

parcel, or tract: AND PROVIDED FURTHER, That sale or transfer of such a lot, parcel, or tract in violation of the binding site plan, or without obtaining binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW;

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when (~~the governing body of~~) the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(6) A division made for the purpose of adjusting boundary lines which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(7) A division which is made by subjecting a portion of a parcel or tract of land to chapter 64.32 RCW if a city, town, or county has approved a binding site plan for all of such land.

Passed the Senate March 20, 1987.

Passed the House April 9, 1987.

Approved by the Governor April 20, 1987.

Filed in Office of Secretary of State April 20, 1987.

CHAPTER 109

[Senate Bill No. 5427]

ECOLOGY PROCEDURES SIMPLIFICATION ACT OF 1987

AN ACT Relating to simplifying and clarifying procedures of the department of ecology, local air pollution control authorities, and the pollution control hearings board; amending RCW 43.21B.240, 43.21B.110, 43.27A.190, 70.105.080, 90.14.130, 90.14.190, 90.48.240, 70.105.095, 90.48.144, 70.94.332, 70.94.431, 90.48.350, 70.95.210, 70.107.050, 86.16.110, 18.104.130, 43.20A.140, 43.21.110, 43.21.140, 43.21.160, 43.21.190, 43.21B.140, 43.27A.020, 43.27A.080, 70.94.030, 70.94.053, 70.94.142, 70.94.143, 70.94.151, 70.94.200, 70.94.331, 70.94.350, 70.94.385, 70.94.390, 70.94.395, 70.94.400, 70.94.420, 70.94.425, 70.94.510, 70.94.405, 70.94.410, 86.16.025, 86.16.027, 86.16.030, 86.16.035, 86.16.040, 86.16.060, 86.16.065, 86.16.067, 86.16.070, 86.16.080, 86.16.090, 86.16.130, 86.16.170, 86.18.030, 86.24.020, 90.03.280, 90.03.320, 90.03.030, 90.03.060, 90.03.070, 90.03.100, 90.03.110, 90.03.120, 90.03.130, 90.03.140, 90.03.160, 90.03.170, 90.03.190, 90.03.200, 90.03.210, 90.03.230, 90.03.240, 90.03.250, 90.03.260, 90.03.270, 90.03.290, 90.03.300, 90.03.310, 90.03.330, 90.03.340, 90.03.350, 90.03.360, 90.03.370, 90.03.380, 90.03.390, 90.03.430, 90.03.440, 90.03.470, 90.03.471, 90.14.150, 90.14.180, 90.14.230, 90.22.010, 90.22.040, 90.24.030, 90.44.035, 90.44.050, 90.44.060, 90.44.070, 90.44.080, 90.44.090, 90.44.100, 90.44.110, 90.44.120, 90.44.130, 90.44.180, 90.44.200, 90.44.220, 90.44.230, 90.44.250, 90.48.020, 90.48.030, 90.48.035, 90.48.037, 90.48.080, 90.48.090, 90.48.095, 90.48.100, 90.48.110, 90.48.120, 90.48.142, 90.48.153, 90.48.156, 90.48.165, 90.48.170, 90.48.180, 90.48.190, 90.48.195, 90.48.200, 90.48.250, 90.48.270, 90.48.280, 90.48.285, 90.48.290, 90.48.320, 90.48.330, 90.48.340, 90.48.343, 90.48.345, 90.48.355, 90.48.360, 90.48.365, 90.50.020, 90.50.030, 90.62.080, and 43.83B.335; reenacting and amending RCW 90.24.060; adding new sections to chapter 43.21B RCW; adding new sections to chapter 90.03 RCW; recodifying RCW 43.83B.335; creating new sections; and repealing RCW 18.104.140, 43.21.100, 43.21.120, 43.21.150, 43.21B.120, 43.21B.200, 43.21B.220, 43.27A.200,

43.27A.210, 70.94.223, 70.94.333, 70.94.334, 90.03.080, 90.03.480, 90.44.215, 90.48.135, and 90.48.210.

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

PART A GENERAL

NEW SECTION. Sec. 1. PURPOSE. The purposes of this act are to:

(1) Simplify and clarify existing statutory and administrative procedures for appealing decisions of the department of ecology and air pollution control authorities in order to (a) expedite those appeals, (b) insure that those appeals are conducted with a minimum of expense to save state and private resources, and (c) allow the appellate authorities to decide cases on their merits rather than on procedural technicalities.

(2) Clarify existing statutes relating to the environment but which refer to numerous agencies no longer in existence.

(3) Eliminate provisions no longer effective or meaningful and abbreviate statutory provisions which are unnecessarily long and confusing.

NEW SECTION. Sec. 2. SHORT TITLE. This act may be referred to as the "ecology procedures simplification act of 1987."

NEW SECTION. Sec. 3. CONSTRUCTION. Unless otherwise specifically intended, this act shall not be construed to change existing substantive or procedural law; it should only clarify and standardize existing procedures.

NEW SECTION. Sec. 4. DEFINITIONS. As used in this chapter, "department" means the department of ecology, and "director" means the director of ecology.

PART B PENALTIES AND PROCEDURES

NEW SECTION. Sec. 5. PENALTY PROCEDURES. (1) Any civil penalty provided in RCW 70.94.431, 70.105.080, 70.107.050, 90.03.— (RCW 43.83B.335 as recodified by this act), 90.48.144, and 90.48.350 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 penalty from the department or the local air authority, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department or authority may remit or mitigate the penalty upon whatever terms the department or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it

may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after receipt by the person penalized of the notice imposing the penalty or thirty days after receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account, created by RCW 70.105.180, and RCW 90.48.350, which shall be credited to the coastal protection fund created by RCW 90.48.390.

NEW SECTION. Sec. 6. APPEAL OF ORDERS, PERMITS, AND LICENSES. (1) Any order issued by the department or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, or 90.48.120(2) or any provision enacted after the effective date of this section or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after receipt of the order. This is the exclusive means of appeal of such an order.

(2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to section 7 of this act to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

(a) The appellant's name and address;

(b) The date and docket number of the order, permit, or license appealed;

(c) A description of the substance of the order, permit, or license that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought.

(5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of receipt.

NEW SECTION. Sec. 7. STAYS OF ORDERS. (1) A person appealing to the hearings board an order of the department or an authority, not stayed by the issuing agency, may obtain a stay of the effectiveness of that order only as set forth in this section.

(2) An appealing party may request a stay by including such a request in the appeal document, in a subsequent motion, or by such other means as the rules of the hearings board shall prescribe. The request must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which request is based. The hearings board shall hear the request for a stay as soon as possible. The hearing on the request for stay may be consolidated with the hearing on the merits.

(3) The applicant may make a prima facie case for stay if the applicant demonstrates either a likelihood of success on the merits of the appeal or irreparable harm. Upon such a showing, the hearings board shall grant the stay unless the department or authority demonstrates either (a) a substantial probability of success on the merits or (b) likelihood of success on the merits and an overriding public interest which justifies denial of the stay.

(4) Unless otherwise stipulated by the parties, the hearings board, after granting or denying an application for a stay, shall expedite the hearing and decision on the merits.

(5) Any party or other person aggrieved by the grant or denial of a stay by the hearings board may petition the superior court for Thurston county for review of that decision pursuant to chapter 34.04 RCW pending the appeal on the merits before the board. The superior court shall expedite its review of the decision of the hearings board.

NEW SECTION. Sec. 8. SUMMARY PROCEEDINGS. The hearings board shall develop procedures for summary procedures, consistent with the rules of civil procedure for superior court on summary judgment, to decide cases before it. Such procedures may include provisions for determinations without an oral hearing or hearing by telephonic means.

Sec. 9. Section 54, chapter 62, Laws of 1970 ex. sess. and RCW 43-.21B.240 are each amended to read as follows:

DEPARTMENT AND AIR AUTHORITY HEARINGS. (~~Notwithstanding any other powers, duties and functions transferred by the provisions of this act,)~~ The department and air authorities shall ((only)) not have authority to hold public hearings(;) on contested cases pursuant to the administrative procedure act, chapter 34.04 RCW((, with respect to those matters enumerated in sections of this 1970 amendatory act)) . Such hearings shall be held by the pollution control hearings board.

Sec. 10. Section 41, chapter 62, Laws of 1970 ex. sess. and RCW 43-.21B.110 are each amended to read as follows:

POLLUTION CONTROL HEARINGS BOARD JURISDICTION.
(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following 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:)), or local health departments:

(a) Civil penalties imposed pursuant to RCW 70.94.431, 70.105.080, 70.107.050, 90.03.— (RCW 43.83B.335 as recodified by this 1987 act), 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 (, shall be deemed to be an order for purposes of this act: PROVIDED, That)).

(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 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 RCW.

Sec. 11. Section 7, chapter 284, Laws of 1969 ex. sess. and RCW 43-.27A.190 are each amended to read as follows:

WATER RESOURCE ORDERS. Notwithstanding and in addition to any other powers granted to the department of ~~((water resources))~~ ecology, whenever it appears to the ~~((director of the))~~ department ~~((of water resources, or to an assistant authorized by the director to issue regulatory orders under this section;))~~ that a person is violating or is about to violate any of the provisions of the following:

(1) Chapter 90.03 RCW; or

(2) Chapter 90.44 RCW; or

(3) Chapter 86.16 RCW; or

(4) Chapter 43.37 RCW; or

(5) Chapter 43.27A RCW; or

(6) Any other ~~((chapter or statute the director of the department of water resources is charged with administering))~~ law relating to water resources administered by the department; or

(7) A rule or regulation adopted, or a directive or order issued by the department ~~((of water resources))~~ relating to subsections (1) through (6) of this section; the ~~((director of the))~~ department ~~((of water resources, or an authorized assistant;))~~ may cause a written regulatory order to be served

upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. The regulation of a headgate or controlling works as provided in RCW 90.03-.070, by a watermaster, stream patrolman, or other person so authorized by the ~~((director of the))~~ department ~~((of water resources,))~~ shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein~~((, and shall become final unless review thereof is requested as provided in RCW 43.27A.200. This section is supplementary to and shall not lessen any of the regulatory and enforcement powers of the department of water resources))~~. Any person aggrieved by such order may appeal the order pursuant to section 6 of this 1987 act.

Sec. 12. Section 8, chapter 101, Laws of 1975-'76 2nd ex. sess. as amended by section 2, chapter 172, Laws of 1983 and RCW 70.105.080 are each amended to read as follows:

HAZARDOUS WASTE PENALTIES. (1) Every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. 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 herein provided.

(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 the violation with reasonable particularity. Within fifteen 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 of ecology 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 the provisions of this section shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.~~

~~(3) Any 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 by the hearings board is filed. 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 hearings board 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 to the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which such violator may do business, to recover such 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)) pursuant to the procedures in section 5 of this 1987 act.~~

Sec. 13. Section 13, chapter 233, Laws of 1967 and RCW 90.14.130 are each amended to read as follows:

WATER RESOURCES DECISIONS—RELINQUISHMENT DETERMINATIONS. When it appears to the ~~((supervisor of water resources))~~ department of ecology that a person entitled to the use of water has not beneficially used his water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the ~~((supervisor))~~ department of ecology shall notify such person ~~((to show cause at a hearing before the supervisor why his right or portion thereof should not be declared relinquished))~~ by order: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of RCW 90.14.060 for the total benefits of those served by it, the notice ~~((to show cause))~~ shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The ~~((notice))~~ order shall contain~~((, (1) the time and place of the hearing as determined by the supervisor, (2))~~): (1) A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based~~((, and (3))~~); (2) a statement that unless sufficient cause be shown on appeal the water right will be declared

relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to section 6 of this 1987 act. ~~((Said notice))~~ The order shall be served by registered or certified mail to the last known address of the person and be posted at ((least sixty days before the hearing and sent to the last known address of said person. The supervisor shall, as soon as practicable after such hearing, make an order determining whether such water right has been relinquished and give notice to said person of the contents thereof in the same manner as in the notice procedure provided for in this section)) the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any.

Sec. 14. Section 19, chapter 233, Laws of 1967 and RCW 90.14.190 are each amended to read as follows:

WATER RESOURCES DECISIONS—RELINQUISHMENT APPEALS. Any person feeling aggrieved by any ~~((order))~~ decision of the ~~((supervisor of water resources))~~ department of ecology may have the same reviewed ~~((by the superior court of the county in which the waters under consideration are situated))~~ pursuant to section 6 of this 1987 act. In any such review ((by the courts)), the findings of fact as set forth in the report of the ~~((supervisor of water resources))~~ department of ecology shall be prima facie evidence of the fact of any waiver or relinquishment of a water right or portion thereof. ~~((The court, reviewing any order of the supervisor, may award reasonable attorney's fees to any party injured by an arbitrary, capricious or erroneous order of the supervisor. Such attorney's fees shall be paid by the department of conservation from any funds available therefor.))~~ If the hearings board affirms the decision of the department, a party seeks review in superior court of that hearings board decision pursuant to chapter 34.04 RCW, and the court determines that the party was injured by an arbitrary, capricious, or erroneous order of the department, the court may award reasonable attorneys' fees.

Sec. 15. Section 22, chapter 13, Laws of 1967 and RCW 90.48.240 are each amended to read as follows:

WATER POLLUTION ORDERS. Notwithstanding any other provisions of this chapter, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the ~~((commission or))~~ director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible

the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the ~~((commission))~~ department at the time and place specified in said written order for the purpose of ~~((a hearing))~~ providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such ~~((hearing))~~ an information meeting. If following such ~~((hearing a majority of the commission finds))~~ a meeting the department determines that water quality conditions exist which require immediate action as described herein, the ~~((commission))~~ department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. ~~((The order issued following such hearing is subject to judicial review as provided in RCW 90.48.135 but shall not be stayed pending such judicial review unless the commission so directs, or unless the court finds the commission to have acted capriciously or arbitrarily.))~~ In the event an order is not immediately complied with the attorney general, upon request of the ~~((commission or director))~~ department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the ~~((commission))~~ department. Such an order is appealable pursuant to section 6 of this 1987 act.

Sec. 16. Section 4, chapter 172, Laws of 1983 and RCW 70.105.095 are each amended to read as follows:

HAZARDOUS WASTE ORDERS. (1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) ~~((Any order shall become final unless, no later than thirty days after the order is served, the person or persons named in the order request a public hearing. The request shall be delivered either by registered mail or personally to the department. Upon receiving a request for a hearing, the department shall promptly conduct a public hearing to consider testimony and new information regarding the order. The department may, at its discretion, either modify the order or maintain it unchanged. The order shall become effective immediately after the department reaches a final decision;~~

~~unless the department modifies the order to specify another compliance date:~~

~~(4) Any person directly affected by a compliance order or by any decision of the department regarding a compliance order may appeal the order or decision to the pollution control hearings board in accordance with chapter 43.21B RCW)) Any order may be appealed pursuant to section 6 of this 1987 act.~~

Sec. 17. Section 14, chapter 139, Laws of 1967 ex. sess. as last amended by section 2, chapter 316, Laws of 1985 and RCW 90.48.144 are each amended to read as follows:

WATER POLLUTION PENALTIES. Every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or ~~((this amendatory act))~~ 90.48.260 through 90.48.262, or

(2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or ~~((this amendatory act))~~ 90.48.260 through 90.48.262, or

(3) Violates the provisions of RCW 90.48.080, or other sections of this chapter or regulations or orders adopted or issued pursuant thereto, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. ~~The penalty herein provided for 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 director of the department or his authorized delegate describing such violation with reasonable particularity. The director or his authorized delegate may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he in his discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. The director shall remit or mitigate penalties only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty. Any person incurring any penalty hereunder may appeal the same to the hearings board as provided~~

~~for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or his authorized delegate setting forth the disposition of the application. Any penalty imposed hereunder shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such 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. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund)) pursuant to the procedures set forth in section 5 of this 1987 act.~~

Sec. 18. Section 47, chapter 238, Laws of 1967 and RCW 70.94.332 are each amended to read as follows:

AIR POLLUTION HEARINGS. Whenever the department of ecology has reason to believe that any provision of this chapter or any rule or regulation adopted by ~~((the state board))~~ it or being enforced by ~~((the state board))~~ it under RCW 70.94.410 relating to the control or prevention of air pollution has been violated, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the 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 department may require that the alleged violator or violators appear before ~~((the state board or a duly appointed hearing officer for a hearing at a time and place specified in the notice given at least twenty days prior to such hearing and answer))~~ it for the purpose of providing the department information pertaining to the violation or the charges complained of((, or)). In addition to or in place of an order or hearing, the department may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435.

Sec. 19. Section 53, chapter 168, Laws of 1969 ex. sess. as last amended by section 2, chapter 255, Laws of 1984 and RCW 70.94.431 are each amended to read as follows:

AIR POLLUTION PENALTIES. (1) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW or any of the rules and regulations of the department or the board shall incur a civil penalty (~~(in the form of a fine)~~) in an amount not to exceed one thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. For the purposes of this subsection, the maximum daily fine imposed by a local board for violations of standards by a specific emissions unit is one thousand dollars.

(2) Further, the person is subject to a fine of up to five thousand dollars to be levied by the director of the department of ecology if requested by the board of a local authority or if the director determines that the penalty is needed for effective enforcement of this chapter. A local board shall not make such a request until notice of violation and compliance order procedures have been exhausted, if such procedures are applicable. For the purposes of this subsection, the maximum daily fine imposed by the department of ecology for violations of standards by a specific emissions unit is five thousand dollars.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. (~~Except as provided in subsection (4) of this section, the penalty shall become due and payable when the person incurring the same receives a notice in writing from the director or his designee or the control officer of the authority or his designee describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing to the hearings board as provided for in chapter 43.21B RCW. When a request is made for a hearing, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order affirming the penalty in whole or part. If the amount of such penalty is not paid to the department or the board within thirty days after it becomes due and payable, and a request for a hearing has not been made, the attorney general, upon the request of the director or his designee, or the attorney for the local authority, upon request of the board or control officer, shall bring an action to recover such penalty in the superior court of the county in which the violation occurred:)) The penalties provided in this section shall be imposed pursuant to section 5 of this 1987 act.~~

(4) All penalties recovered under this section by the (~~state board~~) department shall be paid into the state treasury and credited to the general fund or, if recovered by the authority, fifty percent shall be paid into the

treasury of the authority and credited to its funds and fifty percent shall be distributed to the cities, towns and counties within the authority, on a pro rata basis, as each contributes to support the authority pursuant to RCW 70.94.093. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed under subsection (2) of this section shall be reduced by the amount of the payment. Notwithstanding any other provisions of this chapter, no penalty may be levied for the violation of any opacity standard in an amount exceeding four hundred dollars per day.

~~((4) If a penalty is levied under subsection (2) of this section, the director or the director's authorized delegate may, upon written application therefor received within fifteen days after the notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the director in the director's discretion deems proper, and may ascertain the facts upon all such applications in such manner and under such regulations as the director deems proper. The mitigation shall not affect or reduce the penalty imposed by the local board. Any person incurring any penalty under this section may appeal the same to the hearings board as provided in chapter 43.21B RCW. Appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, appeals shall be filed within thirty days of receipt of notice from the director or the director's authorized delegate setting forth the disposition of the application. Any penalty imposed under 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 an appeal is filed. When an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from the disposition. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which the violator may do business, to recover the penalty. In all such actions the procedure and rules of evidence shall be the same as for an ordinary civil action except as otherwise provided in this chapter.))~~

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

~~((In all actions brought in the superior court for the recovery of penalties hereunder, the procedure and rules of evidence shall be the same as in an ordinary civil action:))~~

Sec. 20. Section 7, chapter 133, Laws of 1969 ex. sess. as last amended by section 7, chapter 316, Laws of 1985 and RCW 90.48.350 are each amended to read as follows:

OIL POLLUTION PENALTIES. Any person who intentionally or negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation, and for each day of a continuing violation; said amount to be determined by the director ~~((of the commission))~~ after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall ~~((become due and payable when the person incurring the same receives a notice in writing from the director of the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The director may, upon written application therefor, received within fifteen days, and when deemed in the best interest of the state in carrying out the purposes of this chapter, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as he in his discretion shall deem proper, and shall have the authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after the receipt of notice imposing the same, or if an application for remission or mitigation has been made within fifteen days as herein provided and the amount provided in the order issued by the director subsequent to such application is not paid within fifteen days after the receipt thereof, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or any other county in which such violator may do business, to recover the amount specified in the final order of the director. 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. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. No order issued under this section shall be construed as an order within the meaning of RCW 90.48-135))~~ be imposed pursuant to section 5 of this 1987 act.

Sec. 21. Section 21, chapter 134, Laws of 1969 ex. sess. and RCW 70-.95.210 are each amended to read as follows:

SOLID WASTE PERMIT APPEALS. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given all interested parties including the county or city having jurisdiction over the site and the department (~~(of environmental quality)~~). Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the (~~(department of environmental quality)~~) pollution control hearings board by filing with the (~~(director)~~) hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The (~~(department)~~) hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended.

**Sec. 22. Section 5, chapter 183, Laws of 1974 ex. sess. and RCW 70.107.050 are each amended to read as follows:*

NOISE POLLUTION PENALTIES. (1) *Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars. (~~All violations of this chapter shall be administered pursuant to the provisions of chapter 34.04 RCW, the state administrative procedure act:~~*

~~*Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the pollution control hearings board shall become due and payable on the issuance of said board's final order in the appeal.*~~

~~*(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney general shall, upon request of the director, bring an action in the name of the state of Washington, in the superior court of Thurston county or in the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.) This penalty shall be imposed pursuant to section 5 of this 1987 act.*~~

**Sec. 22 was vetoed, see message at end of chapter.*

Sec. 23. Section 17, chapter 159, Laws of 1935 and RCW 86.16.110 are each amended to read as follows:

FLOOD CONTROL ZONE PERMITS. Any person, association or corporation, public, municipal or private, feeling aggrieved at any order,

decision, or determination of the ~~((state supervisor of flood control made))~~ department or director pursuant to this chapter, affecting his interest, may have the same reviewed ~~((by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the matter affected, or a portion thereof is situated. The proceedings in every such appeal shall be heard and tried by the court and shall be informal and summary, but full opportunity to be heard and present evidence shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal containing a statement of the substance of the order, decision, or determination complained of and the manner in which the same injuriously affects the appellant's interests, shall have been served personally upon the state supervisor of flood control, or by registered mail, at his office at the state capitol, within twenty days following the rendition of the order, decision or determination appealed from and communication thereof in writing to the person affected thereby. No bond shall be required except a stay is desired and an appeal shall not be a stay, unless within five days following the service of notice of appeal a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. Costs shall be paid as in civil cases brought in the superior court, and the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. In all court proceedings under or pursuant to this section the decision of the state supervisor of flood control shall be prima facie correct. The attorney general shall be the legal advisor of the state supervisor of flood control and shall represent him in all proceedings whenever so requested))~~ pursuant to section 6 of this 1987 act.

Sec. 24. Section 13, chapter 212, Laws of 1971 ex. sess. and RCW 18-.104.130 are each amended to read as follows:

WELL DRILLERS LICENSE APPEALS. Any person who feels aggrieved by an order of the department including the granting, denial, revocation, or suspension of a license issued by the department pursuant to this chapter shall be entitled to ~~((a hearing before the pollution control hearings board upon request. No such request shall be entertained unless it contains the following:~~

- ~~(1) Requestor's name and address;~~
- ~~(2) The date of the order for which the request for review is taken;~~
- ~~(3) A statement of the substance of the order complained of;~~
- ~~(4) Clear, separate and concise statements of each and every error which the requestor alleges to have been committed by the department;~~
- ~~(5) Clear and concise statement of facts upon which the requestor relies to sustain his statements of error;~~
- ~~(6) A statement setting forth the relief sought.~~

~~The request shall be delivered to said pollution control hearings board's office in Olympia, Washington, either personally or by registered mail,~~

~~within thirty days following the rendition of the order sought to be reviewed. All orders issued by the department as to which a hearing has been requested shall be stayed pending the completion of the hearing process and the issuance of a final order by the pollution control hearings board with the exception of regulatory orders issued pursuant to RCW 18.104.060. Any final order shall be subject to judicial review in accordance with chapter 43.21B RCW.~~

~~The issuance of a regulatory order hereunder, the granting or denial of a license hereunder and the revocation or suspension of a license pursuant to RCW 18.104.110 shall be deemed to be orders for the purposes of this section)) an appeal pursuant to section 6 of this 1987 act.~~

PART C CORRECTION OF REFERENCES

Sec. 25. Section 12, chapter 18, Laws of 1970 ex. sess. and RCW 43.20A.140 are each amended to read as follows:

Where feasible, the department and the state board of health shall consult with the ~~((water pollution control commission and the state air pollution control board, or their successors;))~~ department of ecology in order that, to the fullest extent possible, agencies concerned with the preservation of life and health and agencies concerned with protection of the environment may integrate their efforts and endorse policies in common.

Sec. 26. Section 43.21.110, chapter 8, Laws of 1965 and RCW 43.21.110 are each amended to read as follows:

The ~~((director of conservation, through the division of reclamation;))~~ department of ecology shall exercise all the powers and perform all the duties prescribed by law with respect to the reclamation and development of arid, swamp, overflow, and logged-off lands in the state and such other duties as may be prescribed by law.

Sec. 27. Section 43.21.140, chapter 8, Laws of 1965 as amended by section 1, chapter 53, Laws of 1967 and RCW 43.21.140 are each amended to read as follows:

The ~~((director of conservation, through the division of water resources;))~~ director of ecology may create within his department a fund to be known as the "basic data fund."

Into such fund shall be deposited all moneys contributed by persons for stream flow, ground water and water quality data or other hydrographic information furnished by the department in cooperation with the United States geological survey, and the fund shall be expended on a matching basis with the United States geological survey for the purpose of obtaining additional basic information needed for an intelligent inventory of water resources in the state.

Disbursements from the basic data fund shall be on vouchers approved by the ~~((supervisor of water resources))~~ department and the district engineer of the United States geological survey.

Sec. 28. Section 43.21.160, chapter 8, Laws of 1965 and RCW 43.21.160 are each amended to read as follows:

The ~~((director of conservation, through the division of flood control,))~~ department of ecology shall exercise all the powers and perform all the duties prescribed by law with respect to flood control.

Sec. 29. Section 43.21.190, chapter 8, Laws of 1965 and RCW 43.21.190 are each amended to read as follows:

The ~~((director))~~ department of ecology shall prepare and perfect from time to time a state master plan for flood control, state public reservations, financed in whole or in part from moneys collected by the state, sites for state public buildings and for the orderly development of the natural and agricultural resources of the state. The plan shall be a guide in making recommendations to the officers, boards, commissions, and departments of the state.

Whenever an improvement is proposed to be established by the state, the state agency having charge of the establishment thereof shall request of the director a report thereon, which shall be furnished within a reasonable time thereafter. In case an improvement is not established in conformity with the report, the state agency having charge of the establishment thereof shall file in its office and with the ~~((director))~~ department a statement setting forth its reasons for rejecting or varying from such report which shall be open to public inspection.

The ~~((director))~~ department shall insofar as possible secure the cooperation of adjacent states, and of counties and municipalities within the state in the coordination of their proposed improvements with such master plan.

Sec. 30. Section 44, chapter 62, Laws of 1970 ex. sess. and RCW 43.21B.140 are each amended to read as follows:

In all appeals over which the hearings board has jurisdiction ~~((under RCW 43.21B.110 and 43.21B.120))~~, 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 RCW 43.21B.190 and 43.21B.200. 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.

Sec. 31. Section 2, chapter 242, Laws of 1967 and RCW 43.27A.020 are each amended to read as follows:

As used in this chapter, and unless the context indicates otherwise, words and phrase shall mean:

"Department" means the department of ~~((water resources))~~ ecology;

"Director" means the director of ~~((the department of water resources))~~ ecology;

"State agency" and "state agencies" mean any branch, department or unit of state government, however designated or constituted;

"Water resources" means all waters above, upon, or beneath the surface of the earth, located within the state and over which the state has sole or concurrent jurisdiction.

"Beneficial use" means, but its meaning shall not be limited to: Domestic water supplies; irrigation; fish, shellfish, game, and other aquatic life; recreation; industrial water supplies; generation of hydroelectric power; and navigation.

~~(("Council" means the water resources advisory council.))~~

Sec. 32. Section 8, chapter 242, Laws of 1967 as amended by section 104, chapter 3, Laws of 1983 and RCW 43.27A.080 are each amended to read as follows:

The department shall exercise the powers, duties and functions of the following state agencies or division of state agencies, and public officials, and all their powers, duties and functions are transferred to the department of ~~((water resources))~~ ecology:

- (1) The division of reclamation of the department of conservation;
- (2) The division of water resources of the department of conservation;
- (3) The division of flood control of the department of conservation;
- (4) The division of power resources of the department of conservation;
- (5) The Columbia basin commission;
- (6) The weather modification board;

All other powers, duties or functions now vested in the department of conservation or the director thereof are transferred to the department of ~~((water resources))~~ ecology, except those powers which are expressly transferred to some other agency of the state by this chapter. The director in exercising the powers, duties and functions of the Columbia basin commission as set forth in chapter 43.49 RCW may create and maintain in the department a Columbia basin division.

Sec. 33. Section 3, chapter 232, Laws of 1957 as last amended by section 119, chapter 141, Laws of 1979 and RCW 70.94.030 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 shall have the following meanings:

- (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

(3) "Person" means and includes an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

(4) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(5) "Board" means the board of directors of an authority.

(6) "Control officer" means the air pollution control officer of any authority.

(7) (~~"State board" means the state air pollution control board, or any department or agency which by law shall succeed to its powers, duties and functions:~~

~~(8))~~ "Emission" means a release into the outdoor atmosphere of air contaminants.

~~((9))~~ (8) "Department" means the state department of ~~((social and health services))~~ ecology.

~~((10))~~ (9) "Ambient air" means the surrounding outside air.

~~((11))~~ (10) "Multicounty authority" means an authority which consists of two or more counties.

~~((12))~~ (11) "Emission standard" means a limitation on the release of a contaminant or multiple contaminants into the ambient air.

~~((13))~~ (12) "Air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.

~~((14))~~ (13) "Air quality objective" means the concentration and exposure time of a contaminant or multiple contaminants in the ambient air below which undesirable effects will not occur.

Sec. 34. Section 4, chapter 238, Laws of 1967 as amended by section 120, chapter 141, Laws of 1979 and RCW 70.94.053 are each amended to read as follows:

(1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) All authorities which are presently or may hereafter be within counties of the first class, class A or class AA, are hereby designated as activated authorities and shall carry out the duties and exercise the powers

provided in this chapter. Those authorities hereby activated which encompass contiguous counties located in one or the other of the two major areas determined in RCW 70.94.011 are declared to be and directed to function as a multicounty authority.

(3) Except as provided in RCW 70.94.232, all other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such appointees and/or county commissioners or other officers as is provided in RCW 70.94.100. The first meeting of the boards of those authorities designated as activated authorities by this chapter shall be on or before sixty days after June 8, 1967.

(5) The ~~((state board and the department of social and health services are))~~ department is directed to conduct the necessary evaluations and delineate appropriate air pollution regions throughout the state, taking into consideration:

(a) The natural climatic and topographic features affecting the potential for buildup of air contaminant concentrations.

(b) The degree of urbanization and industrialization and the existence of activities which are likely to cause air pollution.

(c) The county boundaries as related to the air pollution regions and the practicality of administering air pollution control programs.

The ~~((state board and the department are))~~ department is directed to report to the 1969 and succeeding legislative sessions with respect to the further need for activating or combining air pollution control authorities.

Sec. 35. Section 26, chapter 238, Laws of 1967 as amended by section 17, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.142 are each amended to read as follows:

In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181(~~(;)~~) and 70.94.221 (~~(and 70.94.333)~~), the board or the ~~((state board))~~ department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be state-wide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the ~~((state board))~~ department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or ~~((state board))~~ department, shall be paid by the board or ~~((state board))~~ department. Such fees and mileage, and the cost of producing records required to

be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) 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 or the subject of the hearing, the board or (~~state board~~) department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or (~~state board~~) department and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The (~~state board~~) department may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter.

Sec. 36. Section 27, chapter 238, Laws of 1967 as amended by section 18, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.143 are each amended to read as follows:

Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): PROVIDED, That any such application shall be submitted to and approved by the (~~state board~~) department. The (~~state board~~) department shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law.

Sec. 37. Section 28, chapter 238, Laws of 1967 as last amended by section 2, chapter 88, Laws of 1984 and RCW 70.94.151 are each amended to read as follows:

(1) The board of any activated authority or the (~~state board~~) department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the ~~((state board))~~ department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such ~~((state board))~~ department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The ~~((state board))~~ department or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the ~~((state board))~~ department shall preclude a further registration with any other board or the ~~((state board))~~ department.

Sec. 38. Section 20, chapter 232, Laws of 1957 as last amended by section 121, chapter 141, Laws of 1979 and RCW 70.94.200 are each amended to read as follows:

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the ~~((secretary of social and health services))~~ department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the ~~((secretary of social and health services))~~ department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

Sec. 39. Section 46, chapter 238, Laws of 1967 as last amended by section 4, chapter 372, Laws of 1985 and RCW 70.94.331 are each amended to read as follows:

(1) The ~~((state board))~~ department shall have all the powers as provided in RCW 70.94.141.

(2) The ~~((state board))~~ department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapter ~~((42.32))~~ 42.30 RCW and chapter 34.04 RCW shall:

(a) Adopt rules and regulations establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, but in no event may less stringent standards be enacted by an authority without the prior approval of the ~~((state board))~~ department after public hearing and due notice to interested parties;

(c) Adopt by rule and regulation air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonable foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The ~~((state board))~~ department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The ~~((state board))~~ department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

(6) The ~~((state board))~~ department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The ~~((state board))~~ department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The ~~((state board))~~ department shall have the power to require the addition to or deletion of a county from an existing authority in order to

carry out the purposes of this chapter: PROVIDED, HOWEVER, That no such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.04 RCW.

Sec. 40. Section 6, chapter 188, Laws of 1961 as last amended by section 122, chapter 141, Laws of 1979 and RCW 70.94.350 are each amended to read as follows:

The (~~secretary of social and health services~~) department is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the (~~secretary of social and health services~~) department is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The (~~secretary of social and health services~~) department shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for performing the (~~functioning of the state board~~) functions under this chapter. (~~The necessary staff, services, and facilities shall be administered through an appropriate organizational unit of the department of social and health services under the direction of the executive director of the state board.~~)

Sec. 41. Section 51, chapter 238, Laws of 1967 as amended by section 37, chapter 163, Laws of 1969 ex. sess. and RCW 70.94.385 are each amended to read as follows:

(1) Any authority may apply to the (~~state board~~) department for state financial aid. The (~~state board~~) department shall by rule and regulation establish the ratio of state funds to the local funds taking into consideration available federal and state funds. Any such aid shall be expended from the general fund from such appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the maximum unless otherwise approved by the (~~state board~~) department: PROVIDED FURTHER, That the ratio of state funds to local funds of the previous year shall not be changed without a public hearing held by the (~~state board~~) department.

(2) Before any such application is approved and financial aid is given or approved by the (~~state board~~) department, the authority shall demonstrate to the satisfaction of the (~~state board~~) department that it is fulfilling the requirements of RCW 70.94.380, or, if the (~~state board~~) department has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the (~~state board~~) department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The ~~((state board))~~ department shall adopt rules and regulations requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the ~~((state board))~~ department to determine the need for state aid.

Sec. 42. Section 52, chapter 238, Laws of 1967 as amended by section 38, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.390 are each amended to read as follows:

The ~~((state board))~~ department may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter ~~((42.32))~~ 42.30 RCW and chapter 34.04 RCW. If at such hearing the ~~((state board))~~ department finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: PROVIDED, That if at such hearing the ~~((state board))~~ department determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the ~~((state board))~~ department will exercise jurisdiction for the control and/or prevention of air pollution. The ~~((state board))~~ department shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the ~~((state board))~~ department in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The ~~((state board))~~ department shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the ~~((state board))~~ department, the ~~((state board))~~ department shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the ~~((state board))~~ department, the ~~((state board))~~

department shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the ~~((state air pollution control board))~~ office of air programs of the department.

Sec. 43. Section 53, chapter 238, Laws of 1967 as amended by section 39, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.395 are each amended to read as follows:

If the ~~((state board))~~ department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a state-wide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules and regulations to control and/or prevent the emission of air contaminants from such source: PROVIDED, That an authority may, after public hearing and a finding by the board of a need for more stringent rules and regulations than those adopted by the ~~((state board))~~ department under this section, propose the adoption of such rules and regulations by the ~~((state board))~~ department for the control of emissions from the particular type or class or air contaminant source within the geographical area of the authority. The ~~((state board))~~ department shall hold a public hearing and shall adopt the proposed rules and regulations within the area of the requesting authority, unless it finds that the proposed rules and regulations are inconsistent with the rules and regulations adopted by the ~~((state board))~~ department under this section: PROVIDED, FURTHER, That when such standards are adopted by the ~~((state board))~~ department it shall delegate to the authority all powers necessary for their enforcement at the request of the authority: PROVIDED, That the ~~((state board))~~ department may delegate the responsibility for the enforcement of such rules and regulations to any authority which it deems capable of enforcing such regulations: PROVIDED FURTHER, That if after public hearing the ~~((state board))~~ department finds that the regulation on a state-wide basis of a particular type of class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the ~~((state board))~~ department may relinquish exclusive jurisdiction over such source.

Sec. 44. Section 54, chapter 238, Laws of 1967 as amended by section 40, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.400 are each amended to read as follows:

If, at the end of ninety days after the ~~((state board))~~ department issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the ~~((state board))~~ department, and the ~~((state board))~~ department is still of the opinion that the

activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the ~~((state board))~~ department may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the ~~((state board))~~ department shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The ~~((state board))~~ department may, upon due notice to all interested parties, conduct a hearing in accordance with chapter ~~((42.32))~~ 42.30 RCW and chapter 34.04 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the ~~((state board))~~ department may amend any such order issued if it is determined by the ~~((state board))~~ department that such order is being carried out in bad faith or the ~~((state board))~~ department may take the appropriate action as is provided in RCW 70.94.410.

Sec. 45. Section 55, chapter 238, Laws of 1967 as amended by section 41, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.405 are each amended to read as follows:

At any time after an authority has been activated for no less than one year, the ~~((state board))~~ department may, on its own motion, conduct a hearing held in accordance with chapter ~~((42.32))~~ 42.30 RCW and chapter 34.04 RCW, as now or hereafter amended to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible under the circumstances ~~((: PROVIDED, That no such hearing shall be held within one year of June 8, 1967))~~. If at such hearing the ~~((board))~~ department finds that such authority is not carrying out its air pollution control or prevention program in good faith, or is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, it shall set forth in a report to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the ~~((state board))~~ department.

Sec. 46. Section 56, chapter 238, Laws of 1967 as amended by section 42, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.410 are each amended to read as follows:

(1) If, after thirty days from the time that the ~~((state board))~~ department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken any action which indicates that it is attempting in good faith to implement the recommendations or actions of

the ~~((state board))~~ department as set forth in the report or order, the ~~((state board))~~ department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the ~~((state board))~~ department shall become the sole body with authority to make and enforce rules and regulations ~~((to))~~ for the control and/or prevention of air pollution within the geographical area of such authority. In this connection the ~~((state board))~~ department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The ~~((state board))~~ department may, by order, continue in effect and enforce those provisions of the ordinances, resolutions, or rules and regulations of such authority which are not less stringent than those requirements which the ~~((state board))~~ department may have found applicable to the area under RCW 70.94.331 until such time as the ~~((board))~~ department adopts its own rules and regulations. Any rules and regulations promulgated ~~((and any enforcement action, as provided in RCW 70.94.333, taken))~~ by the ~~((state board))~~ department shall be subject to the provisions of chapter 34.04 RCW as it now appears or may hereinafter be amended ~~((and subject to RCW 70.94.425 and 70.94.435 to the extent that they are not inconsistent with chapter 34.04 RCW))~~. Any enforcement actions shall be subject to section 5 or 6 of this 1987 act.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the ~~((state board))~~ department and which complies with the purposes of this chapter and with applicable rules and regulations and orders of the ~~((state board))~~ department.

(3) Nothing in this chapter shall prevent the ~~((state board))~~ department from withdrawing the exercise of its jurisdiction over an authority upon its own motion: PROVIDED, That the ~~((state board))~~ department has found at a hearing held in accordance with chapter ~~((42.32))~~ 42.30 RCW and chapter 34.04 RCW as now or hereafter amended, that the air pollution prevention and control program of such authority will be carried out in good faith or that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction. Upon the withdrawal of the ~~((state board))~~ department, the ~~((state board))~~ department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the ~~((state board))~~ department.

Sec. 47. Section 58, chapter 238, Laws of 1967 as amended by section 44, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.420 are each amended to read as follows:

(1) It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over

any building, installation, or other property shall cooperate with the ((state board)) department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of the matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws, rules or regulations.

(2) In addition to its other powers and duties prescribed by law, the ((state board)) department may establish classes of potential pollution sources for which any state department or agency having jurisdiction over any building, installation, or other property, which is not located within the geographical boundaries of any authority which has an air pollution control and/or prevention program in effect, shall, before discharging any matter into the air, obtain a permit from the ((state board)) department for such discharge, such permits to be issued for a specified period of time to be determined by the ((state board)) department and subject to revocation if the ((state board)) department finds that such discharge is endangering the health and welfare of any persons. Such permits may also be required for any such building, installation, or other property which is located within the geographical boundaries of any authority which has an air pollution control and prevention program in effect if the standards set by the ((state board)) department for state departments and agencies are more stringent than those of the authority. In connection with the issuance of any permits under this section, there shall be submitted to the ((state board)) department such plans, specifications, and other information as it deems relevant thereto and under such other conditions as it may prescribe.

Sec. 48. Section 60, chapter 238, Laws of 1967 and RCW 70.94.425 are each amended to read as follows:

Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the ((state board)) department, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

Sec. 49. Section 45, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.510 are each amended to read as follows:

It is declared to be the policy of the state of Washington through the ((state air pollution control board)) department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the ((state air pollution control

board)) department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act.

Sec. 50. Section 6, chapter 159, Laws of 1935 as amended by section 1, chapter 85, Laws of 1939 and RCW 86.16.025 are each amended to read as follows:

With respect to such features as may affect flood conditions, the ~~((state supervisor of flood control))~~ department shall have authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected or built or to be reconstructed or modified upon the banks or in or over the channel or over and across the flood plain or floodway of any stream or body of water in this state.

Sec. 51. Section 9, chapter 159, Laws of 1935 and RCW 86.16.027 are each amended to read as follows:

The ~~((state supervisor of flood control))~~ department shall ~~((have authority and it shall be his duty to establish and))~~ promulgate rules and regulations governing the administration of this chapter.

Sec. 52. Section 5, chapter 159, Laws of 1935 and RCW 86.16.030 are each amended to read as follows:

The ~~((state supervisor of flood control))~~ director shall have authority to appoint and employ such assistants, professional, clerical and other services and to purchase such equipment, materials and supplies, as shall be necessary for the performance of his duties under this chapter.

Sec. 53. Section 8, chapter 159, Laws of 1935 and RCW 86.16.035 are each amended to read as follows:

~~((Said state supervisor))~~ The department shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he deems necessary for the protection to life and property below such works from flood waters.

Sec. 54. Section 11, chapter 159, Laws of 1935 and RCW 86.16.040 are each amended to read as follows:

As soon as funds are available for the purpose the ~~((state supervisor of flood control))~~ department shall undertake and conduct a careful study of the flood control needs of the state. In so doing ~~((he))~~ it shall consult, consider and utilize any available data and records gathered by ~~((the state planning council, and))~~ state departments and by other agencies, state or local, and it shall be the duty of all such agencies to cooperate with the ~~((supervisor))~~ department in furnishing ~~((him))~~ it all available data and

records. The ~~((supervisor))~~ department shall also make such field investigations and surveys as ~~((he))~~ it shall deem necessary to carry out the provisions of this chapter.

Sec. 55. Section 13, chapter 159, Laws of 1935 and RCW 86.16.060 are each amended to read as follows:

The ~~((state supervisor of flood control))~~ department shall have authority and it shall be ~~((his))~~ its duty as soon as sufficient data are available for the purpose, to establish any area of the state subject to flood damages, beginning with such area as ~~((he))~~ it shall select, into a flood control zone, in accordance with the objects of this chapter.

Sec. 56. Section 14, chapter 159, Laws of 1935 and RCW 86.16.065 are each amended to read as follows:

The boundaries and area of any established flood control zone may be altered and revised from time to time by the ~~((state supervisor of flood control))~~ department under such general rules and regulations as may be prescribed under the provisions of this chapter.

Sec. 57. Section 15, chapter 159, Laws of 1935 as amended by section 86, chapter 469, Laws of 1985 and RCW 86.16.067 are each amended to read as follows:

No flood control zone shall be established, altered or revised without notice previously given by the ~~((state supervisor of flood control))~~ department to the owners of the lands included in such zone or in any alteration or revision thereof by previous publication of the notice once a week for three consecutive weeks in a newspaper of general circulation in the county where the lands or the greater portion thereof are situated, and selected by the ~~((state supervisor))~~ department, stating briefly a general description in terms of government sections, townships and ranges, of the lands within the zone or alteration or revision thereof, and the general objects of the establishment or alteration or revision of the zone and the day, hour and place where written objections may be submitted and heard.

Sec. 58. Section 16, chapter 159, Laws of 1935 and RCW 86.16.070 are each amended to read as follows:

Notice of the establishment, alteration or revision of a flood control zone given substantially in the manner above prescribed, shall be construed to be sufficient notice thereof. Upon the establishment, alteration or revision of a flood control zone after such notice and hearing, the ~~((state supervisor of flood control))~~ department shall make and enter a written order thereof and file the same ~~((in his office))~~ with the department and the same shall be final and conclusive, unless an appeal therefrom be had within the time and in the manner provided in this chapter.

Sec. 59. Section 10, chapter 159, Laws of 1935 and RCW 86.16.080 are each amended to read as follows:

No person, firm, association or corporation, public, municipal or private, shall have the authority or the right hereafter to construct, reconstruct, or modify any structure or works affecting flood waters within any flood control zone, established under the provisions of this chapter, or to operate or maintain any such structure or work hereafter constructed, reconstructed or modified without a written permit from the ~~((state supervisor of flood control))~~ department applied for and issued in accordance with such general rules and regulations as shall be established and promulgated for the purpose under the provisions of this chapter: PROVIDED, HOWEVER, That whenever, in cases of emergency, flood waters shall threaten to or shall endanger lives or damage property, or it shall be necessary to repair, reconstruct, or restore property damaged by such flood waters, in order that such property may be used immediately for the purpose or purposes therefore used, no permit shall be required.

Sec. 60. Section 7, chapter 159, Laws of 1935 as amended by section 2, chapter 85, Laws of 1939 and RCW 86.16.090 are each amended to read as follows:

Any existing structures or works hereafter reconstructed or modified and their operation or maintenance, and any structures or works hereafter constructed, operated or maintained in violation of any order or orders of the ~~((state supervisor of flood control))~~ department, issued under the provisions of this chapter, shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the prosecuting attorney of the county wherein such structures or works, or the major portion thereof, are situated to institute abatement proceedings against the owner or owners of such structures or works, whenever he is requested to do so by the ~~((state supervisor of flood control))~~ department.

Sec. 61. Section 18, chapter 159, Laws of 1935 and RCW 86.16.130 are each amended to read as follows:

Nothing in this chapter contained shall be construed to alter, abridge or enlarge any power or duty of the ~~((state supervisor of flood control))~~ department conferred or imposed by any other statute now or hereafter enacted.

Sec. 62. Section 3, chapter 75, Laws of 1973 and RCW 86.16.170 are each amended to read as follows:

For purposes of this chapter:

- (1) "~~((supervisor of flood control)) shall mean~~" Department means the department of ecology^(); and
- (2) "Director" means the director of ecology.

Sec. 63. Section 3, chapter 136, Laws of 1967 ex. sess. as amended by section 12, chapter 32, Laws of 1980 and RCW 86.18.030 are each amended to read as follows:

Funds shall be expended and contributions made to a political subdivision of the state from flood control appropriations only after:

(1) The project for which the funds are to be used has been approved by the ~~((state supervisor of flood control))~~ department of ecology in accordance with the regulatory provisions of chapter 86.16 RCW.

(2) Engineering studies and plans have been made and filed with the county engineer of the county in which the project is located, or the county engineers of all counties in which the project is located, if it is located in more than one county.

(3) The estimate of cost of acquisition of necessary lands, rights of way and construction of the project or improvements, together with adequate supporting data have been completed and filed with the ~~((state supervisor of flood control))~~ department of ecology.

(4) A comprehensive plan for the area involved has been completed and filed with the ~~((state supervisor of flood control))~~ department.

(5) The political subdivision desiring a contribution has made an application for a contribution to the ~~((state supervisor of flood control))~~ department showing the estimated cost of the project and the requested contribution.

(6) Federal funds are available for contribution for payment of a portion of the cost of the project.

The director of ~~((the department of water resources))~~ ecology is authorized to determine when these conditions have been met and to request the proper warrant for the state's contribution. Contributions to a political subdivision for a specific project shall not exceed fifty percent of the cost of acquisition of necessary lands and rights of way, and construction of the project or works of improvement.

Sec. 64. Section 2, chapter 163, Laws of 1935 and RCW 86.24.020 are each amended to read as follows:

The ~~((state director of conservation))~~ department of ecology, in cooperation with ~~((the secretary of war, acting through))~~ the corps of engineers of the United States army, and any other agencies of the United States, and in cooperation with any official, agency or institution of the state and any flood control district created under the laws of the state, and any county, or any counties acting jointly pursuant to RCW 86.13.010 through 86.13.090, shall act for the state in the formulation of plans for the control of floods in the several flood areas of the state, and shall consider the extent to which the state should participate therein with the United States and/or any flood control district, or county, or counties so acting jointly. In case of federal participation, the plan of development and the surveys, plans and specifications for such flood control projects shall be in accordance with the federal requirements therefor.

NEW SECTION. Sec. 65. A new section is added to chapter 90.03 RCW to read as follows:

As used in this chapter:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of ecology; and
- (3) "Person" means any firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual.

Sec. 66. Section 30, chapter 117, Laws of 1917 as last amended by section 1, chapter 275, Laws of 1953 and RCW 90.03.280 are each amended to read as follows:

Upon receipt of a proper application, the ~~((supervisor))~~ department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by him in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as he may direct, once a week for two consecutive weeks. Upon receipt by the ~~((supervisor))~~ department of an application ~~((he))~~ it shall send notice thereof containing pertinent information to the director of fisheries and the director of game.

Sec. 67. Section 33, chapter 117, Laws of 1917 and RCW 90.03.320 are each amended to read as follows:

Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the ~~((supervisor of water resources))~~ department, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the ~~((supervisor))~~ department. The ~~((supervisor))~~ department, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected: and, for good cause shown, ~~((he))~~ it shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. If the terms of the permit or extension thereof, are not complied with the ~~((supervisor))~~ department shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause be not shown, said permit shall be canceled.

Sec. 68. Section 3, chapter 117, Laws of 1917 and RCW 90.03.030 are each amended to read as follows:

Any person may convey any water which he may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary highwater mark, without making just

compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the ~~((supervisor of water resources))~~ department, upon the application of any person interested.

Sec. 69. Section 9, chapter 117, Laws of 1917 as last amended by section 1, chapter 80, Laws of 1967 and RCW 90.03.060 are each amended to read as follows:

Water masters shall be appointed by the ~~((supervisor of water resources))~~ department whenever ~~((he))~~ it shall find the interests of the state or of the water users to require them. The districts for or in which the water masters serve shall be designated water master districts, which shall be fixed from time to time by the ~~((supervisor))~~ department, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no district shall be created or continued where the need for the same does not exist. Water masters shall be supervised by the ~~((supervisor of water resources))~~ department, shall be compensated for services from funds of the department ~~((of conservation, division of water resources))~~, and shall be technically qualified to the extent of understanding the elementary principals of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Counties and municipal and public corporations of the state are authorized to contribute moneys to the department ~~((of conservation))~~ to be used as compensation to water masters in carrying out their duties. All such moneys received by the department ~~((of conservation))~~ shall be used exclusively for said purpose.

Sec. 70. Section 10, chapter 117, Laws of 1917 as amended by section 2, chapter 80, Laws of 1967 and RCW 90.03.070 are each amended to read as follows:

It shall be the duty of the water master, acting under the direction of the ~~((supervisor of water resources))~~ department, to divide in whole or in part, the water supply of his district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He shall divide, regulate and control the use of water within his district by such regulation of headgates, conduits and reservoirs as shall be necessary to prevent the use of water in excess of the amount to which the owner of the right is lawfully entitled. Whenever, in the pursuance of his duties, the water master regulates a headgate of a water conduit or the controlling works of a reservoir, he shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties. In

addition to dividing the available waters and supervising the stream patrolmen in his district, he shall enforce such rules and regulations as the (~~supervisor~~) department shall from time to time prescribe.

The county or counties in which water master districts are created shall deputize the water masters appointed hereunder, and may without charge provide to each water master suitable office space, supplies, equipment and clerical assistance as are necessary to the water master in the performance of his duties.

Sec. 71. Section 13, chapter 117, Laws of 1917 and RCW 90.03.100 are each amended to read as follows:

It shall be the duty of the prosecuting attorney of any county to appear for or on behalf of the (~~supervisor of water resources or his deputy~~) department or any water master, upon request of any such officer in any case which may arise in the performance of the official duties of any such officer within the jurisdiction of said prosecuting attorney.

Sec. 72. Section 14, chapter 117, Laws of 1917 and RCW 90.03.110 are each amended to read as follows:

Upon the filing of a petition with the (~~supervisor of water resources~~) department by one or more persons claiming the right to divert any waters within the state or when, after investigation, in the judgment of the (~~supervisor~~) department, the interest of the public will be subserved by a determination of the rights thereto, it shall be the duty of the (~~supervisor~~) department to prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the (~~supervisor~~) department shall determine to be the most convenient to the parties interested therein. Such statement shall contain substantially the following matter, to wit:

- (1) The names of all known persons claiming the right to divert said water, the right to the diversion of which is sought to be determined, and
- (2) A brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto.

Sec. 73. Section 15, chapter 117, Laws of 1917 as amended by section 1, chapter 357, Laws of 1977 ex. sess. and RCW 90.03.120 are each amended to read as follows:

Upon the filing of the statement and map as provided in RCW 90.03.110 the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than sixty nor more than ninety days, after the making of such order: PROVIDED, That for good cause, the court, at the request of the (~~supervisor~~) department, may modify said time period. A summons shall thereupon be issued out of said superior court, signed and attested by the clerk

thereof, in the name of the state of Washington, as plaintiff, against all known persons claiming the right to divert the water involved and also all persons unknown claiming the right to divert the water involved, which said summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file a statement of claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: PROVIDED, HOWEVER, That any persons claiming the right to the use of water by virtue of a contract with claimant to the right to divert the same, shall not be necessary parties to the proceeding.

Sec. 74. Section 16, chapter 117, Laws of 1917 as last amended by section 2, chapter 216, Laws of 1979 ex. sess. and RCW 90.03.130 are each amended to read as follows:

Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state: PROVIDED, That for good cause, the court, at the request of the ((supervisor)) department, as an alternative to personal service, may authorize service of summons to be made by certified mail, with return receipt signed by defendant, a spouse of a defendant, or another person authorized to accept service. If the defendants, or either of them, cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending shall be prima facie evidence, upon the filing of an affidavit by the ((supervisor of water resources)) department, or ((his)) its attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation in the county in which such proceeding is pending, and also publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications). In cases where personal service can be had, such summons shall be served at least twenty days before the return day thereof. The summons by publication shall state that statements of claim must be filed within twenty day, after the last publication or before the return date, whichever is later.

Personal service of summons may be made by department of ecology employees for actions pertaining to water rights.

Sec. 75. Section 17, chapter 117, Laws of 1917 as amended by section 2, chapter 122, Laws of 1929 and RCW 90.03.140 are each amended to read as follows:

On or before the return day of such summons, each defendant shall file in the office of the clerk of said court a statement, and therewith a copy

thereof for the ~~((supervisor of water resources))~~ department, containing substantially the following~~((, to wit))~~:

- (1) The name and post office address of defendant.
- (2) The full nature of the right, or use, on which the claim is based.
- (3) The time of initiation of such right and commencement of such use.
- (4) The date of beginning and completion of construction.
- (5) The dimensions and capacity of all ditches existing at the time of making said statement.
- (6) The amount of land under irrigation and the maximum quantity of water used thereon prior to the date of said statement and if for power, or other purposes, the maximum quantity of water used prior to date of said statement.
- (7) The legal description of the land upon which said water has been, or may be, put to beneficial use, and the legal description of the subdivision of land on which the point of diversion is located.

Such statement shall be verified on oath by the defendant, and in the discretion of the court may be amended.

Sec. 76. Section 19, chapter 117, Laws of 1917 and RCW 90.03.160 are each amended to read as follows:

Upon the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the ~~((supervisor of water resources))~~ department to take testimony~~((, by himself or))~~ by ~~((his))~~ its duly authorized ~~((deputy))~~ designee, as referee, and ~~((he or his said deputy))~~ the designee shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court.

Sec. 77. Section 20, chapter 117, Laws of 1917 and RCW 90.03.170 are each amended to read as follows:

Thereupon the ~~((supervisor of water resources))~~ department shall fix a time and place for such hearing and serve written notice thereof upon all persons who have appeared in said proceeding, their agents or attorneys. Notice of such hearing shall be served at least ten days before the time fixed therefor. Such hearings may be adjourned from time to time and place to place. The ~~((supervisor or his))~~ duly authorized ~~((deputy))~~ designee shall have authority to subpoena witnesses and administer oaths in the same manner and with the same powers as referees in civil actions. The fees and mileage of witnesses shall be advanced by the party at whose instance they are called as in civil actions. A final decree adjudicating rights or priorities, entered in any case decided prior to ~~((taking effect of this act))~~ June 6, 1917, shall be conclusive among the parties thereto and the extent of use so determined shall be prima facie evidence of rights to the amount of water and priorities so fixed as against any person not a party to said decree.

Sec. 78. Section 22, chapter 117, Laws of 1917 and RCW 90.03.190 are each amended to read as follows:

Upon the completion of the taking of testimony it shall be the duty of the (~~((supervisor of water resources))~~) department's designee to prepare and file with the clerk of the superior court where such proceeding is pending, a transcript of the testimony taken at such hearing, in triplicate, together with all papers and exhibits offered and received in evidence and not already a part of the record. He shall also make and file in said court a full and complete report as in other cases of reference in the superior court. Two of said transcripts shall be for the use of the parties as the court may direct. The court shall set a time for the hearing and the (~~((supervisor))~~) designee shall thereupon prepare a notice designating a time for the hearing of said report and serve a copy thereof, together with a copy of his report, on all persons, their agents or attorneys who have appeared in such proceeding. Such service shall be made not less than twenty days before the time for said hearing, either personally or by registered mail, and an affidavit of such service filed with the clerk.

Sec. 79. Section 23, chapter 117, Laws of 1917 as amended by section 176, chapter 81, Laws of 1971 and RCW 90.03.200 are each amended to read as follows:

Upon the filing of the evidence and the report of the (~~((supervisor of water resources))~~) department, any interested party may, on or before five days prior to the date of said hearing, file exceptions to such report in writing and such exception shall set forth the grounds therefor and a copy thereof shall be served personally or by registered mail upon all parties who have appeared in the proceeding. If no exceptions be filed, the court shall enter a decree determining the rights of the parties according to the evidence and the report of the (~~((supervisor))~~) department, whether such parties have appeared therein or not. If exceptions are filed the action shall proceed as in case of reference of a suit in equity and the court may in its discretion take further evidence or, if necessary, remand the case for such further evidence to be taken by the (~~((supervisor))~~) department's designee, and may require further report by him. Costs, not including taxable attorneys fees, may be allowed or not; if allowed, may be apportioned among the parties in the discretion of the court. Appeal may be taken to the supreme court or the court of appeals from such decree in the same manner as in other cases in equity, except that notice of appeal must be both served and filed within sixty days from the entry thereof.

Sec. 80. Section 1, chapter 103, Laws of 1921 and RCW 90.03.210 are each amended to read as follows:

During the pendency of such adjudication proceedings prior to judgment or upon appeal to the supreme court of the state or other appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in (~~((said supervisor of~~

~~water resources⁴)~~ the department's report upon an order of the court authorizing such regulation: PROVIDED, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him, ~~((in the same manner as provided in RCW 90.03.080;))~~ in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just. The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

Sec. 81. Section 25, chapter 117, Laws of 1917 and RCW 90.03.230 are each amended to read as follows:

The clerk of the superior court, immediately upon the entry of any decree by the superior court, shall transmit a certified copy thereof to the ~~((supervisor of water resources))~~ director, who shall immediately enter the same upon the records of ~~((his office))~~ the department.

Sec. 82. Section 26, chapter 117, Laws of 1917 and RCW 90.03.240 are each amended to read as follows:

Upon the final determination of the rights to the diversion of water it shall be the duty of the ~~((supervisor of water resources))~~ department to issue to each person entitled to the diversion of water by such determination, a certificate under his official seal, setting forth the name and post office address of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion and the place of use; the land to which said water right is appurtenant and when applicable the maximum quantity of water allowed.

Sec. 83. Section 27, chapter 117, Laws of 1917 and RCW 90.03.250 are each amended to read as follows:

Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the ~~((supervisor of water resources))~~ department for a permit to make such appropriation, and shall not use or divert such waters until he has received a permit from ~~((such supervisor))~~ the department as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the ~~((supervisor))~~ department: PROVIDED, That a temporary permit may be granted upon a proper showing made to the ~~((supervisor))~~ department to be valid only during the pendency of such application for a permit unless sooner revoked by ~~((said supervisor))~~ the department: PROVIDED,

FURTHER, That nothing in this chapter contained shall be deemed to affect RCW 90.40.010 through 90.40.080 except that the notice and certificate therein provided for in RCW 90.40.030 shall be addressed to the ~~((supervisor of water resources after the passage of this act))~~ department, and the ~~((supervisor))~~ department shall exercise the powers and perform the duties prescribed by RCW 90.40.030.

Sec. 84. Section 28, chapter 117, Laws of 1917 and RCW 90.03.260 are each amended to read as follows:

Each application for permit to appropriate water shall set forth the name and post office address of the applicant, the source of water supply, the nature and amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use. If for agricultural purposes, it shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied. If for construction of a reservoir, it shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters. If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirement of the municipality. If for mining purposes, it shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions. All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the ~~((supervisor of water resources))~~ department, and such accompanying data shall be considered as a part of the application.

Sec. 85. Section 29, chapter 117, Laws of 1917 and RCW 90.03.270 are each amended to read as follows:

Upon receipt of an application it shall be the duty of the ~~((supervisor of water resources))~~ department to make an endorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings and such data as is required by the ~~((supervisor))~~ department shall be filed ~~((in the office of the supervisor))~~ with the department within such reasonable time as ~~((he))~~ it shall require.

Sec. 86. Section 31, chapter 117, Laws of 1917 as last amended by section 1, chapter 133, Laws of 1947 and RCW 90.03.290 are each amended to read as follows:

When an application complying with the provisions of this chapter and with the rules and regulations of the ~~((supervisor of water resources))~~ department has been filed, the same shall be placed on record ~~((in the office of the supervisor))~~ with the department, and it shall be ~~((his))~~ its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the ~~((supervisor))~~ department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the ~~((supervisor))~~ department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public. If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the ~~((supervisor))~~ department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the ~~((supervisor))~~ department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the ~~((supervisor))~~ department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the ~~((supervisor))~~ department, establishes the good faith, intent and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit. The ~~((supervisor))~~ department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if ~~((he))~~ it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, ~~((he))~~ it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible

development of the use of the waters belonging to the public, it shall be duty of the ((~~supervisor~~)) department to reject such application and to refuse to issue the permit asked for. If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, ((~~said supervisor~~)) the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the ((~~supervisor~~)) department to investigate all facts relevant and material to the application. After the ((~~supervisor~~)) department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a permit is issued by the ((~~supervisor~~)) department upon any application, it shall be ((~~his~~)) its duty to notify both the director of fisheries and the director of game of such issuance.

Sec. 87. Section 3, chapter 103, Laws of 1921 and RCW 90.03.300 are each amended to read as follows:

No permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use or the lands to be irrigated by means of such water, or any part thereof, may be situated in some other state or nation, but in all such cases where either the point of diversion or any of such works or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the state of Washington, the permit shall issue as in other cases: PROVIDED, HOWEVER, That the ((~~supervisor of water resources~~)) department may in ((~~his~~)) its discretion, decline to issue a permit where the point of diversion described in the application is within the state of Washington but the place of beneficial use in some other state or nation, unless under the laws of such state or nation water may be lawfully diverted within such state or nation for beneficial use in the state of Washington.

Sec. 88. Section 32, chapter 117, Laws of 1917 and RCW 90.03.310 are each amended to read as follows:

Any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment shall be binding or valid unless filed for record ((~~in the office of the supervisor of water resources~~)) with the department. Any application for permits to appropriate water prior to permit issuing, may be assigned by the applicant, but no such assignment shall

be valid or binding unless the written consent of the ~~((supervisor))~~ department is first obtained thereto, and unless such assignment is filed for record ~~((in the office of the supervisor))~~ with the department.

Sec. 89. Section 34, chapter 117, Laws of 1917 as amended by section 5, chapter 122, Laws of 1929 and RCW 90.03.330 are each amended to read as follows:

Upon a showing satisfactory to the ~~((supervisor of water resources))~~ department that any appropriation has been perfected in accordance with the provisions of this chapter, it shall be the duty of ~~((such supervisor))~~ the department to issue to the applicant a certificate stating such facts in a form to be prescribed by him, and such certificate shall thereupon be recorded ~~((in his office))~~ with the department. Any original water right certificate issued, as provided by this chapter, shall be recorded ~~((in his office))~~ with the department and thereafter, at the expense of the party receiving the same, be by ~~((such supervisor))~~ the department transmitted to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof.

Sec. 90. Section 35, chapter 117, Laws of 1917 and RCW 90.03.340 are each amended to read as follows:

The right acquired by appropriation shall relate back to the date of filing of the original application ~~((in the office of the supervisor of water resources))~~ with the department.

Sec. 91. Section 36, chapter 117, Laws of 1917 as last amended by section 1, chapter 362, Laws of 1955 and RCW 90.03.350 are each amended to read as follows:

Any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the ~~((supervisor))~~ department for ~~((his))~~ examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the ~~((supervisor))~~ department, and the other returned with ~~((his))~~ its approval or rejection endorsed thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the ~~((supervisor))~~ department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the ~~((supervisor))~~ department or which shall not be maintained in accordance with the order of the ~~((supervisor))~~ department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion

thereof, is situated to institute abatement proceedings against the owner or owners of such dam or controlling works, whenever he is requested to do so by the ~~((supervisor))~~ department.

Sec. 92. Section 37, chapter 117, Laws of 1917 and RCW 90.03.360 are each amended to read as follows:

The owner or owners of any ditch or canal shall maintain, to the satisfaction of the ~~((supervisor of water resources))~~ department, substantial controlling works, and a measuring device at the point where the water is diverted, and these shall be so constructed as to permit of accurate measurement and practical regulation of the flow of water diverted into said ditch or canal. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the ~~((supervisor))~~ department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Sec. 93. Section 38, chapter 117, Laws of 1917 and RCW 90.03.370 are each amended to read as follows:

All applications for reservoir permits shall be subject to the provisions of RCW 90.03.250 through 90.03.320. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of RCW 90.03.250 through 90.03.320. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the ~~((supervisor of water resources))~~ department shall take the proof of the water users under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit.

Sec. 94. Section 39, chapter 117, Laws of 1917 as amended by section 6, chapter 122, Laws of 1929 and RCW 90.03.380 are each amended to read as follows:

The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That said right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. Before any transfer of such right to use water or change of the

point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the ~~((supervisor of water resources))~~ department, and said application shall not be granted until notice of said application shall be published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the ~~((supervisor))~~ department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record ~~((in the office of the supervisor))~~ with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

Sec. 95. Section 7, chapter 122, Laws of 1929 and RCW 90.03.390 are each amended to read as follows:

RCW 90.03.380 shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights, but in no case shall such change be made without the permission of the water master of the district in which such proposed change is located, or of the ~~((supervisor of water resources))~~ department. Nor shall RCW 90.03-.380 be construed to prevent rotation in the use of water for bringing about a more economical use of the available supply. Water users owning lands to which water rights are attached may rotate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or ~~((super-visor))~~ department.

Sec. 96. Section 3, chapter 71, Laws of 1919 and RCW 90.03.430 are each amended to read as follows:

In all cases where irrigating ditches are owned by two or more persons and one or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any court having jurisdiction of the matter the expense or value of such work or labor so performed:

PROVIDED, That no improvement involving an expenditure in excess of one hundred dollars shall be made without the written approval of the ((~~supervisor of water resources~~)) department having first been obtained.

Sec. 97. Section 4, chapter 71, Laws of 1919 and RCW 90.03.440 are each amended to read as follows:

When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or their lessee or lessees, or either of them, to apply to the ((~~supervisor of water resources~~)) department, in writing, setting forth such fact and giving such information as shall enable the ((~~supervisor~~)) department to estimate the probable expense of such service, asking the ((~~supervisor~~)) department to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The ((~~supervisor~~)) department shall upon the receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, ((~~he~~)) the department shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the ((~~supervisor~~)) department shall be entitled to recover in any court of competent jurisdiction from his co-owners their proportionate share of the expense.

Sec. 98. Section 44, chapter 117, Laws of 1917 as last amended by section 1, chapter 160, Laws of 1965 ex. sess. and RCW 90.03.470 are each amended to read as follows:

The following fees shall be collected by the ((~~supervisor~~)) department in advance:

(1) For the examination of an application for permit to appropriate water or on application to change point of diversion, withdrawal, purpose or place of use, a minimum of ten dollars, to be paid with the application. For each second foot between one and five hundred second feet, two dollars per second foot; for each second foot between five hundred and two thousand second feet, fifty cents per second foot; and for each second foot in excess thereof, twenty cents per second foot. For each acre foot of storage up to and including one hundred thousand acre feet, one cent per acre foot, and for each acre foot in excess thereof, one-fifth cent per acre foot. The ten dollar fee payable with the application shall be a credit to that amount whenever the fee for direct diversion or storage totals more than ten dollars

under the above schedule and in such case the further fee due shall be the total computed amount less ten dollars.

Within five days from receipt of an application the ~~((supervisor))~~ department shall notify the applicant by registered mail of any additional fees due under the above schedule and any additional fees shall be paid to and received by the ~~((supervisor))~~ department within thirty days from the date of filing the application, or the application shall be rejected.

(2) For filing and recording a permit to appropriate water for irrigation purposes, forty cents per acre for each acre to be irrigated up to and including one hundred acres, and twenty cents per acre for each acre in excess of one hundred acres up to and including one thousand acres, and ten cents for each acre in excess of one thousand acres; and also twenty cents for each theoretical horsepower up to and including one thousand horsepower, and four cents for each theoretical horsepower in excess of one thousand horsepower, but in no instance shall the minimum fee for filing and recording a permit to appropriate water be less than five dollars. For all other beneficial purposes the fee shall be twice the amount of the examination fee except that for individual household and domestic use, which may include water for irrigation of a family garden, the fee shall be five dollars.

(3) For filing and recording any other water right instrument, four dollars for the first hundred words and forty cents for each additional hundred words or fraction thereof.

(4) For making a copy of any document recorded or filed in his office, forty cents for each hundred words or fraction thereof, but when the amount exceeds twenty dollars, only the actual cost in excess of that amount shall be charged.

(5) For certifying to copies, documents, records or maps, two dollars for each certification.

(6) For blueprint copies of a map or drawing, or, for such other work of a similar nature as may be required of ~~((his office))~~ the department, at actual cost of the work.

(7) For granting each extension of time for beginning construction work under a permit to appropriate water, an amount equal to one-half of the filing and recording fee, except that the minimum fee shall be not less than five dollars for each year that an extension is granted, and for granting an extension of time for completion of construction work or for completing application of water to a beneficial use, five dollars for each year that an extension is granted.

(8) For the inspection of any hydraulic works to insure safety to life and property, the actual cost of the inspection, including the expense incident thereto.

(9) For the examination of plans and specifications as to safety of controlling works for storage of ten acre feet or more of water, a minimum fee of ten dollars, or the actual cost.

(10) For recording an assignment either of a permit to appropriate water or of an application for such a permit, a fee of five dollars.

(11) For preparing and issuing all water right certificates, five dollars.

(12) For filing and recording a protest against granting any application, two dollars.

Sec. 99. Section 3, chapter 161, Laws of 1925 ex. sess. and RCW 90-.03.471 are each amended to read as follows:

All fees, collections and revenues derived (~~(hereunder)~~) under RCW 90.03.470 or by virtue of RCW 90.03.180, shall be used exclusively for the purpose of carrying out the work and performing the functions of the division of water resources of the department.

Sec. 100. Section 15, chapter 233, Laws of 1967 and RCW 90.14.150 are each amended to read as follows:

Nothing in this chapter shall be construed to affect any rights or privileges arising from any permit to withdraw public waters or any application for such permit, but the (~~(supervisor)~~) department of ecology shall grant extensions of time to the holder of a preliminary permit only as provided by RCW 90.03.290.

Sec. 101. Section 18, chapter 233, Laws of 1967 and RCW 90.14.180 are each amended to read as follows:

Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become available for appropriation in accordance with RCW 90.03.250. All certificates hereafter issued by the (~~(supervisor of water resources)~~) department of ecology pursuant to RCW 90.03.330 shall expressly incorporate this section by reference.

Sec. 102. Section 23, chapter 233, Laws of 1967 and RCW 90.14.230 are each amended to read as follows:

The (~~(supervisor of water resources)~~) department of ecology is authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter.

Sec. 103. Section 3, chapter 284, Laws of 1969 ex. sess. and RCW 90-.22.010 are each amended to read as follows:

The department of (~~(water resources)~~) ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of (~~(water resources)~~) ecology shall, when requested by the department of

fisheries or the game commission to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or ~~((by the water pollution control commission))~~ if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request or determination. Any request submitted by the department of fisheries~~(;)~~ or game commission ~~((or water pollution control commission))~~ shall include a statement setting forth the need for establishing a minimum flow or level. When the department acts to preserve water quality, it shall include a similar statement with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department ~~((of water resources))~~ in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

Sec. 104. Section 6, chapter 284, Laws of 1969 ex. sess. and RCW 90.22.040 are each amended to read as follows:

It shall be the policy of the state, and the department of ~~((water resources))~~ ecology shall be so guided in the implementation of RCW 90.22.010 and 90.22.020, to retain sufficient minimum flows or levels in streams, lakes or other public waters to provide adequate waters in such water sources to satisfy stockwatering requirements for stock on riparian grazing lands which drink directly therefrom where such retention shall not result in an unconscionable waste of public waters. The policy hereof shall not apply to stockwatering relating to feed lots and other activities which are not related to normal stockgrazing land uses.

Sec. 105. Section 4, chapter 107, Laws of 1939 as last amended by section 1, chapter 243, Laws of 1963 and RCW 90.24.030 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake in county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon the director of fisheries and of game and the ~~((supervisor of water resources))~~ director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

Sec. 106. Section 7, chapter 107, Laws of 1939 and RCW 90.24.060 are each reenacted and amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the respective directors of the department of fisheries, the department of game and the ~~((supervisor of water resources))~~ department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

Sec. 107. Section 3, chapter 263, Laws of 1945 as amended by section 2, chapter 94, Laws of 1973 and RCW 90.44.035 are each amended to read as follows:

For purposes of this chapter:

(1) "Department" means the department of ecology;

(2) "Director" means the director of ecology;

(3) "Ground waters" means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves(~~(, are defined for the purposes of this chapter as "ground waters."))~~. There is a recognized ((α)) distinction between(~~(- (†))~~) natural ground water and artificially stored ground water;

(4) "Natural ground water" means water that exists in underground storage owing wholly to natural processes; (~~(for the purposes of this chapter such water is designated as "natural ground water." (2))~~) and

(5) "Artificially stored ground water" means water that is made available in underground storage artificially, either intentionally, or incidentally to irrigation and that otherwise would have been dissipated by natural waste(~~(; for the purposes of this chapter such water is designated as "artificially stored ground water."))~~).

Sec. 108. Section 5, chapter 263, Laws of 1945 as amended by section 1, chapter 122, Laws of 1947 and RCW 90.44.050 are each amended to read as follows:

After ~~((the effective date of this act))~~ June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the ~~((supervisor of water resources))~~ department and a permit has been granted by ~~((him))~~ it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the

extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the ((supervisor)) department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.

Sec. 109. Section 6, chapter 263, Laws of 1945 and RCW 90.44.060 are each amended to read as follows:

Applications for permits for appropriation of underground water shall be made in the same form and manner provided in RCW 90.03.250 through 90.03.340, as amended, the provisions of which sections are hereby extended to govern and to apply to ground water, or ground water right certificates and to all permits that shall be issued pursuant to such applications, and the rights to the withdrawal of ground water acquired thereby shall be governed by RCW 90.03.250 through 90.03.340, inclusive: PROVIDED, That each application to withdraw public ground water by means of a well or wells shall set forth the following additional information: (1) the name and post office address of the applicant; (2) the name and post office address of the owner of the land on which such well or wells or works will be located; (3) the location of the proposed well or wells or other works for the proposed withdrawal; (4) the ground water area, sub-area, or zone from which withdrawal is proposed, provided the ((supervisor of water resources)) department has designated such area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of water proposed to be withdrawn, in gallons a minute and in acre feet a year, or millions of gallons a year; (6) the depth and type of construction proposed for the well or wells or other works: AND PROVIDED FURTHER, That any permit issued pursuant to an application for constructing a well or wells to withdraw public ground water may specify an approved type and manner of construction for the purposes of preventing waste of said public waters and of conserving their head.

Sec. 110. Section 7, chapter 263, Laws of 1945 and RCW 90.44.070 are each amended to read as follows:

No permit shall be granted for the development or withdrawal of public ground waters beyond the capacity of the underground bed or formation in the given basin, district, or locality to yield such water within a reasonable or feasible pumping lift in case of pumping developments, or within a reasonable or feasible reduction of pressure in the case of artesian developments. The ((supervisor of water resources)) department shall have the power to determine whether the granting of any such permit will injure or

damage any vested or existing right or rights under prior permits and may in addition to the records of ~~((his office))~~ the department, require further evidence, proof, and testimony before granting or denying any such permits.

Sec. 111. Section 8, chapter 263, Laws of 1945 and RCW 90.44.080 are each amended to read as follows:

Upon a showing to the ~~((supervisor of water resources))~~ department that construction has been completed in compliance with the terms of any permit issued under the provisions of this chapter, it shall be the duty of ~~((such supervisor))~~ the department to issue to the permittee a certificate of ground water right stating that the appropriation has been perfected under such permit: PROVIDED, HOWEVER, That such showing shall include the following information: (1) the location of each well or other means of withdrawal constructed under the permit, both with respect to official land surveys and in terms of distance and direction to any preexisting well or wells or works constructed under an earlier permit or approved declaration of a vested right, provided the distance to such pre-existing well or works is not more than a quarter of a mile; (2) the depth and diameter of each well or the depth and general specifications of any other works constructed under the terms of the permit; (3) the thickness in feet and the physical character of each bed, stratum, or formation penetrated by each well; (4) the length and position, in feet below the land surface, and the commercial specifications of all casing, also of each screen or perforated zone in the casing of each well constructed; (5) the tested capacity of each well in gallons a minute, as determined by measuring the discharge of the pump or pumps after continuous operation for at least four hours or, in the case of a flowing well, by measuring the natural flow at the land surface; (6) for each nonflowing well, the depth to the static ground water level as measured in feet below the land surface immediately before the well-capacity test herein provided, also the draw-down of the water level, in feet, at the end of said well-capacity test; (7) for each flowing well, the shut-in pressure measured in feet above the land surface or in pounds per square inch at the land surface; and (8) such additional factual information as reasonably may be required by the ~~((supervisor))~~ department to establish compliance with the terms of the permit and with the provisions of this chapter.

The well driller or other constructor of works for the withdrawal of public ground waters shall be obligated to furnish the permittee a certified record of the factual information necessary to show compliance with the provisions of this section.

Sec. 112. Section 9, chapter 263, Laws of 1945 as amended by section 2, chapter 122, Laws of 1947 and RCW 90.44.090 are each amended to read as follows:

Any person, firm or corporation claiming a vested right to withdraw public ground waters of the state by virtue of prior beneficial use of such water shall, within three years after the effective date of this act, be entitled

to receive from the (~~(supervisor of water resources)~~) department a certificate of ground water right to that effect: PROVIDED, That the issuance by the (~~(supervisor)~~) department of any such certificate of vested right shall be contingent on a declaration by the claimant in a form prescribed by (~~(said supervisor)~~) the department, which declaration shall set forth: (1) the beneficial use for which such withdrawal has been made; (2) the date or approximate date of the earliest beneficial use of the water so withdrawn, and the continuity of such beneficial use; (3) the amount of water claimed; (4) if the beneficial use has been for irrigation, the description of the land to which such water has been applied and the name of the owner thereof; and (5) so far as it may be available, descriptive information concerning each well or other works for the withdrawal of public ground water, as required of original permittees under the provisions of RCW 90.44.080: PROVIDED, HOWEVER, That in case of failure to comply with the provisions of this section within the three years allotted, the claimant may apply to the (~~(supervisor)~~) department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Each such declaration shall be certified, either on the basis of the personal knowledge of the declarant or on the basis of information and belief. With respect to each such declaration there shall be publication, and findings in the same manner as provided in RCW 90.44.060 in the case of an original application to appropriate water. If (~~(his)~~) the department's findings sustain the declaration, the (~~(supervisor)~~) department shall approve said declaration, which then shall be recorded at length (~~(in his office)~~) with the department and may also be recorded in the office of the county auditor of the county within which the claimed withdrawal and beneficial use of public ground water have been made. When duly approved and recorded as herein provided, each such declaration or copies thereof shall have the same force and effect as an original permit granted under the provisions of RCW 90.44.060, with a priority as of the date of the earliest beneficial use of the water.

Declarations heretofore filed with the (~~(supervisor)~~) department in substantial compliance with the provisions of this section shall have the same force and effect as if filed after (~~(the effective date of this act)~~) June 6, 1945.

The same fees shall be collected by the (~~(supervisor)~~) department in the case of applications for the issuance of certificates of vested rights, as are required to be collected in the case of application for permits for withdrawal of ground waters and for the issuance of certificates of ground water withdrawal rights under this chapter.

Sec. 113. Section 10, chapter 263, Laws of 1945 and RCW 90.44.100 are each amended to read as follows:

After an application to, and upon the issuance by the (~~(supervisor of water resources)~~) department of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or he may change the manner or the place of use of the water: PROVIDED, HOWEVER, That such amendment shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the (~~(supervisor)~~) department only on the conditions that: (1) The additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) other existing rights shall not be impaired. The (~~(supervisor)~~) department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

Sec. 114. Section 11, chapter 263, Laws of 1945 as amended by section 1, chapter 63, Laws of 1949 and RCW 90.44.110 are each amended to read as follows:

No public ground waters that have been withdrawn shall be wasted without economical beneficial use. The (~~(supervisor of water resources)~~) department shall require all wells producing waters which contaminate other waters to be plugged or capped. (~~(He)~~) The department shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, (~~(he)~~) the department shall also require both flowing and non-flowing wells to be so constructed and maintained as to prevent the waste of public ground waters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: PROVIDED, HOWEVER, That the withdrawal of reasonable quantities of public ground water in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to (~~(withdrawal)~~) withdraw and appropriate public ground waters under the provisions of this chapter, the (~~(supervisor)~~) department may, as in his judgment is necessary, specify for

the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section.

Sec. 115. Section 3, chapter 122, Laws of 1947 as amended by section 2, chapter 63, Laws of 1949 and RCW 90.44.120 are each amended to read as follows:

The unauthorized use of ground water to which another person is entitled, or the wilful or negligent waste of ground water, or the failure, when required by the ~~((supervisor of water resources))~~ department, to cap flowing wells or equip the same with valves, fittings, or casings to prevent waste of ground waters, or to cap or plug wells producing waters which contaminate other waters, shall be a misdemeanor.

Sec. 116. Section 12, chapter 263, Laws of 1945 as amended by section 4, chapter 122, Laws of 1947 and RCW 90.44.130 are each amended to read as follows:

As between appropriators of public ground water, the prior appropriator shall as against subsequent appropriators from the same ground water body be entitled to the preferred use of such ground water to the extent of his appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of ground water limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The ~~((supervisor of water resources))~~ department shall have jurisdiction over the withdrawals of ground water and shall administer the ground water rights under the principle just set forth, and ~~((he))~~ it shall have the jurisdiction to limit withdrawals by appropriators of ground water so as to enforce the maintenance of a safe sustaining yield from the ground water body. For this purpose, the ~~((supervisor))~~ department shall have authority and it shall be ~~((his))~~ its duty from time to time, as adequate factual data become available, to designate ground water areas or sub-areas, to designate separate depth zones within any such area or sub-area, or to modify the boundaries of such existing area, or sub-area, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public ground waters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public ground water. Each such sub-area may be so designated as to enclose all or any part of a distinct body of public ground water, as the ~~((supervisor))~~ department deems will most effectively accomplish the purposes of this chapter.

Designation of, or modification of the boundaries of such a ground water area, sub-area, or zone may be proposed by the ~~((supervisor))~~ department on ~~((his))~~ its own motion or by petition to the ~~((supervisor))~~ department signed by at least fifty or one-fourth, whichever is the lesser number, of the users of ground water in a proposed ground water area, sub-area, or zone. Before any proposed ground water area, sub-area, or zone

shall be designated, or before the boundaries or any existing ground water area, sub-area, or zone shall be modified the ~~((supervisor))~~ department shall publish a notice setting forth: (1) In terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, sub-area, or zone, or within the area, sub-area, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3) the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the ~~((supervisor))~~ department. Publication as just prescribed shall be construed as sufficient notice to the landowners and water users concerned.

Objections having been heard as herein provided, the ~~((supervisor))~~ department shall make and file in ~~((his))~~ its office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the ground water area, or sub-area, or zone or modifying the boundaries of the existing area, sub-area, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by ~~((RCW 90.44.215))~~ section 6 of this 1987 act. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of RCW 90.44.180, with respect to the particular area, sub-area, or zone.

Priorities of right to withdraw public ground water shall be established separately for each ground water area, sub-area, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of ground water right shall be the date of filing of the original application for a withdrawal ~~((in the office of the supervisor))~~ with the department, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested ground water right, under the provisions of RCW 90.44.090.

Within ninety days after the designation of a ground water area, sub-area or zone as herein provided, any person, firm or corporation then claiming to be the owner of artificially stored ground water within such area, sub-area, or zone shall file a certified declaration to that effect ~~((in the office of the supervisor))~~ with the department on a form prescribed by ~~((said supervisor))~~ the department. Such declaration shall cover: (1) The location and description of the works by whose operation such artificial ground water storage is purported to have been created, and the name or names of the owner or owners thereof; (2) a description of the lands purported to be underlain by such artificially stored ground water, and the

name or names of the owner or owners thereof; (3) the amount of such water claimed; (4) the date or approximate date of the earliest artificial storage; (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and (6) such additional factual information as reasonably may be required by the ~~((supervisor))~~ department. If any of the purported artificially stored ground water has been or then is being withdrawn, the claimant also shall file (1) the declarations which this chapter requires of claimants to a vested right to withdraw public ground waters, and (2) evidence competent to show that none of the water withdrawn under those declarations is in fact public ground water from the area, sub-area, or zone concerned: PROVIDED, HOWEVER, That in case of failure to file a declaration within the ninety-day period herein provided, the claimant may apply to the ~~((supervisor))~~ department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings—as in the case of an original application, permit, or certificate of right to appropriate public ground waters—the ~~((supervisor))~~ department shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored ground water. Acceptance of such declaration or declarations by the ~~((supervisor))~~ department shall convey to the declarant no right to withdraw public ground waters from the particular area, sub-area, or zone, nor to impair existing or subsequent rights to such public waters.

Any person, firm or corporation hereafter claiming to be the owner of ground water within a designated ground water area, sub-area, or zone by virtue of its artificial storage subsequent to such designation shall, within three years following the earliest artificial storage file a declaration of claim ~~((in the office of the supervisor))~~ with the department, as herein prescribed for claims based on artificial storage prior to such designation: PROVIDED, HOWEVER, That in case of such failure the claimant may apply to the ~~((supervisor))~~ department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted upon a showing of good cause for such failure.

Any person, firm or corporation hereafter withdrawing ground water claimed to be owned by virtue of artificial storage subsequent to designation of the relevant ground water area, sub-area, or zone shall, within ninety days following the earliest such withdrawal, file ~~((in the office of the supervisor))~~ with the department the declarations required by this chapter with respect to withdrawals of public ground water.

Sec. 117. Section 13, chapter 263, Laws of 1945 and RCW 90.44.180 are each amended to read as follows:

At any time the ~~((supervisor of water resources))~~ department may hold a hearing on ~~((his))~~ its own motion, and shall hold a hearing upon petition

of at least fifty or one-fourth, whichever is the lesser number, of the holders of valid rights to withdraw public ground waters from any designated ground water area, sub-area, or zone, to determine whether the water supply in such area, sub-area, or zone is adequate for the current needs of all such holders. Notice of any such hearing, and the findings and order resulting therefrom shall be published in the manner prescribed in RCW 90.44-.130 with respect to the designation or modification of a ground water area, or sub-area, or zone.

If such hearing finds that the total available supply is inadequate for the current needs of all holders of valid rights to withdraw public ground waters from the particular ground water area, sub-area, or zone, the ~~((supervisor))~~ department shall order the aggregate withdrawal from such area, sub-area, or zone decreased so that it shall not exceed such available supply. Such decrease shall conform to the priority of the pertinent valid rights and shall prevail for the term of shortage in the available supply. Except that by mutual agreement among the respective holders and with the ~~((supervisor))~~ department, the ordered decrease in aggregate withdrawal may be accomplished by the waiving of all or some specified part of a senior right or rights in favor of a junior right or rights: PROVIDED, That such waiving of a right or rights by agreement shall not modify the relative priorities of such right or rights as recorded ~~((in the office of the supervisor))~~ in the department.

Sec. 118. Section 15, chapter 263, Laws of 1945 and RCW 90.44.200 are each amended to read as follows:

The ~~((supervisor of water resources))~~ department, as in ~~((his))~~ its judgment is deemed necessary and advisable, may appoint one or more ground water supervisors for each designated ground water area, sub-area, or zone, or may appoint one or more ground water supervisors-at-large. Within their respective jurisdictions and under the direction of the ~~((supervisor of water resources))~~ department, such supervisor and supervisors-at-large shall supervise the withdrawal of public ground waters and the carrying out of orders issued by the ~~((supervisor of water resources))~~ department under the provisions of this chapter.

The duties, compensation, and authority of such supervisors or supervisors-at-large shall be those prescribed for water masters under the terms of RCW 90.03.060 and 90.03.070.

Sec. 119. Section 17, chapter 263, Laws of 1945 and RCW 90.44.220 are each amended to read as follows:

In ~~((his))~~ its discretion or upon the application of any party claiming right to the withdrawal and use of public ground water, the ~~((supervisor of water resources))~~ department may file a petition with the superior court of the county for the determination of the rights of appropriators of any particular ground water body and all the provisions of RCW 90.03.110 through 90.03.240 as heretofore amended, shall govern and apply to the adjudication

and determination of such ground water body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and determination of water rights—either rights to the use of surface water or to the use of ground water, or both—pursuant to chapter 90.03 RCW as heretofore amended, all appropriators of ground water or of surface water in the particular basin or area may be included as parties to such adjudication, as pertinent.

Sec. 120. Section 18, chapter 263, Laws of 1945 and RCW 90.44.230 are each amended to read as follows:

In any determination of the right to withdrawal of ground water under RCW (~~90.44.215 or~~) 90.44.220, the (~~supervisor's~~) department's findings and the court's findings and judgment shall determine the priority of right and the quantity of water to which each appropriator who is a party to the proceedings shall be entitled, shall determine the level below which the ground water body shall not be drawn down by appropriators, or shall reserve jurisdiction for the determination of a safe sustaining water yield as necessary from time to time to preserve the rights of the several appropriators and to prevent depletion of the ground water body.

Sec. 121. Section 19, chapter 263, Laws of 1945 and RCW 90.44.250 are each amended to read as follows:

The (~~supervisor of water resources~~) department is hereby authorized to make such investigations(;) as may be necessary to determine the location, extent, depth, volume, and flow of all ground waters within the state and in making such examination, hereby is authorized and directed to cooperate with the federal government, with any county or municipal corporation, or any person, firm, association or corporation, and upon such terms as may seem appropriate to (~~him~~) it.

In connection with such investigation, the (~~supervisor~~) department from time to time may require reports from each ground water appropriator as to the amount of public ground water being withdrawn and as to the manner and extent of the beneficial use. Such reports shall be in a form prescribed by (~~said supervisor~~) the department.

Sec. 122. Section 2, chapter 216, Laws of 1945 as amended by section 1, chapter 13, Laws of 1967 and RCW 90.48.020 are each amended to read as follows:

Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "~~((commission))~~ department" is used in this chapter it shall mean the ~~((water pollution control commission as created in RCW 90.48.021))~~ department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director ~~((as provided for in RCW 90.48.023))~~ of ecology.

Sec. 123. Section 10, chapter 216, Laws of 1945 and RCW 90.48.030 are each amended to read as follows:

The ~~((commission))~~ department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.

Sec. 124. Section 11, chapter 216, Laws of 1945 as last amended by section 11, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.035 are each amended to read as follows:

The ~~((commission))~~ department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010.

Sec. 125. Section 7, chapter 13, Laws of 1967 and RCW 90.48.037 are each amended to read as follows:

The ~~((commission))~~ department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter.

Sec. 126. Section 14, chapter 216, Laws of 1945 as amended by section 8, chapter 13, Laws of 1967 and RCW 90.48.080 are each amended to read as follows:

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to

be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the ((commission)) department, as provided for in this chapter.

Sec. 127. Section 15, chapter 216, Laws of 1945 and RCW 90.48.090 are each amended to read as follows:

The ((commission)) department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state.

Sec. 128. Section 9, chapter 13, Laws of 1967 and RCW 90.48.095 are each amended to read as follows:

In carrying out the purposes of this chapter the ((commission)) department shall, in conjunction with either the promulgation of rules and regulations, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in contested cases, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the ((commission)) department. In case of disobedience on the part of any person to comply with any subpoena issued by the ((commission)) department, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the ((commission)) department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court.

Sec. 129. Section 16, chapter 216, Laws of 1945 and RCW 90.48.100 are each amended to read as follows:

The ((commission)) department shall have the right to request and receive the assistance of any educational institution or state agency when it is deemed necessary by the ((commission)) department to carry out the provisions of this chapter.

Sec. 130. Section 17, chapter 216, Laws of 1945 as amended by section 10, chapter 13, Laws of 1967 and RCW 90.48.110 are each amended to read as follows:

All plans and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements

or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the ((commission)) department, before construction thereof may begin. No approval shall be given until the ((commission)) department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter.

Sec. 131. Section 18, chapter 216, Laws of 1945 as last amended by section 3, chapter 316, Laws of 1985 and RCW 90.48.120 are each amended to read as follows:

(1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under ((RCW 90.48.135)) section 6 of this 1987 act. Within thirty days from the receipt of notice of such determination, such person shall file with the department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the department. Whereupon the department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail.

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of chapter 90.48 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.

Sec. 132. Section 13, chapter 139, Laws of 1967 ex. sess. as last amended by section 6, chapter 316, Laws of 1985 and RCW 90.48.142 are each amended to read as follows:

Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the ((commission)) department or the director made pursuant to the provisions of this chapter, including the conditions of a waste discharge permit issued pursuant to RCW 90.48.160, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, or otherwise causes a reduction in the quality of the state's waters below the standards set by the ((commission)) department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same, shall be liable to pay the state damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake or other water

source to its condition prior to the injury, as such condition is determined by the ((commission)) department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: PROVIDED, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damages occurred. Any money so recovered by the attorney general shall be transferred to either the state game fund or the department of fisheries to use for food fish or shellfish management purposes and propagation, or to any other agency of the state having jurisdiction over the resource damaged and for which said moneys were recovered, as appropriate: PROVIDED, That the agency receiving such money shall utilize not less than one-half of said money on activities or projects within the county where the action was brought by the attorney general. No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160.

Sec. 133. Section 1, chapter 58, Laws of 1949 and RCW 90.48.153 are each amended to read as follows:

The ((commission)) department is authorized to cooperate with the federal government and to accept grants of federal funds for carrying out the purposes of this chapter. The ((commission)) department is empowered to make any application or report required by an agency of the federal government as an incident to receiving such grants.

Sec. 134. Section 2, chapter 58, Laws of 1949 and RCW 90.48.156 are each amended to read as follows:

The ((commission)) department is authorized to cooperate with appropriate agencies of neighboring states, to enter into contracts, and make contributions toward interstate projects to carry out the purposes of this chapter.

Sec. 135. Section 14, chapter 13, Laws of 1967 and RCW 90.48.165 are each amended to read as follows:

Any city, town or municipal corporation operating a sewerage system including treatment facilities may be granted authority by the ((commission)) department to issue permits for the discharge of wastes to such system provided the ((commission)) department ascertains to its satisfaction that the sewerage system and the inspection and control program operated and conducted by the city, town or municipal corporation will protect the public interest in the quality of the state's waters as provided for in this chapter. Such authority may be granted by the ((commission)) department upon application by the city, town or municipal corporation and may be revoked by the ((commission)) department if it determines that such city, town, or municipal corporation is not, thereafter, operated and conducted in a manner to protect the public interest. Persons holding municipal permits

to discharge into sewerage systems operated by a municipal corporation authorized by this section to issue such permits shall not be required to secure a waste discharge permit provided for in RCW 90.48.160 as to the wastes discharged into such sewerage systems. Authority granted by the ((commission)) department to cities, towns, or municipal corporations to issue permits under this section shall be in addition to any authority or power now or hereafter granted by law to cities, towns and municipal corporations for the regulation of discharges into sewerage systems operated by such cities, towns, or municipal corporations. Permits issued under this section shall automatically terminate if the authority to issue the same is revoked by the ((commission)) department.

Sec. 136. Section 2, chapter 71, Laws of 1955 as amended by section 15, chapter 13, Laws of 1967 and RCW 90.48.170 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the ((commission)) department and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the ((commission)) department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the ((commission)) department shall instruct the applicant to publish notices thereof by such means and within such time as the ((commission)) department shall prescribe. The ((commission)) department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the ((commission)) department may direct. Said notice shall include a statement that any person desiring to present his views to the ((commission)) department with regard to said application may do so in writing to the ((commission)) department, or any person interested in the ((commission's)) department's action on an application for a permit, may submit his views or notify the ((commission)) department of his interest within thirty days of the last date of publication of notice. Such notification or submission of views to the ((commission)) department shall entitle said persons to a copy of the action taken on the application. Upon receipt by the ((commission)) department of an application, it shall immediately send notice thereof containing pertinent information to the directors of fisheries(;) and game(, ~~conservation and health~~) and to the secretary of social and health services. When an application complying with the provisions of this chapter and the rules and regulations of the

~~((commission))~~ department has been filed with the ~~((commission))~~ department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

Sec. 137. Section 3, chapter 71, Laws of 1955 as amended by section 16, chapter 13, Laws of 1967 and RCW 90.48.180 are each amended to read as follows:

The ~~((commission))~~ department shall issue a permit unless it finds that the disposal of waste material as proposed in the application will pollute the waters of the state in violation of the public policy declared in RCW 90.48-.010. The ~~((commission))~~ department shall have authority to specify conditions necessary to avoid such pollution in each permit under which waste material may be disposed of by the permittee. Permits may be temporary or permanent but shall not be valid for more than five years from date of issuance.

Sec. 138. Section 4, chapter 71, Laws of 1955 as amended by section 17, chapter 13, Laws of 1967 and RCW 90.48.190 are each amended to read as follows:

A permit shall be subject to termination upon thirty days' notice in writing if the ~~((commission))~~ department finds:

- (1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;
- (2) That there has been a violation of the conditions thereof;
- (3) That a material change in quantity or type of waste disposal exists.

Sec. 139. Section 18, chapter 13, Laws of 1967 and RCW 90.48.195 are each amended to read as follows:

In the event that a material change in the condition of the state waters occurs the ~~((commission))~~ department may, by appropriate order, modify permit conditions or specify additional conditions in permits previously issued.

Sec. 140. Section 5, chapter 71, Laws of 1955 as amended by section 19, chapter 13, Laws of 1967 and RCW 90.48.200 are each amended to read as follows:

In the event of failure of the ~~((commission))~~ department to act upon an application within sixty days after it has been filed the applicant shall be deemed to have received a temporary permit. Said permit shall authorize the applicant to discharge wastes into waters of the state as requested in its application only until such time as the ~~((commission))~~ department shall have taken action upon said application.

Sec. 141. Section 23, chapter 13, Laws of 1967 and RCW 90.48.250 are each amended to read as follows:

The ((commission)) department is authorized to make agreements and enter into such contracts as are appropriate to carry out a program of monitoring the condition of the waters of the state and the effluent discharged therein, including contracts to monitor effluent discharged into public waters when such monitoring is required by the terms of a waste discharge permit or as part of the approval of a sewerage system, if adequate compensation is provided to the ((commission)) department as a term of the contract.

Sec. 142. Section 26, chapter 13, Laws of 1967 and RCW 90.48.270 are each amended to read as follows:

The ((commission)) department shall have authority to delineate and establish sewage drainage basins in the state for the purpose of developing and/or adopting comprehensive plans for the control and abatement of water pollution within such basins. Basins may include, but are not limited to, rivers and their tributaries, streams, coastal waters, sounds, bays, lakes, and portions or combinations thereof, as well as the lands drained thereby.

Sec. 143. Section 27, chapter 13, Laws of 1967 and RCW 90.48.280 are each amended to read as follows:

The ((commission)) department is authorized to prepare and/or adopt a comprehensive water pollution control and abatement plan and to make subsequent amendments thereto, for each basin established pursuant to RCW 90.48.270. Comprehensive plans for sewage drainage basins may be prepared by any municipality and submitted to the ((commission)) department for adoption.

Prior to adopting a comprehensive plan for any basin or any subsequent amendment thereof the ((commission)) department shall hold a public hearing thereon. Notice of such hearing shall be given by registered mail, together with copies of the proposed plan, to each municipality, or other political subdivision, within the basin exercising a sewage disposal function, at least twenty days prior to the hearing date. Such hearing may be continued from time to time and, at the termination thereof, the ((commission)) department may reject the plan proposed or adopt it with such modifications as it shall deem proper.

Following adoption of a comprehensive plan for any basin, the ((commission)) department shall require compliance with such plan by any municipality or person operating or constructing a sewage collection, treatment or disposal system or plant, or any improvement to or extension of an existing sewage collection, treatment or disposal system or plant, within the basin.

Sec. 144. Section 1, chapter 141, Laws of 1969 ex. sess. as amended by section 13, chapter 32, Laws of 1980 and RCW 90.48.285 are each amended to read as follows:

The ((~~commission~~)) department is authorized to enter into contracts with any municipal or public corporation or political subdivision within the state for the purpose of assisting such agencies to finance the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state, including but not limited to, systems for the control of storm or surface waters which will provide for the removal of waste or polluting materials in a manner conforming to the comprehensive plan of water pollution control and abatement proposed by the agencies and approved by the ((~~commission~~)) department. Any such contract may provide for:

The payment by the ((~~commission~~)) department to a municipal or public corporation or political subdivision on a monthly, quarterly, or annual basis of varying amounts of moneys as advances which shall be repayable by said municipal or public corporation, or political subdivision under conditions determined by the ((~~commission~~)) department.

Contracts made by the ((~~commission~~)) department shall be subject to the following limitations:

(1) No contract shall be made unless the ((~~commission~~)) department shall find that the project cannot be financed at reasonable cost or within statutory limitations by the borrower without the making of such contract.

(2) No contract shall be made with any public or municipal corporation or political subdivision to assist in the financing of any project located within a sewage drainage basin for which the ((~~commission~~)) department shall have previously adopted a comprehensive water pollution control and abatement plan unless the project is found by the ((~~commission~~)) department to conform with the basin comprehensive plan.

(3) The ((~~commission~~)) department shall determine the interest rate, not to exceed ten percent per annum, which such advances shall bear.

(4) The ((~~commission~~)) department shall provide such reasonable terms and conditions of repayment of advances as it may determine.

(5) The total outstanding amount which the ((~~commission~~)) department may at any time be obligated to pay under all outstanding contracts made pursuant to this section shall not exceed the moneys available for such payment.

(6) Municipal or public corporations or political subdivisions shall meet such qualifications and follow such procedures in applying for contract assistance as shall be established by the ((~~commission~~)) department.

In making such contracts the ((~~commission~~)) department shall give priority to projects which will provide relief from actual or potential public health hazards or water pollution conditions and which provide substantial capacity beyond present requirements to meet anticipated future demand.

Sec. 145. Section 28, chapter 13, Laws of 1967 as amended by section 1, chapter 284, Laws of 1969 ex. sess. and RCW 90.48.290 are each amended to read as follows:

The ((commission)) department is authorized to make and administer grants within appropriations authorized by the legislature to any municipal or public corporation, or political subdivision within the state for the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the ((commission)) department shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: PROVIDED, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8(f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project;

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter, and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the ((commission)) department from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: PROVIDED, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any municipal or public corporation, or political subdivision for any project located within a drainage basin unless the ((commission)) department shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the ((commission)) department to conform with such basin comprehensive plan: PROVIDED, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the ((commission or director)) department for any grant application filed with the ((commission)) department prior to July 1, 1974, in those situations where the ((commission or director)) department finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the ((commission)) department.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this (~~(1969 amendatory act)~~) section and were commenced after the recipient had filed a grant application with the (~~(commission)~~) department.

Sec. 146. Section 1, chapter 133, Laws of 1969 ex. sess. as amended by section 2, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.320 are each amended to read as follows:

It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the (~~(water pollution control commission)~~) department prior to the entry of the oil into state waters;

(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200;

(3) Where a person having control over the oil can prove that a discharge was caused by:

(a) An act of war or sabotage, or

(b) Negligence on the part of the United States government, or the state of Washington.

Sec. 147. Section 3, chapter 133, Laws of 1969 ex. sess. as amended by section 4, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.330 are each amended to read as follows:

The (~~(water pollution control commission)~~) department is authorized, with the staff, equipment and material under its control, or by contract with others, to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil discharged into waters of the state. The (~~(director of the commission)~~) department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized. The authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property.

Sec. 148. Section 5, chapter 133, Laws of 1969 ex. sess. as last amended by section 4, chapter 316, Laws of 1985 and RCW 90.48.340 are each amended to read as follows:

The ((director)) department shall investigate each activity or project conducted under RCW 90.48.330 to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for the act or acts which result in said entry. Whenever it appears to the ((director)) department, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.48.335, the ((director)) department shall notify said person or persons by appropriate order: PROVIDED, That no order may be issued pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. Said order shall state the findings of the ((director)) department, the amount of necessary expenses incurred by the ((commission)) department in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The ((commission)) department may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the ((commission)) department may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the ((director)) department notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the ((commission)) department subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the ((director)) department, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business, or in any other court of competent jurisdiction, to recover the amount specified in the final order of the ((director or the commission, as appropriate)) department. No order issued under this section shall be construed as an order within the meaning of ((RCW 90.48.135)) section 6 of this 1987 act and shall not be appealable to the hearings board. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if he can prove that the oil to which the necessary expenses relate entered the waters of the state by causes set forth in RCW 90.48.320(3).

Sec. 149. Section 8, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.343 are each amended to read as follows:

Any person who proposes to discharge oil or cause or permit the entry of same into waters of the state shall prior to such discharge obtain permission from the director ~~((of the water pollution control commission))~~. The director is authorized to permit the discharge of oil into waters of the state consistent with the pertinent effluent and receiving water standards and

treatment requirements established by the ~~((commission))~~ department. Permission for industrial or commercial discharges shall be given through the terms of a waste discharge permit issued pursuant to RCW 90.48.180. Permission shall be given in all other cases on a form prescribed by the director.

Sec. 150. Section 6, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.345 are each amended to read as follows:

The ~~((commission))~~ department shall adopt such rules and regulations as it deems necessary and proper for the purpose of carrying out the provisions of RCW 90.48.315 through 90.48.365.

Sec. 151. Section 8, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.355 are each amended to read as follows:

The ~~((commission))~~ department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of RCW 90.48.315 through 90.48.365, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs: PROVIDED, That in connection with the authority granted herein no person shall be required to divulge trade secrets or secret processes.

Sec. 152. Section 9, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.360 are each amended to read as follows:

It shall be the duty of any person discharging oil or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the ~~((commission))~~ department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the ~~((water pollution control commission))~~ department at its office in Olympia, or a regional office thereof, of such discharge or entry.

Sec. 153. Section 11, chapter 133, Laws of 1969 ex. sess. and RCW 90.48.365 are each amended to read as follows:

RCW 90.48.315 through 90.48.365 shall grant authority to the ~~((water pollution control commission))~~ department which is supplemental to and in no way reduces or otherwise modifies the powers heretofore granted to the ~~((water pollution control commission))~~ department, except as it may directly conflict therewith.

Sec. 154. Section 2, chapter 106, Laws of 1967 and RCW 90.50.020 are each amended to read as follows:

The ~~((pollution control commission))~~ department of ecology is authorized to make and administer grants to any public bodies for the purpose of

aiding in the construction and improvement of water pollution control facilities in conjunction with federal grants authorized pursuant to the Federal Water Pollution Control Act.

Sec. 155. Section 3, chapter 106, Laws of 1967 as amended by section 14, chapter 32, Laws of 1980 and RCW 90.50.030 are each amended to read as follows:

The proceeds from the sale of the bonds authorized herein, together with all grants, donations, transferred funds and all other moneys which the state finance committee may direct shall be administered by the (~~pollution control commission~~) department of ecology under the authority granted by RCW 90.50.020.

Sec. 156. Section 8, chapter 185, Laws of 1973 1st ex. sess. as amended by section 6, chapter 54, Laws of 1977 and RCW 90.62.080 are each amended to read as follows:

(1) Any person aggrieved by any final decision of a state agency, as defined in RCW 90.62.020(8) as now or hereafter amended, contained in the document issued by the department pursuant to RCW 90.62.060(6) may obtain review thereof by filing a request, with the board, within thirty days of the transmittal under RCW 90.62.060(6) by the department of ecology of the document, for all final decisions other than a final decision relating to the granting or denial of a substantial development permit pursuant to RCW 90.58.140 in which case the filing of such request shall be with the shorelines hearings board. The board shall review all final decisions other than a final decision on a substantial development permit which shall be reviewed by the shorelines hearings board. In the event a request for review includes a final decision involving a substantial development permit and other permits, there shall be single staged hearing of the permits by the boards. The board shall be authorized to adopt rules and regulations implementing such staged hearings and the filing of requests so as to eliminate all unnecessary duplication.

(2) Any hearing held pursuant to this section by the pollution control hearings board or the shorelines hearings board or by the boards jointly shall be a de novo quasi judicial hearing and shall be conducted pursuant to the procedures provided in chapter 34.04 RCW.

(3) The board or boards shall make written findings of fact based upon a preponderance of the evidence and shall prepare written conclusions of law and an order, which order may affirm with or without condition, remand for further proceedings, or reverse the appealed decision in accordance with the findings and conclusions.

(4) Judicial review of decisions of the boards shall be controlled by RCW 43.21B.180 through (~~43.21B.200~~) 43.21B.190 except as they relate to decisions pertaining to substantial development permits under RCW 90.58.140 which shall be controlled by RCW 90.58.180.

(5) (a) Any person aggrieved by and desiring to appeal any final decision of a local government contained in the document issued by the department pursuant to RCW 90.62.060(6) as now or hereafter amended shall obtain review thereof in the same manner as would apply had the local government not utilized the procedures provided by this chapter.

(b) The provisions of subsection (5)(a) of this section shall not apply to a decision concerning any permit required by a "state agency" as that term is defined in RCW 90.62.020(8) as now or hereafter amended.

PART D MISCELLANEOUS

Sec. 157. Section 8, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.335 are each amended to read as follows:

The power is granted to the department of ecology to levy civil penalties of up to one hundred dollars per day for violation of any of the provisions of this chapter and chapters (~~(90.03)~~) 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same.

NEW SECTION. Sec. 158. RECODIFICATION. RCW 43.83B.335 shall be recodified in chapter 90.03 RCW.

NEW SECTION. Sec. 159. REPEALER. The following acts or parts of acts are each repealed:

(1) Section 14, chapter 212, Laws of 1971 ex. sess. and RCW 18.104-.140;

(2) Section 43.21.100, chapter 8, Laws of 1965 and RCW 43.21.100;

(3) Section 43.21.120, chapter 8, Laws of 1965 and RCW 43.21.120;

(4) Section 43.21.150, chapter 8, Laws of 1965 and RCW 43.21.150;

(5) Section 42, chapter 62, Laws of 1970 ex. sess. and RCW 43.21B-.120;

(6) Section 50, chapter 62, Laws of 1970 ex. sess. and RCW 43.21B-.200;

(7) Section 52, chapter 62, Laws of 1970 ex. sess. and RCW 43.21B-.220;

(8) Section 8, chapter 284, Laws of 1969 ex. sess. and RCW 43.27A-.200;

(9) Section 9, chapter 284, Laws of 1969 ex. sess. and RCW 43.27A-.210;

(10) Section 37, chapter 238, Laws of 1967, section 27, chapter 168, Laws of 1969 ex. sess. and RCW 70.94.223;

(11) Section 48, chapter 238, Laws of 1967 and RCW 70.94.333;

(12) Section 49, chapter 238, Laws of 1967, section 35, chapter 168, Laws of 1969 ex. sess., section 5, chapter 193, Laws of 1973 1st ex. sess. and RCW 70.94.334;

(13) Section 11, chapter 117, Laws of 1917, section 1, chapter 71, Laws of 1919 and RCW 90.03.080;

(14) Section 46, chapter 117, Laws of 1917 and RCW 90.03.480;

(15) Section 16, chapter 263, Laws of 1945 and RCW 90.44.215;

(16) Section 12, chapter 13, Laws of 1967, section 1, chapter 41, Laws of 1970 ex. sess. and RCW 90.48.135; and

(17) Section 6, chapter 71, Laws of 1955, section 20, chapter 13, Laws of 1967, section 14, chapter 88, Laws of 1970 ex. sess. and RCW 90.48.210.

NEW SECTION, Sec. 160. RULES. The department of ecology shall amend its rules by June 30, 1988, to effect the purposes of this act.

NEW SECTION, Sec. 161. SEVERABILITY. 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. 162. CAPTIONS. As used in this act, bill headings and section captions constitute no part of the law.

NEW SECTION, Sec. 163. CODIFICATION. Sections 4 through 8 of this act are each added to chapter 43.21B RCW.

Passed the Senate April 7, 1987.

Passed the House March 27, 1987.

Approved by the Governor April 20, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 20, 1987.

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

"I am returning herewith, without my approval as to section 22, Senate Bill No. 5427, entitled:

"AN ACT Relating to simplifying and clarifying procedures of the department of ecology, local air pollution control authorities, and the pollution control hearings board."

Section 22 of this bill amends RCW 70.107.050 relating to noise pollution penalties. I have signed into law today Substitute Senate Bill No. 5389, entitled:

"AN ACT relating to noise control."

Signing both laws would constitute a double amendment to existing law and create confusion. For this reason, I have vetoed section 22.

With the exception of section 22, Senate Bill No. 5427 is approved."