of the members of the commission, notify the director in writing of their disapproval of such proposed rules and regulations and their reasons therefor, such rules and regulations shall be adopted by the director in accordance with the procedures of chapter 34.04 RCW.

No powers, duties and functions authorized to be performed by the department of water resources, or the director thereof, by the terms of chapter 43.27A RCW or otherwise, including those assigned by action of the 1970 legislature shall be affected by this section.

NEW SECTION. Sec. 20. In matters submitted to the commission for advice and guidance, as set forth in section 19 of this 1970 amendatory act, it shall be the responsibility of the director to accompany such request with a statement of the background occasioning the request, together with the director's proposal for dealing with the same. Each member shall individually submit to the director in writing his views within such time as the director shall prescribe. In considering a matter submitted to it by the director, the commission shall conduct such public hearings and make such investigations as it deems necessary. The secretary of the commission shall be the director, or an employee of the department designated by the director. It shall be the duty of the secretary to act as liaison between the commission and department as well as other state agencies; to prepare the minutes of the commission; and otherwise to assist the commission. The director shall furnish to the commission such staff and facilities as may be necessary to fulfill its duties. He shall submit to the governor during July of each year, a report containing a summary of the advice and guidance rendered by the commission during the preceding twelve month period.

NEW SECTION. Sec. 21. In addition to the duties and authorities contained in sections 19 and 20, the advisory commission may agree to consider any matter pertinent to the purposes of this act by consent of a majority of the members.

NEW SECTION. Sec. 22. All employees and personnel classified under chapter 41.06 RCW, the state civil service law, and engaged in duties pertaining to the functions transferred by this chapter shall be assigned to the department to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state merit system.

NEW SECTION. Sec. 23. All reports, documents, surveys, books, records, files, papers or other writings in the possession of the department of health or state board of health pertaining to air pollution, in the possession of the department of health pertaining to air or solid waste pollution, or in the possession of the department of water resources or in the possession of the water pollution control commission shall be delivered to the custody of the department of ecology.

All cabinets, furniture, office equipment, motor vehicles and other tangible property employed in carrying out the powers, duties, and functions transferred by this chapter shall be made available to the department of ecology.

All funds, credits or other assets held in connection with the functions herein transferred shall be assigned to the department of ecology.

Any appropriations made to the department of health, the state air pollution control board, the department of water resources, or the water pollution control commission for the purpose of carrying out the powers, duties, and functions herein transferred, shall on the effective date of this chapter be transferred and credited to the department of ecology for the purpose of carrying out such transferred powers, duties and functions.

Whenever any question arises as to the transfer of any funds, including unexpended balances within any accounts, books, documents, records, papers, files, equipment or any other tangible property used or held in the exercise of the powers and the performance of the

duties and functions transferred under this chapter, the director of program planning and fiscal management shall make a determination thereon and certify the same to the state agencies concerned.

NEW SECTION. Sec. 24. All state officials required to maintain contact with or provide services to the department of water resources, to the water pollution control commission, to the department of health or state air pollution control board in connection with air pollution, or to the department of health in connection with solid waste pollution, shall continue to perform such services for the department of ecology unless otherwise directed by this chapter.

NEW SECTION. Sec. 25. Except as specifically provided in this 1970 amendatory act, the provisions hereof shall not impair or supersede the powers or rights granted under any other law to any person, committee, or association, any public, municipal, or private corporation, any state or local governmental agency, any federal agency, or any political subdivision of the state of Washington. Pollution control permits, water quality standards, air pollution permits, air quality standards, and permits for disposal of solid waste material are not affected by this 1970 amendatory act, and the laws governing the same shall be protected and preserved.

NEW SECTION. Sec. 26. On July 1, 1970, the following state agencies, councils and committees are abolished:

- (1) The department of water resources.
- (2) The water pollution control commission.
- (3) The state air pollution control board.
- (4) The water resources advisory council.

All rules and regulations, and all pending business before the department of water resources, the department of health, the state air pollution control board or the water pollution control commission pertaining to matters affected by this chapter, as of July 1, 1970, shall be continued and acted upon by the department of ecology.

All existing contracts and obligations pertaining to the functions herein transferred shall remain in full force and effect, and

shall be performed by the department. Neither the abolition of any agency nor any of the transfers authorized by this chapter shall affect the validity of any act performed by the department of water resources, the department of health, the state air pollution control board, or the water pollution control commission, or by any official or employee thereof, prior to the effective date of this chapter.

NEW SECTION. Sec. 27. The rule of strict construction shall have no application to this chapter and it shall be liberally construed in order to carry out the broad purposes set forth in section 2 of this 1970 amendatory act.

Sec. 28. Section 1, chapter 32, Laws of 1969 and RCW 43.17-.010 are each amended to read as follows:

There shall be departments of the state government which shall be known as (1) the department of public assistance, (2) the department of institutions, (3) the department of health, (4) the department of ((~~water-resources~~)) ecology, (5) the department of labor and industries, (6) the department of agriculture, (7) the department of fisheries, (8) the department of game, (9) the department of highways, (10) the department of motor vehicles, (11) the department of general administration, (12) the department of commerce and economic development, and (13) the department of revenue, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide.

Sec. 29. Section 2, chapter 32, Laws of 1969 and RCW 43.17-.020 are each amended to read as follows:

There shall be a chief executive officer of each department to be known as: (1) The director of public assistance, (2) the director of institutions, (3) the director of health, (4) the director of ((~~water-resources~~)) ecology, (5) the director of labor and industries, (6) the director of agriculture, (7) the director of fisheries, (8) the director of game, (9) the director of highways, (10) the director of motor vehicles, (11) the director of general

administration, (12) the director of commerce and economic development, and (13) the director of revenue.

Such officers, except the director of highways and the director of game, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. If a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall present to that body his nomination for the office. The director of highways shall be appointed by the state highway commission, and the director of game shall be appointed by the game commission.

NEW SECTION. Sec. 30. The following acts or parts thereof are each hereby repealed:

- (1) Section 3, chapter 242, Laws of 1967 and RCW 43.27A.030;
- (2) Section 4, chapter 242, Laws of 1967 and RCW 43.27A.040;
- (3) Section 5, chapter 242, Laws of 1967 and RCW 43.27A.050;
- (4) Section 6, chapter 242, Laws of 1967 as amended by section 2, chapter 103, Laws of 1969 ex. sess. and RCW 43.27A.060;
- (5) Section 7, chapter 242, Laws of 1967 and RCW 43.27A.070;
- (6) Section 10, chapter 242, Laws of 1967 as amended by section 1, chapter 103, Laws of 1969 ex. sess. and RCW 43.27A.100;
- (7) Section 11, chapter 242, Laws of 1967 and RCW 43.27A.110;
- (8) Section 16, chapter 242, Laws of 1967 and RCW 43.27A.140;
- (9) Section 17, chapter 242, Laws of 1967 and RCW 43.27A.150;
- (10) Section 18, chapter 242, Laws of 1967 and RCW 43.27A-.160;
- (11) Section 19, chapter 242, Laws of 1967 and RCW 43.27A-.170;
- (12) Section 1, chapter 188, Laws of 1961 as last amended by section 32, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.300;
- (13) Section 2, chapter 188, Laws of 1961 and RCW 70.94.310;
- (14) Section 3, chapter 188, Laws of 1961 as amended by section 33, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.320;

(15) Section 3, chapter 216, Laws of 1945 as amended by section 2, chapter 13, Laws of 1967 and RCW 90.48.021;

(16) Sections 4 and 5, chapter 216, Laws of 1945 and RCW 90.48.022 and 90.48.023;

(17) Section 6, chapter 216, Laws of 1945 as amended by section 3, chapter 13, Laws of 1967 and RCW 90.48.024;

(18) Section 7, chapter 216, Laws of 1945 as amended by section 4, chapter 13, Laws of 1967 and RCW 90.48.025;

(19) Section 8, chapter 216, Laws of 1945 as amended by section 5, chapter 13, Laws of 1967 and RCW 90.48.026;

(20) Section 9, chapter 216, Laws of 1945 and RCW 90.48.027;
and

(21) Section 1, chapter 242, Laws of 1967 and RCW 43.27A.010.

NEW SECTION. Sec. 31. There is hereby created a pollution control hearings board of the state of Washington as an agency of state government.

The purpose of the hearings board is to provide for a more expeditious and efficient disposition of appeals with respect to the decisions and orders of the department and director and with respect to all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW.

NEW SECTION. Sec. 32. The hearings board shall consist of three members qualified by experience or training in pertinent matters pertaining to the environment, and at least one member of the hearings board shall have been admitted to practice law in this state and engaged in the legal profession at the time of his appointment. The hearings board shall be appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their term shall be members of the same political party.

NEW SECTION. Sec. 33. Members of the hearings board shall be appointed for a term of six years and until their successors are appointed and have qualified. In case of a vacancy, it shall be filled

by appointment by the governor for the unexpired portion of the term in which said vacancy occurs: PROVIDED, That the terms of the first three members of the hearings board shall be staggered so that one member shall be appointed to serve until July 1, 1972, one member until July 1, 1974, and one member until July 1, 1976.

NEW SECTION. Sec. 34. Any member of the hearings board may be removed for inefficiency, malfeasance and misfeasance in office, under specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the hearings board by the tribunal shall disqualify such member for reappointment.

NEW SECTION. Sec. 35. The hearings board shall operate on either a part time or a full time basis, as determined by the governor. If it is determined that the hearings board shall operate on a full time basis, each member of the hearings board shall receive an annual salary to be determined by the governor pursuant to RCW 43.03-.040. If it is determined the hearings board shall operate on a part time basis, each member of the hearings board shall receive compensation on the basis of seventy-five dollars per diem for each day spent in performance of his duties: PROVIDED, That such compensation shall not exceed ten thousand dollars in a calendar year. Each hearings board member shall receive reimbursement for travel and other expenses incurred in the discharge of his duties in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 36. Each member of the hearings board: (1) shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member of the hearings board,

nor shall he serve on or under any committee of any political party; and (2) shall not for a period of one year after the termination of his membership on the hearings board, act in a representative capacity before the hearings board on any matter.

NEW SECTION. Sec. 37. The hearings board may appoint, discharge and fix the compensation of an executive secretary, a clerk, and such other clerical, professional and technical assistants as may be necessary, or may contract for required services.

NEW SECTION. Sec. 38. The hearings 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 such a chairman.

NEW SECTION. Sec. 39. The principal office of the hearings board shall be at the state capitol, but it may sit or hold hearings at any other place in the state. A majority of the hearings 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 of the hearings board be vacant. One or more members may hold hearings and take testimony to be reported for action by the hearings board when authorized by rule or order of the hearings board. The hearings board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

NEW SECTION. Sec. 40. The hearings board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decisions shall be effective upon being signed by two or more members of the hearings board and upon being filed at the hearings board's principal office, and shall be open for public inspection at all reasonable times.

NEW SECTION. Sec. 41. The hearings board shall only have jurisdiction to hear and decide appeals from the decisions of the department and the director and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW when such

decisions concern matters within the jurisdiction of the hearings board as provided in this act or as provided in any future act or law granting the hearings board additional jurisdiction. The hearings board shall also have jurisdiction to hear and decide appeals from any person aggrieved by an order issued by the department or by air pollution control boards or authorities as established pursuant to chapter 70.94 RCW with respect to a violation or violations of this act or of any rule or regulation adopted by the department or of any other law within the jurisdiction of the department. The issuance, modification, or termination of any permit or license by the department 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, shall be deemed to be an order for purposes of this act: PROVIDED, That review of rules and regulations adopted by the board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW.

NEW SECTION. Sec. 42. Notwithstanding any other provisions of law to the contrary, the department and all air pollution control boards or authorities established pursuant to chapter 70.94 RCW are hereby prohibited from conducting hearings on violations of any rule or regulation made by the department or the director, on violations of this act, or on violations of any rule or regulation adopted by any air pollution control board or authority established pursuant to chapter 70.94 RCW, or on the issuance, modification, or termination of any permit or license, within the jurisdiction of the department. All petitions for hearings with respect to such violations shall be heard by this hearing board created in this 1970 act: PROVIDED, That violations of any rule or regulation made by any air pollution control board or authority established pursuant to chapter 70.94 RCW, may be heard by a hearings board of three members created by such board or authority pursuant to regulations promulgated by the hearings board

created in this act.

Any order issued by the department or by any air pollution control board or authority established pursuant to chapter 70.94 RCW shall become final unless, no later than thirty days after the date that the notice and order are served, the person aggrieved by the order appeals to the hearings board as provided for in this act.

NEW SECTION. Sec. 43. The Administrative Procedure Act, chapter 34.04 RCW, shall apply to the appeal of rules and regulations adopted by the board to the same extent as it applied to the review of rules and regulations adopted by the directors and/or boards or commissions of the various departments whose powers, duties and functions are transferred by this 1970 act to the department. All other decisions and orders of the director and all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW shall be subject to review by the hearings board as provided in this 1970 act.

NEW SECTION. Sec. 44. In all appeals over which the hearings board has jurisdiction under sections 41 and 42 of this 1970 act, a party taking an appeal may elect either a formal or an informal hearing, such election to be made according to rules of practice and procedure to be promulgated by the hearings board: PROVIDED, That nothing herein shall be construed to modify the provisions of sections 49 and 50 of this 1970 act. 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.

NEW SECTION. Sec. 45. In all appeals involving an informal hearing, the hearings board shall have all powers relating to the administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.04 RCW. In the case of appeals within the scope of this 1970 act 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 hear-

ings 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 shall be presented only in an open hearing.

NEW SECTION. Sec. 46. In all appeals involving a formal hearing the hearings board 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 RCW; and the hearings 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 RCW relating to contested cases. In the case of appeals within the scope of this 1970 act, 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 shall be presented only in an open hearing.

NEW SECTION. Sec. 47. All proceedings, including both formal and informal hearings, before the hearings board or any of its members shall be conducted in accordance with such rules of practice and procedure as the hearings board may prescribe. The hearings board shall publish such rules and arrange for the reasonable distribution thereof.

NEW SECTION. Sec. 48. 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, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and RCW 34.04.140. The director shall have the same right of review from a decision made pursuant to section 41 of this 1970 act as does any person.

NEW SECTION. Sec. 49. Within thirty days after the final decision and order of the hearings board upon such an appeal has been

communicated to the interested parties, or within thirty days after an appeal has been denied after an informal hearing, such interested party aggrieved by the decision and order of the hearings board may appeal to the superior court. In all appeals involving a decision or an order of the hearings board after an informal hearing, the petition shall be filed in the superior court for the county of the petitioner's residence or principal place of business, or in the absence of a residence or principal place of business, for Thurston county. Such appeal may be perfected by filing with the clerk of the superior court a notice of appeal, and by serving a copy thereof by mail, or personally on the director, the air pollution control boards or authorities, established pursuant to chapter 70.94 RCW or on the board as the case may be. The hearings board shall serve upon the appealing party, the director, the air pollution control board or authorities established pursuant to chapter 70.94 RCW, or the board, as the case may be, and on any other party appearing at the hearings board's proceeding, and file with the clerk of the court before trial, a certified copy of the hearings board's decision and order. Every appeal from a decision of the superior court shall go directly to the supreme court, notwithstanding RCW 2.06.030. No bond shall be required on appeals to the superior court or on appeals to the supreme court unless specifically required by the judge of the superior court.

NEW SECTION. Sec. 50. Within thirty days after the final decision and order of the hearings board upon such an appeal has been communicated to the interested parties, or within thirty days after an appeal has been denied after a formal hearing, such interested party aggrieved by the decision and order of the hearings board may appeal to the court of appeals pursuant to the provisions of RCW 34-.04.130(6). Such appeal may be perfected by filing with the clerk of the court of appeals a notice of appeal, and by serving a copy thereof by mail, or personally on the director of the department, and on the board. The hearings board shall serve upon the appealing

party, the director, and any other party appearing at the hearings board's proceeding, and file with the clerk of the court before trial, a certified copy of the hearings board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the hearings board's decision and order which shall become the record in such case. No bond shall be required on appeals to the court of appeals or on appeals to the supreme court unless specifically required by the judge of the court of appeals.

NEW SECTION. Sec. 51. When the proceeding is at issue, a hearing will be had only upon demand. Either party may demand a hearing by filing a written request therefor. The demand shall include an estimate of time that will be required to hear the matter. The hearings boards shall thereupon fix the time and place for hearing: PROVIDED, That all hearings shall be commenced within thirty days of the filing of the appeal: PROVIDED, FURTHER, That extensions of time, continuances and adjournments may be ordered by the hearings board only upon motion of all parties, filed in writing and shall not in any case exceed a period greater than six months.

NEW SECTION. Sec. 52. No provision of this chapter shall be construed to change existing law relating to the staying of orders or decisions pending final determination of any hearing or appeal taken in accordance with the provisions herein.

NEW SECTION. Sec. 53. Any person having received notice of a denial of a petition, a notice of determination, notice of or an order made by the department under the provisions of this 1970 amendatory act may appeal, within thirty days from the date of the notice of such denial, order, or determination to the hearings board. The appeal shall be perfected by serving a copy of the notice of appeal upon the department or air pollution authority established pursuant to chapter 70.94 RCW, as the case may be, within the time specified herein and by filing the original thereof with proof of service with the clerk of the hearings board. If the person intends that the hearing before the hearings board be a formal one, the notice of

appeal shall so state. In the event that the notice of appeal does not so state, the hearing shall be an informal one: PROVIDED, HOWEVER, That nothing shall prevent the department or the air pollution authority, as the case may be, within ten days from the date of its receipt of the notice of appeal, from filing with the clerk of the hearings board notice of its intention that the hearing be a formal one.

NEW SECTION. Sec. 54. Notwithstanding any other powers, duties and functions transferred by the provisions of this act, the department shall only have authority to hold public hearings, pursuant to the Administrative Procedure Act, chapter 34.04 RCW, with respect to those matters enumerated in sections of this 1970 amendatory act.

NEW SECTION. Sec. 55. Sections 31 through 54 shall constitute a new chapter in Title 43 RCW.

Sec. 56. Section 25, chapter 238, Laws of 1967 as amended by section 16, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.141 are each amended to read as follows:

The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own ordinances, resolutions, or rules and regulations, as the case may be, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.32 RCW.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter ..., (ESB No. 1), Laws of 1970 1st ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal

as provided in chapter ... (ESB No. 1), Laws of 1970 1st ex. sess..

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any

of the functions of this chapter.

Sec. 57. Section 34, chapter 238, Laws of 1967 as amended by section 24, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.211 are each amended to read as follows:

Whenever the board or the control officer has reason to believe that any provision of this chapter or any ordinance, resolution, rule or regulation relating to the control or prevention of air pollution has been violated, such board or control officer may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the ordinance, resolution, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the hearings board as provided for in chapter ... (ESB No. 1), Laws of 1970 1st ex. sess. for a hearing pursuant to the provisions of chapter 34.04 RCW as now or hereafter amended, or in addition to or in place of an order or hearing, the hearings board created therein (~~(or control officer)~~) may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435.

Sec. 58. Section 35, chapter 238, Laws of 1967 as amended by section 25, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.221 are each amended to read as follows:

~~((1))~~ Any order issued by the board or by the control officer, ~~((which is not preceded by a hearing,))~~ shall become final unless ~~((, no later than twenty days after the date the notice and order are served, the person aggrieved by the order petitions for a hearing before the board,-- Upon receipt of the petition, the board shall hold a hearing pursuant to the provisions of chapter 34.04 RCW as now or hereafter amended,~~

~~((2))-- If, after a hearing held as a result of a petition to the board by a person aggrieved by an order, the board finds that a vio-~~

l~~ation has occurred or is occurring, it shall affirm or modify the order previously issued, or if the finding made is that no violation has occurred or is occurring, the order shall be rescinded.~~ If, after a hearing held in lieu of an order, the board finds that a violation has occurred or is occurring, it shall issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective actions as may be appropriate. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions.

~~(3) Any hearings held under this section or under RCW 70.94-181 shall be conducted in accordance with the rules of evidence as set forth in RCW 34.04.100 as now or hereafter amended)~~ such order is appealed to the hearings board as provided in chapter ... (ESB No. 1), Laws of 1970 1st ex. sess. .

Sec. 59. Section 36, chapter 238, Laws of 1967 as amended by section 26, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.222 are each amended to read as follows:

Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, ~~((a petition requesting judicial review is filed in accordance with provisions of chapter 34.04 RCW as now or hereafter amended))~~ a notice of appeal is filed with the hearings board as provided in chapter ... (ESB No. 1), Laws of 1970 1st ex. sess. .

Sec. 60. Section 3, chapter 134, Laws of 1969 ex. sess. and RCW 70.95.030 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Committee" means the solid waste advisory committee.
- (3) "Department" means the department of ~~((environmental quality))~~ ecology.

(4) "Director" means the director of the department of (~~environmental-quality~~) ecology.

(5) "Disposal site" means the location where any final treatment, utilization, processing, or depository of solid waste occurs.

(6) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(7) "Jurisdictional health department" means city, county, city-county, or district public health department.

(8) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(9) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded (~~home-and-industrial-appliances, manure, vegetable-or-animal-solid-and-semisolid-wastes, and other-discarded-materials~~) commodities.

(10) "Solid waste handling" means the storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes.

NEW SECTION. Sec. 61. The provisions of this act shall not impair or supersede the powers or rights of any person, committee, association, public, municipal or private corporations, state or local governmental agency, federal agency, or political subdivision of the state of Washington under any other law except as specifically provided herein. Pollution control permits, water quality standards, air pollution permits, air quality standards, and permits for disposal of solid waste materials of this state are not changed hereby and the laws governing the same are to be protected and preserved.

NEW SECTION. Sec. 62. Wherever in the statutes of this state, including any enactment at this 1970 extraordinary session, the department of environmental quality is referred to such reference shall

mean the state department of ecology created herein.

NEW SECTION. Sec. 63. Sections 1 through 10, 12 through 27, 62 and 64 shall constitute a new chapter in Title 43 RCW and shall be known and cited as the "Environmental Quality Reorganization Act of 1970".

NEW SECTION. Sec. 64. This 1970 amendatory act shall take effect on July 1, 1970.

NEW SECTION. Sec. 65. If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, shall not be affected.

Passed the Senate February 12, 1970

Passed the House February 12, 1970

Approved by the Governor February 23, 1970, with the exception of certain items in section 17 which are vetoed.

Filed in Office of Secretary of State February 24, 1970

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

"...This bill consolidates the functions of air and water pollution, solid waste disposal and water resources now performed by various state agencies into a new agency, the Department of Ecology. It is one of the most significant pieces of legislation enacted by this legislature. State government is now in a position to provide a more effective environmental protection program for its citizens.

Section 17 of the bill establishes an ecological commission consisting of seven members to be appointed by the governor. Three members are to represent three sections of the economy, labor, business and agriculture. As presented to me for my approval, the governor must make his selection of these three members from a list submitted to him by recognized business, labor and agricultural organizations.

It is my conviction that agencies of state government must be responsive to the people. It is appropriate that the views of these three segments of the economy be represented on the commission, but it is inappropriate for the governor's appointments to be dictated by private interest groups. I have therefore vetoed the provisions restricting the governor's appointments to a list of nominees to be submitted to him.

The sections relating to the hearings board contain certain provisions that are in some respect ambiguous and even inconsistent.

One of the areas where these provisions lack

precision is the scope of review by the hearings board of an order of the director. While these sections do not directly address this important issue, from an examination of the entire bill and its legislative development it is clear that the legislature intended to vest in the director of the department broad resource-management and regulatory powers as well as the equally broad authority to implement these powers. It is not intended that the hearings board should substitute its own judgment for the expertise of the director and his technical staff.

In order to state this more completely and to resolve certain ambiguities and inconsistencies, I intend to submit to the next session of the legislature suggestions for modification and clarification of the hearings board provisions of this act.

With the exception of those certain items in section 17 which I have vetoed for the reasons discussed, the remainder of Senate Bill 1 is approved."

CHAPTER 63

[Engrossed Substitute Senate Bill No. 80]
WASHINGTON STATE PATROL--
DRUG CONTROL ASSISTANCE UNIT

AN ACT Relating to state government; adding new sections to chapter 43.43 RCW; making an appropriation; and declaring an emergency.

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

NEW SECTION. Section 1. There is hereby created in the Washington state patrol a drug control assistance unit.

NEW SECTION. Sec. 2. The drug control assistance unit shall:

- (1) Provide investigative assistance for the purpose of enforcement of the provisions of chapters 69.32 and 69.40 RCW.
- (2) Provide laboratory services for the purpose of analyzing and scientifically handling any physical evidence relating to any crime.
- (3) Provide training assistance for local law enforcement personnel.

NEW SECTION. Sec. 3. The drug control assistance unit shall:

- (1) Establish a record system to coordinate with all law enforcement agencies in the state a comprehensive system of informa-