

CHAPTER 117

[Engrossed Substitute Senate Bill No. 3006]

STATE ENVIRONMENTAL POLICY REVISIONS

AN ACT Relating to environmental policy; amending section 1, chapter 290, Laws of 1981 and RCW 43.21C.037; amending section 6, chapter 109, Laws of 1971 ex. sess. as amended by section 2, chapter 278, Laws of 1977 ex. sess. and RCW 43.21C.060; amending section 4, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.100; amending section 6, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.110; amending section 8, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.120; adding new sections to chapter 43.21C RCW; creating new sections; recodifying RCW 43.21C.100; recodifying RCW 43.21C.105; decodifying RCW 43.21C.070; decodifying RCW 43.21C.200; decodifying RCW 43.21C.202; decodifying RCW 43.21C.204; repealing section 2, chapter 84, Laws of 1979 ex. sess., section 2, chapter 2, Laws of 1980 and RCW 43.21C.032; repealing section 3, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.085; repealing section 11, chapter 179, Laws of 1974 ex. sess., section 107, chapter 151, Laws of 1979 and RCW 43.21C.140; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. There is added to chapter 43.21C RCW a new section to be codified as RCW 43.21C.031 with the section heading of "SIGNIFICANT IMPACTS" to read as follows:

An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement under this chapter.

An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

Sec. 2. Section 1, chapter 290, Laws of 1981 and RCW 43.21C.037 are each amended to read as follows:

(1) Decisions pertaining to applications for Class I, II, and III forest practices, as defined by rule of the forest practices board under RCW 76.09.050, are not subject to the requirements of RCW 43.21C.030(2)(c) as now or hereafter amended.

(2) When the applicable county, city, or town requires a license in connection with any proposal involving forest practices (a) on lands platted after January 1, 1960, (b) on lands being converted to another use, or (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, then the local government, rather than the department of natural resources, is responsible for any detailed statement required under RCW 43.21C.030(2)(c).

(3) Those forest practices determined by rule of the forest practices board to have a potential for a substantial impact on the environment, and thus to be Class IV practices, require an evaluation by the department of natural resources as to whether or not a detailed statement must be prepared pursuant to this chapter. The evaluation shall be made within ten days from the date the department receives the application. A Class IV forest practice application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. This section shall not be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action regarding a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted.

~~((This section shall cease to exist on June 30, 1983, unless extended by law for an additional period of time.))~~

Sec. 3. Section 6, chapter 109, Laws of 1971 ex. sess. as amended by section 2, chapter 278, Laws of 1977 ex. sess. and RCW 43.21C.060 are each amended to read as follows:

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties ~~((: PROVIDED, HOWEVER, That))~~. Any governmental action ((; not requiring a legislative decision;)) may be conditioned or denied pursuant to this chapter ((only on the basis of)): PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter. Such designation shall occur at the time specified

~~by RCW 43.21C.120. Such action may be conditioned only to mitigate specific adverse environmental impacts which are ((both)) identified in the environmental documents prepared ((pursuant to the)) under this chapter ((and)). These conditions shall be stated in writing by the ((responsible official of the acting governmental agency. In the case of counties with a population of more than seventy thousand people and cities with a population of more than thirty-seven thousand people, such conditions or denials made more than one year from September 21, 1977 shall also be based upon policies developed by the appropriate local governmental authority and incorporated into resolutions, regulations, ordinances, plans, or codes. In the case of counties with a population of less than seventy thousand people and cities with a population of less than thirty-seven thousand people, such conditions or denials made more than three years from September 21, 1977 shall also be based upon policies developed by the appropriate local governmental authority, and incorporated into resolutions, regulations, ordinances, plans, or codes. PROVIDED, FURTHER, That;)) decisionmaker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter, an agency must find that: (1) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. Except for permits and variances issued pursuant to chapter 90.58 RCW, when such a governmental action, not requiring a legislative decision, is conditioned or denied by a nonelected official of a local governmental agency, the decision shall be appealable to the legislative authority of the acting local governmental agency unless that legislative authority formally eliminates such appeals. Such appeals shall be in accordance with procedures established for such appeals by the legislative authority of the acting local governmental agency.~~

NEW SECTION. Sec. 4. There is added to chapter 43.21C RCW a new section to be codified as RCW 43.21C.075 with a section heading of "APPEALS" to read as follows:

(1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:

(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.

(3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall not allow more than one agency appeal proceeding on a procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement), consistent with any state statutory requirements for appeals to local legislative bodies. The appeal proceeding on a determination of significance/nonsignificance may occur before the agency's final decision on a proposed action. Such an appeal shall also be allowed for a determination of significance/nonsignificance which may be issued by the agency after supplemental review;

(b) Shall consolidate appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) by providing for simultaneous appeal of an agency decision on a proposal and any environmental determinations made under this chapter, with the exception of the threshold determination appeal as provided in (a) of this subsection or an appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes;

(c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this paragraph; and

(d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an appeal procedure, such person shall, prior to seeking any judicial review, use such procedure if any such procedure is available, unless expressly provided otherwise by state statute.

(5) RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). This section does not modify any such time periods. This section governs when a judicial appeal must be brought under this chapter where a "notice of action" is used, and/or where there is another time period which is required by statute or ordinance for challenging the underlying governmental action. In this subsection, the term "appeal" refers to a judicial appeal only.

(a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within thirty days. The agency shall give official notice stating the date and place for commencing an appeal. If there is an agency proceeding under subsection (3) of this section, the appellant shall, prior to commencing a judicial appeal, submit to the responsible official a notice of intent to commence a judicial appeal. This notice of intent shall be given within the time period for commencing a judicial appeal on the underlying governmental action.

(b) A notice of action under RCW 43.21C.080 may be used. If a notice of action is used, judicial appeals shall be commenced within the time period specified by RCW 43.21C.080, unless there is a time period for appealing the underlying governmental action in which case (a) of this subsection shall apply.

(c) Notwithstanding RCW 43.21C.080(1), if there is a time period for appealing the underlying governmental action, a notice of action may be published within such time period.

(6)(a) Judicial review of an appeal decision made by an agency under RCW 43.21C.075(5) shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and said certified final order may only be appealed to an appellate court.

(8) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2))

and (3)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. The word "appeal" refers to administrative, legislative, or judicial appeals.

(9) The court in its discretion may award reasonable attorney's fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis.

NEW SECTION. Sec. 5. There is added to chapter 43.21C RCW a new section to be codified as RCW 43.21C.095 with a section heading of "STATE ENVIRONMENTAL POLICY ACT RULES TO BE ACCORDED SUBSTANTIAL DEFERENCE" to read as follows:

The rules promulgated under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter.

Sec. 6. Section 4, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.100 are each amended to read as follows:

~~((There is hereby established the))~~ The legislature may establish a council on environmental policy ((which shall be composed of the members of the pollution control hearings board:

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

~~Upon the abolishment of the council on June 30, 1976, all powers, duties and functions of the council are transferred to the department of ecology))~~ to review and assist in the implementation of this chapter.

Sec. 7. Section 6, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.110 are each amended to read as follows and shall be given the section heading "CONTENT OF STATE ENVIRONMENTAL POLICY ACT RULES":

It shall be the duty and function of the ~~((council))~~ department of ecology, which may utilize proposed rules developed by the environmental policy commission:

(1) To adopt ~~((initially))~~ and amend thereafter rules of interpretation and implementation of this chapter (the state environmental policy act of 1971), subject to the requirements of chapter 34.04 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The proposed rules shall be subject to full public

hearings requirements associated with rule promulgation. Suggestions for modifications of the proposed rules shall be considered on their merits, and the department shall have the authority and responsibility for full and appropriate independent promulgation and adoption of rules, assuring consistency with this chapter as amended and with the preservation of protections afforded by this chapter. The rule making powers authorized in this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter (the state environmental policy act of 1971):

(a) Categories of governmental actions which ((normally)) are not to be considered as potential major actions significantly affecting the quality of the environment ((as well as categories of actions exempt from such classification)), including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment. The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review.

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable; statements are required to analyze only reasonable alternatives and probable adverse environmental impacts which are significant, and may analyze beneficial impacts.

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

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or portions thereof). The list of elements of the environment shall consist of the "natural" and "built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health

(such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

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

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

(i) To prepare ~~((guidelines))~~ rules for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter.

(j) ~~((Guidelines))~~ Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

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

(l) Rules relating to the use of environmental documents in planning and decisionmaking and the implementation of the substantive policies and requirements of this chapter, including procedures for appeals under this chapter.

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

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

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

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

Sec. 8. Section 8, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C.120 are each amended to read as follows:

(1) All agencies of government of this state are directed, consistent with rules and guidelines adopted under RCW 43.21C.110, including any revisions, to adopt rules pertaining to the integration of the policies and procedures of this chapter (the state environmental policy act of 1971), into the various programs under their jurisdiction for implementation. Designation of polices under RCW 43.21C.060 and adoption of ((the initial)) rules required under this section shall take place not later than one hundred ((twenty)) eighty days after the effective date of rules and guidelines

adopted pursuant to RCW 43.21C.110, or after the establishment of an agency, whichever shall occur later.

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

(3) All public and municipal corporations, political subdivisions, and counties of this state are directed, consistent with rules and guidelines adopted under RCW 43.21C.110, including any revisions, to adopt rules, ordinances, or resolutions pertaining to the integration of the policies and procedures of this chapter (the state environmental policy act of 1971), into the various programs under their jurisdiction for implementation. Designation of policies under RCW 43.21C.060 and adoption of the ((initial)) rules required under this section shall take place not later than one hundred eighty days after the effective date of rules and guidelines adopted pursuant to RCW 43.21C.110, or after the establishment of the governmental entity, whichever shall occur later.

(4) Ordinances or regulations adopted prior to the effective date of rules and guidelines adopted pursuant to RCW 43.21C.110 shall continue to be effective until the adoptions of any new or revised ordinances or regulations which may be required: PROVIDED, That revisions required by this section as a result of rule changes under RCW 43.21C.110 are made within the time limits specified by this section.

NEW SECTION. Sec. 9. There is added to chapter 43.21C RCW a new section to read as follows:

The department of ecology shall conduct annual state-wide workshops and publish an annual state environmental policy act handbook or supplement to assist persons in complying with the provisions of this chapter and the implementing rules. The workshops and handbook shall include, but not be limited to, measures to assist in preparation, processing, and review of environmental documents, relevant court decisions affecting this chapter or rules adopted under this chapter, legislative changes to this chapter, administrative changes to the rules, and any other information which will assist in orderly implementation of this chapter and rules.

The department shall develop the handbook and conduct the workshops in cooperation with, but not limited to, state agencies, the association of Washington cities, the Washington association of counties, educational institutions, and other groups or associations interested in the state environmental policy act.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) Section 2, chapter 84, Laws of 1979 ex. sess., section 2, chapter 2, Laws of 1980 and RCW 43.21C.032;

(2) Section 3, chapter 179, Laws of 1974 ex. sess. and RCW 43.21C-.085; and

(3) Section 11, chapter 179, Laws of 1974 ex. sess., section 107, chapter 151, Laws of 1979 and RCW 43.21C.140.

NEW SECTION. Sec. 11. RCW 43.21C.070, 43.21C.200, 43.21C.202, and 43.21C.204 are each decodified.

NEW SECTION. Sec. 12. RCW 43.21C.100 is recodified as RCW 43.21C.170.

NEW SECTION. Sec. 13. RCW 43.21C.105 is recodified as RCW 43.21C.175.

NEW SECTION. Sec. 14. Section headings as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 15. Sections 3 and 4 of this act apply to agency decisions and to appeal proceedings prospectively only and not retrospectively. Sections 1, 5, 6, 7, and 8 of this act may be applied by agencies retrospectively.

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

NEW SECTION. Sec. 17. (1) Sections 1, 2, and 4 through 16 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

(2) Section 3 of this act shall take effect one hundred eighty days after the remainder of this act goes into effect under subsection (1) of this section.

Passed the Senate March 24, 1983.
Passed the House April 18, 1983.
Approved by the Governor April 23, 1983.
Filed in Office of Secretary of State April 23, 1983.

CHAPTER 118

[Substitute Senate Bill No. 3007]

RAPE—SPOUSAL EXCEPTION—REMOVED FOR 1ST AND 2ND DEGREE

AN ACT Relating to sexual offenses; amending section 3, chapter 10, Laws of 1982 as amended by section 11, chapter 192, Laws of 1982 and RCW 9A.44.040; and amending section 5, chapter 14, Laws of 1975 1st ex. sess. as amended by section 2, chapter 244, Laws of 1979 ex. sess. and RCW 9A.44.050.

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