

**NEW SECTION.** Sec. 14. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 3, 1990.

Passed the Senate March 1, 1990.

Approved by the Governor March 15, 1990.

Filed in Office of Secretary of State March 15, 1990.

## CHAPTER 65

[Senate Bill No. 5712]

### ENVIRONMENTAL HEARINGS OFFICE—ADMINISTRATIVE APPEALS JUDGES

AN ACT Relating to the environmental hearings office; and amending RCW 43.21B.005, 43.21B.090, 43.21B.130, 43.21B.150, 43.21B.160, and 43.21B.230.

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

Sec. 1. Section 2, chapter 47, Laws of 1979 ex. sess. as amended by section 3, chapter 173, Laws of 1986 and RCW 43.21B.005 are each amended to read as follows:

There is created an environmental hearings office of the state of Washington. The environmental hearings office shall consist of the pollution control hearings board created in RCW 43.21B.010, the forest practices appeals board created in RCW 76.09.210, the shorelines hearings board created in RCW 90.58.170, and the hydraulic appeals board created in RCW 75.20.130. The chairman of the pollution control hearings board shall be the chief executive officer of the environmental hearings office. Membership, powers, functions, and duties of the pollution control hearings board, the forest practices appeals board, the shorelines hearings board, and the hydraulic appeals board shall be as provided by law.

The chief executive officer of the environmental hearings office may appoint(~~(, discharge, and fix the compensation of such staff as may be necessary or may contract for required services. Employees of the environmental hearings office shall serve each board at the direction of the chief executive officer of the environmental hearings office))~~ an administrative appeals judge who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, in cases before the boards comprising the office. The administrative appeals judge shall have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.

The chief executive officer may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

The chief executive officer may also contract for required services.

Sec. 2. Section 39, chapter 62, Laws of 1970 ex. sess. as amended by section 1, chapter 69, Laws of 1974 ex. sess. and RCW 43.21B.090 are each amended to read as follows:

The principal office of the hearings board shall be at the state capitol, but it may sit or hold hearings at any other place in the state. A majority of the hearings board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position of the hearings board be vacant. One or more members may hold hearings and take testimony to be reported for action by the hearings board when authorized by rule or order of the hearings board. ~~((The board may also appoint as its authorized agents one or more hearing examiners to assist the board in the performance of its hearing function pursuant to the authority contained in the administrative procedure act, \*chapter 34.04 RCW as now or hereafter amended. PROVIDED, That the findings of the hearing examiner shall not become final until they have been formally approved by the board.))~~ The hearings board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

Sec. 3. Section 43, chapter 62, Laws of 1970 ex. sess. and RCW 43.21B.130 are each amended to read as follows:

The administrative procedure act, chapter ~~((34.04))~~ 34.05 RCW, shall apply to the appeal of rules and regulations adopted by the board to the same extent as it applied to the review of rules and regulations adopted by the directors and/or boards or commissions of the various departments whose powers, duties and functions ~~((are))~~ were transferred by ~~((this 1970 act))~~ section 6, chapter 62, Laws of 1970 ex. sess. to the department. All other decisions and orders of the director and all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW shall be subject to review by the hearings board as provided in this ~~((1970 act))~~ chapter.

Sec. 4. Section 45, chapter 62, Laws of 1970 ex. sess. as amended by section 2, chapter 69, Laws of 1974 ex. sess. and RCW 43.21B.150 are each amended to read as follows:

In all appeals involving an informal hearing, the hearings board ~~((or its hearing examiners))~~ shall have all powers relating to the administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter ~~((34.04))~~ 34.05 RCW. In the case of appeals within the ~~((scope of this 1970 act))~~ jurisdiction of the hearings board, the hearings board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director as the hearings

board or any member thereof may deem necessary or appropriate: **PROVIDED**, That any communication, oral or written, from the staff of the director to the hearings board (~~((or its hearing examiners))~~) shall be presented only in an open hearing.

Sec. 5. Section 46, chapter 62, Laws of 1970 ex. sess. as last amended by section 103, chapter 175, Laws of 1989 and RCW 43.21B.160 are each amended to read as follows:

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

Sec. 6. Section 53, chapter 62, Laws of 1970 ex. sess. and RCW 43.21B.230 are each amended to read as follows:

Any person having received notice of a denial of a petition, a notice of determination, notice of or an order made by the department (~~((under the provisions of this 1970 amendatory act))~~) may appeal, within thirty days from the date of the notice of such denial, order, or determination to the hearings board. The appeal shall be perfected by serving a copy of the notice of appeal upon the department or air pollution authority established pursuant to chapter 70.94 RCW, as the case may be, within the time specified herein and by filing the original thereof with proof of service with the clerk of the hearings board. If the person intends that the hearing before the hearings board be a formal one, the notice of appeal shall so state. In the event that the notice of appeal does not so state, the hearing shall be an informal one: **PROVIDED, HOWEVER**, That nothing shall prevent the department or the air pollution authority, as the case may be, within ten days from the date of its receipt of the notice of appeal, from filing with the clerk of the hearings board notice of its intention that the hearing be a formal one.

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Passed the House February 26, 1990.

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