
SUBSTITUTE SENATE BILL 6406

State of Washington

62nd Legislature

2012 Regular Session

By Senate Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker, and Shin)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to modifying programs that provide for the
2 protection of the state's natural resources; amending RCW 77.55.021,
3 77.15.300, 77.55.291, 77.55.151, 77.55.231, 76.09.040, 76.09.050,
4 76.09.150, 76.09.065, 76.09.470, 76.09.030, 43.21C.031, 43.21C.087,
5 43.21C.229, 43.21C.420, 36.70A.490, 36.70A.500, 82.02.020, 43.21C.110,
6 43.21C.095, and 36.70A.280; reenacting and amending RCW 77.55.011,
7 43.21B.110, 76.09.060, and 76.09.020; adding new sections to chapter
8 77.55 RCW; adding a new section to chapter 35.21 RCW; adding a new
9 section to chapter 36.01 RCW; adding a new section to chapter 39.34
10 RCW; adding a new section to chapter 76.09 RCW; adding a new section to
11 chapter 43.30 RCW; adding new sections to chapter 43.21C RCW; adding a
12 new section to chapter 82.02 RCW; creating new sections; prescribing
13 penalties; providing a contingent effective date; and providing
14 expiration dates.

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

16 NEW SECTION. **Sec. 1.** The legislature finds that significant
17 opportunities exist to modify programs that provide for management and
18 protection of the state's natural resources, including the state's
19 forests, fish, and wildlife, in order to streamline regulatory

1 processes and achieve program efficiencies while at the same time
2 increasing the sustainability of program funding and maintaining
3 current levels of natural resource protection. The legislature intends
4 to update provisions relating to natural resource management and
5 regulatory programs including the hydraulic project approval program,
6 forest practices act, and state environmental policy act, in order to
7 achieve these opportunities.

8 **PART ONE**

9 **Hydraulic Project Approvals**

10 **Sec. 101.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and
11 amended to read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Bed" means the land below the ordinary high water lines of
15 state waters. This definition does not include irrigation ditches,
16 canals, storm water runoff devices, or other artificial watercourses
17 except where they exist in a natural watercourse that has been altered
18 artificially.

19 (2) "Board" means the pollution control hearings board created in
20 chapter 43.21B RCW.

21 (3) "Commission" means the state fish and wildlife commission.

22 (4) "Date of receipt" has the same meaning as defined in RCW
23 43.21B.001.

24 (5) "Department" means the department of fish and wildlife.

25 (6) "Director" means the director of the department of fish and
26 wildlife.

27 (7) "Emergency" means an immediate threat to life, the public,
28 property, or of environmental degradation.

29 (8) "Hydraulic project" means the construction or performance of
30 work that will use, divert, obstruct, or change the natural flow or bed
31 of any of the salt or freshwaters of the state.

32 (9) "Imminent danger" means a threat by weather, water flow, or
33 other natural conditions that is likely to occur within sixty days of
34 a request for a permit application.

35 (10) "Marina" means a public or private facility providing boat

1 moorage space, fuel, or commercial services. Commercial services
2 include but are not limited to overnight or live-aboard boating
3 accommodations.

4 (11) "Marine terminal" means a public or private commercial wharf
5 located in the navigable water of the state and used, or intended to be
6 used, as a port or facility for the storing, handling, transferring, or
7 transporting of goods to and from vessels.

8 (12) "Ordinary high water line" means the mark on the shores of all
9 water that will be found by examining the bed and banks and
10 ascertaining where the presence and action of waters are so common and
11 usual, and so long continued in ordinary years as to mark upon the soil
12 or vegetation a character distinct from the abutting upland. Provided,
13 that in any area where the ordinary high water line cannot be found,
14 the ordinary high water line adjoining saltwater is the line of mean
15 higher high water and the ordinary high water line adjoining freshwater
16 is the elevation of the mean annual flood.

17 (13) "Permit" means a hydraulic project approval (~~(permit)~~) issued
18 under this chapter.

19 (14) "Sandbars" includes, but is not limited to, sand, gravel,
20 rock, silt, and sediments.

21 (15) "Small scale prospecting and mining" means the use of only the
22 following methods: Pans; nonmotorized sluice boxes; concentrators; and
23 minirocker boxes for the discovery and recovery of minerals.

24 (16) "Spartina," "purple loosestrife," and "aquatic noxious weeds"
25 have the same meanings as defined in RCW 17.26.020.

26 (17) "Streambank stabilization" means those projects that prevent
27 or limit erosion, slippage, and mass wasting. These projects include,
28 but are not limited to, bank resloping, log and debris relocation or
29 removal, planting of woody vegetation, bank protection using rock or
30 woody material or placement of jetties or groins, gravel removal, or
31 erosion control.

32 (18) "Tide gate" means a one-way check valve that prevents the
33 backflow of tidal water.

34 (19) "Waters of the state" and "state waters" means all salt and
35 freshwaters waterward of the ordinary high water line and within the
36 territorial boundary of the state.

37 (20) "Emergency permit" means a verbal hydraulic project approval

1 or the written follow-up to the verbal approval issued to a person
2 under RCW 77.55.021(12).

3 (21) "Expedited permit" means a hydraulic project approval issued
4 to a person under RCW 77.55.021 (14) and (16).

5 (22) "General permit" means a hydraulic project approval issued to
6 a person under RCW 77.55.021 for multiple hydraulic projects that: (a)
7 Involve repair or maintenance activities; and (b) occur over a defined
8 geographic area, but for which specific project sites have not been
9 designated.

10 (23) "Multiple site permit" means a hydraulic project approval
11 issued to a person under RCW 77.55.021 for hydraulic projects occurring
12 at more than one specific location and which includes site-specific
13 requirements.

14 (24) "Permit modification" means a hydraulic project approval
15 issued to a person under RCW 77.55.021 that extends, renews, or changes
16 the conditions of a previously issued hydraulic project approval.

17 (25) "Pamphlet hydraulic project" means a hydraulic project for the
18 removal or control of aquatic noxious weeds conducted under the aquatic
19 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
20 prospecting and mining conducted under the gold and fish pamphlet
21 authorized by RCW 77.55.091.

22 (26) "One hundred year floodplain" means those areas subject to a
23 base (one hundred year) flood and designated as special flood hazard
24 areas on the most recent maps provided by the federal emergency
25 management agency for the national flood insurance program. Best
26 available information must be used if these maps are not available or
27 sufficient as determined by the federal emergency management agency.

28 (27)(a) "Shoreline or streambank protection project" means the
29 physical armoring of any surface that is adjacent to waters of the
30 state using materials including concrete, rock, large woody material,
31 or the use of other man-made materials for the purposes of preventing
32 or limiting erosion.

33 (b) "Shoreline or streambank protection project" does not include
34 the use of live native vegetation unless that vegetation is required as
35 mitigation for impacts to fish life.

36 (28) "Forest practices hydraulic project" means a hydraulic project
37 that requires a forest practices application under chapter 76.09 RCW.

1 (29) "Adjacent" means within: (a) Fifty horizontal feet of the
2 ordinary high water line for marine shorelines, freshwater lakes, and
3 freshwater rivers or streams within a moderately confined channel; and
4 (b) two hundred horizontal feet of the ordinary high water line for
5 rivers or streams within unconfined channels.

6 (30) "Unconfined channel" means larger rivers or streams that can
7 experience abrupt shifts in channel location, creating a complex
8 floodplain characterized by gravel bars, disturbance of vegetation of
9 variable age, two or more side channels, wall-based channels, oxbow
10 lakes, or wetland complexes.

11 (31) "Moderately confined channel" means streams that consist of
12 single channels with low to moderate sinuosity. These channels are
13 typically located within a narrow valley with a marginal floodplain or
14 narrow terrace development.

15 (32)(a) "Repair or maintenance" means the care and upkeep of
16 existing structures and conditions that have the potential to impact
17 the natural bed or flow of any waters of the state.

18 (b) "Repair or maintenance" does not include routine, repetitive
19 maintenance activities that do not have the potential to impact the
20 natural flow or bed of any waters of the state.

21 (33)(a) "Stream channelization" means the excavation or trenching
22 of soils or gravel adjacent to the ordinary high water line that may
23 use, obstruct, or divert stream flow from freshwaters of the state.

24 (b) "Stream channelization" does not include roadside ditches that
25 do not convey waters of the state or temporary excavation and trenching
26 that will not intercept or capture waters of the state prior to the
27 site being restored to its condition prior to the project.

28 (34) "Outfall" means a structure designed or used for the purpose
29 of discharging water or other fluids from a storm water, sewer, or
30 irrigation conveyance system into waters of the state.

31 **Sec. 102.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to
32 read as follows:

33 (1)(a) Except as provided in RCW 77.55.031, 77.55.041, and
34 77.55.051(~~7~~) and (~~77.55.041~~) section 201 of this act, (~~in the~~
35 event that any)) a person (~~or government agency desires to undertake~~
36 a hydraulic project, the person or government agency)) shall(~~7~~, before
37 commencing work thereon,7)):

1 (i) Secure the approval of the department in the form of a permit
2 as to the adequacy of the means proposed for the protection of fish
3 life before conducting a hydraulic project at or below the ordinary
4 high water line, including those components of the project located
5 above the ordinary high water line that are physically connected to
6 those at or below the ordinary high water line and that will use,
7 divert, obstruct, or change the natural flow or bed of any of the salt
8 or freshwaters of the state; and

9 (ii) Submit a written application to the department as provided in
10 this section before conducting a hydraulic project above the ordinary
11 high water line that involves one of the following project types:

12 (A) A new dike or levee within the one hundred year floodplain;

13 (B) Repair or maintenance of an existing bridge, dike, or levee
14 adjacent to the ordinary high water line;

15 (C) A new or replacement bridge that crosses waters of the state;

16 (D) A shoreline or streambank protection project adjacent to the
17 ordinary high water line;

18 (E) An outfall that discharges to waters of the state;

19 (F) Mineral prospecting not covered under the gold and fish
20 pamphlet authorized by RCW 77.55.091 adjacent to the ordinary high
21 water line; or

22 (G) Stream channelization adjacent to the ordinary high water line.

23 (b)(i) Upon receipt of an application under (a)(ii) of this
24 subsection, the director shall determine whether the proposed hydraulic
25 project requires a permit. A permit is required if the proposed
26 hydraulic project: (A) Involves the construction or performance of
27 work that will use, divert, obstruct, or change the natural flow or bed
28 of any of the salt or freshwaters of the state; and (B) creates a
29 reasonable likelihood of impacts to fish life. In making this
30 determination, the director may consider factors including, but not
31 limited to, project size, scope, planned time frame and duration, and
32 proximity to waters of the state.

33 (ii) If the director determines that a proposed hydraulic project
34 creates a reasonable likelihood of impacts to fish life, the department
35 shall review and process the application as provided in this section.
36 If the director determines that a proposed hydraulic project does not
37 create a reasonable likelihood of impacts to fish life, no permit is

1 required and the department shall refund all fees as provided in
2 section 103 of this act.

3 (iii) The director may only delegate the authority to make the
4 determinations required under this subsection (1)(b) to department
5 personnel who report directly to the director.

6 (2) Except for pamphlet hydraulic projects, a complete written
7 application for a permit ((may)) must be submitted ((in person or by
8 registered mail)) to the department and must contain the following:

9 (a) ~~((General plans for the overall project;~~
10 ~~(b)))~~ Complete plans and specifications ((of the proposed
11 construction or work within the mean higher high water line in
12 saltwater or within the ordinary high water line in freshwater)) for
13 the hydraulic project;

14 ~~((c) Complete plans and specifications))~~ (b) Proposed measures for
15 the proper protection of fish life; ((and

16 ~~(d)))~~ (c) Notice of compliance with any applicable requirements of
17 the state environmental policy act, unless otherwise provided for in
18 this chapter; and

19 (d) Payment of all applicable application submittal and permit
20 processing fees charged by the department under section 103 of this
21 act.

22 (3) The department may establish direct billing accounts or other
23 funds transfer methods with permit applicants to satisfy the fee
24 payment requirements of section 103 of this act.

25 (4) The department may accept complete, written applications as
26 provided in this section for multiple site permits and general permits
27 and may issue these permits. For multiple site permits, each specific
28 location must be identified.

29 (5) With the exception of emergency permits as provided in
30 subsection (12) of this section, applications for permits must be
31 submitted to the department's headquarters office in Olympia. Requests
32 for emergency permits as provided in subsection (12) of this section
33 may be made to the permitting biologist assigned to the location in
34 which the emergency occurs, to the department's regional office in
35 which the emergency occurs, or to the department's headquarters office.

36 (6) Except as provided for emergency permits in subsection (12) of
37 this section, the department may not proceed with permit review until
38 all fees are paid in full as required in section 103 of this act.

1 ~~((3))~~ (7)(a) Protection of fish life is the only ground upon
2 which approval of a permit may be denied or conditioned. Approval of
3 a permit may not be unreasonably withheld or unreasonably conditioned.

4 (b) Except as provided in this subsection and subsections ~~((8),~~
5 ~~(10), and)~~ (12) through (14) and (16) of this section, the department
6 has forty-five calendar days upon receipt of a complete application to
7 grant or deny approval of a permit. The forty-five day requirement is
8 suspended if:

9 (i) After ten working days of receipt of the application, the
10 applicant remains unavailable or unable to arrange for a timely field
11 evaluation of the proposed project;

12 (ii) The site is physically inaccessible for inspection;

13 (iii) The applicant requests a delay; or

14 (iv) The department is issuing a permit for a storm water discharge
15 and is complying with the requirements of RCW 77.55.161(3)(b).

16 ~~((b))~~ (c) Immediately upon determination that the forty-five day
17 period is suspended under (b) of this subsection, the department shall
18 notify the applicant in writing of the reasons for the delay.

19 ~~((e))~~ (d) The period of forty-five calendar days may be extended
20 if the permit is part of a multiagency permit streamlining effort and
21 all participating permitting agencies and the permit applicant agree to
22 an extended timeline longer than forty-five calendar days.

23 (e) The department has sixty calendar days upon receipt of a
24 complete application submitted under subsection (1)(a)(ii) of this
25 section to grant or deny approval of a permit.

26 ~~((4))~~ (8) If the department denies approval of a permit, the
27 department shall provide the applicant a written statement of the
28 specific reasons why and how the proposed project would adversely
29 affect fish life.

30 (a) Except as provided in (b) of this subsection, issuance, denial,
31 conditioning, or modification of a permit shall be appealable to the
32 board within thirty days from the date of receipt of the decision as
33 provided in RCW 43.21B.230.

34 (b) Issuance, denial, conditioning, or modification of a permit may
35 be informally appealed to the department within thirty days from the
36 date of receipt of the decision. Requests for informal appeals must be
37 filed in the form and manner prescribed by the department by rule. A

1 permit decision that has been informally appealed to the department is
2 appealable to the board within thirty days from the date of receipt of
3 the department's decision on the informal appeal.

4 ~~((+5))~~ (9)(a) ~~((The permittee must demonstrate substantial
5 progress on construction of that portion of the project relating to the
6 permit within two years of the date of issuance.~~

7 ~~(b))~~ Approval of a permit is valid for ~~((a period of))~~ up to five
8 years from the date of issuance, except as provided in ~~((+e))~~ (b) of
9 this subsection and in RCW 77.55.151.

10 ~~((+e))~~ (b) A permit remains in effect without need for periodic
11 renewal for hydraulic projects that divert water for agricultural
12 irrigation or stock watering purposes and that involve seasonal
13 construction or other work. A permit for streambank stabilization
14 projects to protect farm and agricultural land as defined in RCW
15 84.34.020 remains in effect without need for periodic renewal if the
16 problem causing the need for the streambank stabilization occurs on an
17 annual or more frequent basis. The permittee must notify the
18 appropriate agency before commencing the construction or other work
19 within the area covered by the permit.

20 ~~((+6))~~ (10) The department may, after consultation with the
21 permittee, modify a permit due to changed conditions. The modification
22 is appealable as provided in subsection ~~((+4))~~ (8) of this section.
23 For a hydraulic project~~((s))~~ that diverts water for agricultural
24 irrigation or stock watering purposes, ~~((or))~~ when the hydraulic
25 project or other work is associated with streambank stabilization to
26 protect farm and agricultural land as defined in RCW 84.34.020, the
27 burden is on the department to show that changed conditions warrant the
28 modification in order to protect fish life.

29 ~~((+7))~~ (11) A permittee may request modification of a permit due
30 to changed conditions. The request must be processed within forty-five
31 calendar days of receipt of the written request and payment of
32 applicable fees under section 103 of this act. A decision by the
33 department is appealable as provided in subsection ~~((+4))~~ (8) of this
34 section. For a hydraulic project~~((s))~~ that diverts water for
35 agricultural irrigation or stock watering purposes, ~~((or))~~ when the
36 hydraulic project or other work is associated with streambank
37 stabilization to protect farm and agricultural land as defined in RCW

1 84.34.020, the burden is on the permittee to show that changed
2 conditions warrant the requested modification and that such a
3 modification will not impair fish life.

4 ~~((+8))~~ (12)(a) The department, the county legislative authority,
5 or the governor may declare and continue an emergency. If the county
6 legislative authority declares an emergency under this subsection, it
7 shall immediately notify the department. A declared state of emergency
8 by the governor under RCW 43.06.010 shall constitute a declaration
9 under this subsection.

10 (b) The department, through its authorized representatives, shall
11 issue immediately, upon request, ~~((oral))~~ verbal approval for a stream
12 crossing, or work to remove any obstructions, repair existing
13 structures, restore streambanks, protect fish life, or protect property
14 threatened by the stream or a change in the stream flow without the
15 necessity of obtaining a written permit prior to commencing work.
16 Conditions of the emergency ~~((oral))~~ verbal permit must be
17 ~~((established by the department and))~~ reduced to writing within thirty
18 days and complied with as provided for in this chapter.

19 (c) The department may not require the provisions of the state
20 environmental policy act, chapter 43.21C RCW, to be met as a condition
21 of issuing a permit under this subsection.

22 (d) The department may not charge a person requesting an emergency
23 permit any of the fees authorized by section 103 of this act until
24 after the emergency permit is issued and reduced to writing.

25 ~~((+9))~~ (13) All state and local agencies with authority under this
26 chapter to issue permits or other authorizations in connection with
27 emergency water withdrawals and facilities authorized under RCW
28 43.83B.410 shall expedite the processing of such permits or
29 authorizations in keeping with the emergency nature of such requests
30 and shall provide a decision to the applicant within fifteen calendar
31 days of the date of application.

32 ~~((+10))~~ (14) The department or the county legislative authority
33 may determine an imminent danger exists. The county legislative
34 authority shall notify the department, in writing, if it determines
35 that an imminent danger exists. In cases of imminent danger, the
36 department shall issue an expedited written permit, upon request, for
37 work to remove any obstructions, repair existing structures, restore
38 banks, protect fish resources, or protect property. Expedited permit

1 requests require a complete written application as provided in
2 subsection (2) of this section and must be issued within fifteen
3 calendar days of the receipt of a complete written application.
4 Approval of an expedited permit is valid for up to sixty days from the
5 date of issuance. The department may not require the provisions of the
6 state environmental policy act, chapter 43.21C RCW, to be met as a
7 condition of issuing a permit under this subsection.

8 ~~((+11+))~~ (15)(a) For any property, except for property located on
9 a marine shoreline, that has experienced at least two consecutive years
10 of flooding or erosion that has damaged or has threatened to damage a
11 major structure, water supply system, septic system, or access to any
12 road or highway, the county legislative authority may determine that a
13 chronic danger exists. The county legislative authority shall notify
14 the department, in writing, when it determines that a chronic danger
15 exists. In cases of chronic danger, the department shall issue a
16 permit, upon request, for work necessary to abate the chronic danger by
17 removing any obstructions, repairing existing structures, restoring
18 banks, restoring road or highway access, protecting fish resources, or
19 protecting property. Permit requests must be made and processed in
20 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

21 (b) Any projects proposed to address a chronic danger identified
22 under (a) of this subsection that satisfies the project description
23 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
24 of the state environmental policy act, chapter 43.21C RCW. However,
25 the project is subject to the review process established in RCW
26 77.55.181(3) as if it were a fish habitat improvement project.

27 ~~((+12+))~~ (16) The department may issue an expedited written permit
28 in those instances where normal permit processing would result in
29 significant hardship for the applicant or unacceptable damage to the
30 environment. Expedited permit requests require a complete written
31 application as provided in subsection (2) of this section and must be
32 issued within fifteen calendar days of the receipt of a complete
33 written application. Approval of an expedited permit is valid for up
34 to sixty days from the date of issuance. The department may not
35 require the provisions of the state environmental policy act, chapter
36 43.21C RCW, to be met as a condition of issuing a permit under this
37 subsection.

1 NEW SECTION. **Sec. 103.** A new section is added to chapter 77.55
2 RCW to read as follows:

3 (1) Except as otherwise provided in this section, the department
4 shall charge a submittal fee and a processing fee, established by the
5 department consistent with this section, for all hydraulic project
6 permits issued under RCW 77.55.021, to recover a portion of the costs
7 for processing and issuing decisions on permit notifications and
8 applications, administering fee collections, and compliance and
9 effectiveness monitoring and enforcement of projects requiring a
10 permit.

11 (2) When assessing fees for permits under this section, the
12 department must categorize the following hydraulic projects as low
13 complexity:

- 14 (a) Anchoring or mooring buoys and navigation aids;
- 15 (b) Water crossing structures in nonfish bearing waters
16 (maintenance or repair);
- 17 (c) Bridge repair or maintenance above the ordinary high water line
18 (cleaning, painting, or redecking);
- 19 (d) Conduit crossing using boring;
- 20 (e) Boat ramps or launches within the existing footprint
21 (maintenance, repair, or replacement);
- 22 (f) Temporary or permanent stream gauges or scientific instruments;
- 23 (g) Boom (installation or maintenance);
- 24 (h) Existing overwater structure within the existing footprint, not
25 including marinas or marine terminals (maintenance or repair);
- 26 (i) Beaver dam work;
- 27 (j) Riparian habitat (maintenance or repair);
- 28 (k) Existing outfall (maintenance or repair);
- 29 (l) Aquaculture (maintenance or repair);
- 30 (m) Habitat freshwater beach creation (maintenance or repair);
- 31 (n) Shoreline armoring or bank protection (maintenance or repair);
- 32 (o) Breeding substrate (maintenance or repair);
- 33 (p) Large woody material (maintenance or repair);
- 34 (q) Wetland and estuarine habitat work (maintenance or repair);
- 35 (r) Dredging of less than fifty cubic yards (maintenance or
36 repair);
- 37 (s) Boat lifts or railway launches (maintenance or repair);
- 38 (t) Existing pilings (maintenance or repair);

- 1 (u) Pump water diversions and fish screens (maintenance or repair);
2 (v) Gravity water diversions and fish screens (maintenance or
3 repair);
4 (w) Tidegates (maintenance or repair); and
5 (x) Temporary water crossing structures installed and removed
6 within one season in fish-bearing waters.
- 7 (3) When assessing fees for permits under this section, the
8 department must categorize the following hydraulic projects as medium
9 complexity:
- 10 (a) Water crossing structures in fish-bearing waters (maintenance
11 or repair);
12 (b) Aquaculture;
13 (c) Habitat freshwater beach creation (new, replacement, or
14 removal);
15 (d) Shoreline armoring or bank protection of less than one hundred
16 feet in length (new, replacement, or removal);
17 (e) Jetties, dikes, or levees (maintenance or repair);
18 (f) Breeding substrate (new, replacement, or removal);
19 (g) Large woody material (removal, placement, or repositioning);
20 (h) Off channel, side channel, or in channel enhancement or
21 restoration work (maintenance or repair);
22 (i) Riparian habitat work (new, replacement, or removal);
23 (j) Bed modification excluding enhancement (maintenance or repair);
24 (k) Channel realignment in fish-bearing waters (maintenance or
25 repair);
26 (l) Conduit and cable work using trenching (new, replacement, or
27 removal);
28 (m) Dredging of less than fifty cubic yards (new);
29 (n) Fish passage barrier removal with replacement or retrofit using
30 methods such as baffles or log controls for passage through or over a
31 structure;
32 (o) Fish passage not associated with a water crossing structure
33 such as to bypass a natural barrier or a dam;
34 (p) Boat lifts and railway launches (new, replacement, and
35 removal);
36 (q) Boat ramps or launches outside of the footprint of any existing
37 (new, replacement, or removal);
38 (r) Work on pilings (new, replacement, or removal);

- 1 (s) Pump water diversions or fish screens (new, replacement, or
2 removal);
- 3 (t) Gravity water diversions or fish screens (new, replacement, or
4 removal);
- 5 (u) Outfalls (new, replacement, or removal);
- 6 (v) Tidegates (new, replacement, or removal);
- 7 (w) Mechanical aquatic plant control that is not a pamphlet
8 hydraulic project;
- 9 (x) Overwater structure outside of the footprint of any existing
10 structure, not including marinas or marine terminals (new or
11 replacement);
- 12 (y) Marinas or marine terminals (maintenance or repair);
- 13 (z) Dams not under jurisdiction of the federal energy regulatory
14 commission (maintenance or repair);
- 15 (aa) New water crossing structures in nonfish-bearing waters (new,
16 replacement, or removal); and
- 17 (bb) Temporary water crossing structures present for multiple
18 seasons in fish-bearing waters.
- 19 (4) When assessing fees for permits under this section, the
20 department must categorize the following hydraulic projects as high
21 complexity:
- 22 (a) Water crossing structures in fish-bearing waters (new,
23 replacement, removal, or modification);
- 24 (b) Shoreline armoring or bank protection of greater than one
25 hundred feet in length (new, replacement, or removal);
- 26 (c) Jetties, dikes, or levees (new, replacement, or removal);
- 27 (d) Off channel, side channel, or in channel enhancement or
28 restoration work (new, replacement, or removal);
- 29 (e) Wetland or estuarine habitat work (new, replacement, or
30 removal);
- 31 (f) Bed modification excluding enhancement (new, replacement, or
32 removal);
- 33 (g) Channel realignment in fish-bearing waters (new, replacement,
34 or removal);
- 35 (h) Dredging of more than fifty cubic yards (new, replacement,
36 removal, or maintenance);
- 37 (i) Fish passage barrier removal with replacement or retrofit using

1 methods such as baffles or log controls for passage through or over a
2 structure (new, replacement, or removal);

3 (j) Fish passage not associated with a water crossing structure
4 such as to bypass a natural barrier or a dam (new, replacement, or
5 removal);

6 (k) Marinas or marine terminals (new, replacement, or removal);

7 (l) Dams not under jurisdiction of the federal energy regulatory
8 commission (new, replacement, or removal);

9 (m) New project types not identified as low or medium complexity;
10 and

11 (n) Perpetual agriculture hydraulic projects.

12 (5) If the department receives applications for project types not
13 identified in subsections (2) through (4) of this section, it shall
14 categorize them as low, medium, or high complexity and charge fees
15 based on those categories consistent with the most similar project
16 types identified in subsections (2) through (4) of this section.

17 (6)(a) The department shall charge the following submittal fees:

18 (i) Fifty dollars for single site low complexity hydraulic project
19 permits and multiple site low complexity hydraulic project permits;

20 (ii) Seventy-five dollars for single site medium complexity
21 hydraulic project permits and multiple site medium complexity hydraulic
22 project permits; and

23 (iii) One hundred twenty-five dollars for single site high
24 complexity hydraulic project permits, multiple site high complexity
25 hydraulic project permits, and general permits.

26 (b) The department may not charge a submittal fee for permit
27 modifications.

28 (7) Unless the department establishes a lower fee consistent with
29 this section, a hydraulic project permit application must be assessed
30 one of the following processing fees:

31 (a) Seventy-five dollars for a single site low complexity hydraulic
32 project;

33 (b) One hundred seventy-five dollars for a single site medium
34 complexity hydraulic project;

35 (c) Five hundred seventy-five dollars for a single site high
36 complexity hydraulic project;

37 (d) For a multiple site permit, the applicable permit processing
38 fee assessed under this subsection for one of the hydraulic project

1 sites identified in the permit application, and twenty percent of the
2 applicable permit processing fee assessed under this subsection for
3 each additional site; and

4 (e) Four thousand eight hundred seventy-five dollars for a general
5 permit authorizing up to three types of hydraulic projects, and twenty
6 percent of the applicable permit processing fee assessed under this
7 subsection for each additional type of hydraulic project.

8 (8) In cases where hydraulic projects include work that falls into
9 more than one of the permit categories outlined in this section, the
10 fee charged must be based on the most complex component of the project.

11 (9) Unless the department establishes a lower fee consistent with
12 this section, all permit modifications must be assessed a seventy-five
13 dollar processing fee, except for those modified under RCW
14 77.55.021(10).

15 (10) The following hydraulic projects are exempt from all fees
16 listed under this section:

17 (a) Approved fish habitat enhancement projects authorized under RCW
18 77.55.181;

19 (b) Hydraulic projects approved under applicant-funded contracts
20 with the department that pay for the costs of processing those
21 projects;

22 (c) Projects approved under the cost-sharing program for fish
23 passage barriers authorized under RCW 76.13.150;

24 (d) If sections 201 through 203 of this act are enacted into law by
25 June 30, 2012, forest practices hydraulic projects;

26 (e) Pamphlet hydraulic projects; and

27 (f) Mineral prospecting and mining activities.

28 (11) The fees assessed in this section must be based on the scale
29 and complexity of the project and the relative effort required for
30 department staff to review the application, conduct site visits, and
31 consult with applicants as necessary. As such, at its discretion, the
32 department may reduce the fees charged to a person under this section
33 when the work required by the department to receive and process that
34 person's application or modify a permit is substantially less than
35 typically required. Decisions made by the department under this
36 subsection are not subject to appeal under RCW 77.55.021(8).

37 (12) The department shall refund fifty percent of the permit

1 processing fee to any person that properly applies for any permit or
2 permit modification under RCW 77.55.021 if the department:

3 (a) Fails to process the application or request within the
4 timelines required by RCW 77.55.021; or

5 (b) Denies the permit because the proposed project would adversely
6 affect fish life.

7 (13) The department shall refund one hundred percent of all fees
8 if:

9 (a) No permit is required for the proposed work; or

10 (b) The hydraulic project is exempted from substantial development
11 permit requirements under RCW 90.58.147 and the project proponent
12 provides to the department a copy of the letter documenting exemption
13 approval by the local government.

14 (14) On September 30th of each year, the department shall calculate
15 adjusted fees by the rate of inflation. The adjusted fees must be
16 calculated to the nearest dollar using the consumer price index for the
17 twelve months prior to each September 1st as calculated by the United
18 States department of labor. Each adjusted fee calculated under this
19 section takes effect on the following January 1st.

20 (15) All fees collected under this section must be deposited in the
21 hydraulic project approval account created in section 106 of this act.

22 NEW SECTION. **Sec. 104.** A new section is added to chapter 77.55
23 RCW to read as follows:

24 To ensure that all hydraulic project approvals provide for the
25 protection of fish life, by January 1, 2013, the department shall
26 develop and implement a program to monitor the effectiveness of the
27 approvals it grants under this chapter. For the purposes of this
28 chapter, effectiveness monitoring must evaluate if project standards
29 are adequate to protect overall fish life. If the department
30 identifies approvals that do not meet standards and provide for
31 protection of fish life, the department shall use adaptive management
32 principles to ensure protection under this chapter.

33 NEW SECTION. **Sec. 105.** (1) By September 1, 2015, the department
34 of fish and wildlife shall provide a report to the legislature that
35 includes: (a) A summary of the impact of fee collection under this act
36 on the department of fish and wildlife's hydraulic project approval

1 permit program; (b) recommendations to improve the department of fish
2 and wildlife's permit streamlining efforts and permit fee schedule; (c)
3 a review of relevant state, federal, and local natural resources and
4 environmental regulatory programs to determine if those programs have
5 the authority to and currently provide adequate fish protection
6 measures for hydraulic projects conducted above the ordinary high water
7 line; and (d) a summary of best management practices and the memorandum
8 of agreement process developed under section 117 of this act, as well
9 as recommendations for further opportunities for permitting
10 efficiencies with regards to hydraulic projects conducted above the
11 ordinary high water line.

12 (2) The department of fish and wildlife must develop the report in
13 consultation with affected stakeholders and submit the report to the
14 legislature consistent with RCW 43.01.036.

15 NEW SECTION. **Sec. 106.** A new section is added to chapter 77.55
16 RCW to read as follows:

17 (1) The hydraulic project approval account is created in the state
18 treasury. All receipts from submittal fees and permit processing fees
19 for hydraulic project approval applications collected under section 103
20 of this act must be deposited into the account.

21 (2) Except for unanticipated receipts under RCW 43.79.260 through
22 43.79.282, moneys in the hydraulic project approval account may be
23 spent only after appropriation.

24 (3) Expenditures from the hydraulic project approval account may be
25 used only to fund department activities relating to processing and
26 issuing hydraulic project approval decisions, compliance and
27 effectiveness monitoring, enforcement activities related to this
28 chapter, conducting informal appeals or participating in administrative
29 or judicial appeals of hydraulic project approval decisions, providing
30 technical assistance by biologists and environmental engineers on
31 project design and implementation that provides for the protection of
32 fish life, and for the associated management and administrative costs
33 incurred to implement and operate the hydraulic project approval
34 program.

35 **Sec. 107.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
36 read as follows:

1 (1) A person is guilty of unlawfully undertaking hydraulic project
2 activities if the person (~~constructs any form of hydraulic project or~~
3 ~~performs other work on a hydraulic project and:~~

4 ~~(a) Fails to have a hydraulic project approval required under~~
5 ~~chapter 77.55 RCW for such construction or work; or~~

6 ~~(b) Violates any requirements or conditions of the hydraulic~~
7 ~~project approval for such construction or work.~~

8 ~~(2) Unlawfully undertaking hydraulic project activities is a gross~~
9 ~~misdemeanor)):~~

10 (a) Constructs any form of hydraulic project or performs other work
11 on a hydraulic project that requires a hydraulic project approval under
12 chapter 77.55 RCW and fails to have a hydraulic project approval for
13 the construction or work;

14 (b) Violates any requirements or conditions of the hydraulic
15 project approval for the construction or other activities;

16 (c) Violates any compliance order issued under RCW 77.55.291; or

17 (d) Violates any department rule that identifies the conditions
18 under which a hydraulic project is approved.

19 (2) Violation of a compliance order under RCW 77.55.291 must be
20 punished as a separate offense from the underlying hydraulic code
21 violation.

22 (3) Unlawfully undertaking hydraulic project activities is a gross
23 misdemeanor.

24 (4) Notwithstanding the provisions of subsection (3) of this
25 section, the commission may by rule identify certain acts that violate
26 the hydraulic code as being of minimal impact to fish life, and may
27 classify these acts, on an individual basis, as infractions, punishable
28 under RCW 77.15.160 and chapter 7.84 RCW.

29 (5) On and after the effective date of section 202 of this act,
30 nothing in this section applies to a forest practices hydraulic project
31 included in an approved forest practices application or to any
32 activities that are associated with such a project.

33 **Sec. 108.** RCW 77.55.291 and 2010 c 210 s 31 are each amended to
34 read as follows:

35 (1) (~~The department may levy civil penalties of up to one hundred~~
36 ~~dollars per day for violation of any provisions of RCW 77.55.021. The~~

1 ~~penalty provided shall be imposed by notice in writing, either by~~
2 ~~certified mail or personal service to the person incurring the penalty,~~
3 ~~from the director or the director's designee describing the violation.~~

4 ~~(2)(a) Except as provided in (b) of this subsection, any person~~
5 ~~incurring any penalty under this chapter may appeal the same under~~
6 ~~chapter 34.05 RCW to the board. Appeals shall be filed within thirty~~
7 ~~days from the date of receipt of the penalty in accordance with RCW~~
8 ~~43.21B.230.~~

9 ~~(b) Issuance of a civil penalty may be informally appealed to the~~
10 ~~department within thirty days from the date of receipt of the penalty.~~
11 ~~Requests for informal appeal must be filed in the form and manner~~
12 ~~prescribed by the department by rule. A civil penalty that has been~~
13 ~~informally appealed to the department is appealable to the board within~~
14 ~~thirty days from the date of receipt of the department's decision on~~
15 ~~the informal appeal.~~

16 ~~(3) The penalty imposed shall become due and payable thirty days~~
17 ~~after receipt of a notice imposing the penalty unless an appeal is~~
18 ~~filed. Whenever an appeal of any penalty incurred under this chapter~~
19 ~~is filed, the penalty shall become due and payable only upon completion~~
20 ~~of all review proceedings and the issuance of a final order confirming~~
21 ~~the penalty in whole or in part.~~

22 ~~(4) If the amount of any penalty is not paid within thirty days~~
23 ~~after it becomes due and payable, the attorney general, upon the~~
24 ~~request of the director, shall bring an action in the name of the state~~
25 ~~of Washington in the superior court of Thurston county or of any county~~
26 ~~in which such violator may do business, to recover such penalty. In~~
27 ~~all such actions the procedure and rules of evidence shall be the same~~
28 ~~as an ordinary civil action. All penalties recovered under this~~
29 ~~section shall be paid into the state's general fund.) (a) The director~~
30 ~~may issue a compliance notice or order to a person who:~~

31 ~~(i) Constructs any form of hydraulic project or performs other work~~
32 ~~on a hydraulic project that requires a hydraulic project approval under~~
33 ~~this chapter and fails to have a hydraulic project approval for the~~
34 ~~construction or work;~~

35 ~~(ii) Violates any requirements or conditions of the hydraulic~~
36 ~~project approval for the construction or other activities; or~~

37 ~~(iii) Violates any department rule that identifies the conditions~~
38 ~~under which a hydraulic project is approved.~~

1 (b) A compliance notice may be issued to inform a person of a
2 potential violation and recommend actions to prevent, correct, or
3 mitigate for adverse impacts to fish life. A notice to comply must:

4 (i) Be served upon the person and any known agents and applicants;

5 (ii) Specify the nature, extent, date, and time of the potential
6 violation; and

7 (iii) Specify any recommended actions to prevent, correct, or
8 mitigate for adverse impacts to fish life.

9 (c) A compliance order must specify measures or actions necessary
10 to prevent, correct, or mitigate for adverse impacts to fish life. A
11 compliance order is effective immediately and remains in effect until
12 withdrawn by the director or until the board orders otherwise. A
13 compliance order must:

14 (i) Be served upon the person and any known agents;

15 (ii) Specify the nature, extent, date, and time of the violation;

16 (iii) Include specific measures or actions necessary to prevent,
17 correct, or mitigate for adverse impacts to fish life;

18 (iv) Specify any necessary action before work may resume; and

19 (v) Specify the right of the person to an appeal.

20 (d) Within thirty days from the date of receipt of a compliance
21 order issued under this section, a person may file a written request
22 appealing the notice or order to the board.

23 (e) A compliance order may be informally appealed to the department
24 within thirty days from the date of receipt of the decision. Requests
25 for informal appeals must be filed in the form and manner prescribed by
26 the department by rule. A compliance order that has been informally
27 appealed to the department is appealable to the board within thirty
28 days from the date of receipt of the department's decision on the
29 informal appeal.

30 (2)(a) Consistent with the penalty schedule described in this
31 subsection, the director may levy civil penalties of up to:

32 (i) Two thousand five hundred dollars for a violation of this
33 chapter or rules adopted under this chapter relating to a hydraulic
34 project categorized or that would be categorized as a low complexity
35 hydraulic project under section 103 of this act;

36 (ii) Five thousand dollars for a violation of this chapter or rules
37 adopted under this chapter relating to a hydraulic project categorized

1 or that would be categorized as a medium complexity hydraulic project
2 under section 103 of this act; and

3 (iii) Ten thousand dollars for a violation of this chapter or rules
4 adopted under this chapter relating to a hydraulic project categorized
5 or that would be categorized as a high complexity hydraulic project
6 under section 103 of this act.

7 (b) Each and every violation of this chapter or rules adopted under
8 this chapter is a separate and distinct civil offense.

9 (c) The penalty provided must be imposed by notice in writing by
10 the director describing the violation. The civil penalty notice must
11 specify the:

12 (i) Basis for the penalty and the amount levied; and

13 (ii) Right of the person to an appeal.

14 (d) Within thirty days from the date of receipt of a civil penalty
15 order issued under this section, a person may file a written request
16 appealing the order to the board.

17 (e) Issuance of a civil penalty may be informally appealed to the
18 department within thirty days from the date of receipt of the penalty.
19 Requests for informal appeal must be filed in the form and manner
20 prescribed by the department by rule. A civil penalty that has been
21 informally appealed to the department is appealable to the board within
22 thirty days from the date of receipt of the department's decision on
23 the informal appeal.

24 (f) The penalty imposed becomes due and payable thirty days after
25 receipt of a notice imposing the penalty unless an appeal is filed.
26 Whenever an appeal of any penalty incurred under this chapter is filed,
27 the penalty becomes due and payable only upon completion of all
28 administrative and judicial review proceedings and the issuance of a
29 final decision confirming the penalty in whole or in part. When the
30 penalty becomes past due, it is also subject to interest at the rate
31 allowed by RCW 43.17.240 for debts owed to the state.

32 (g) If the amount of any penalty is not paid within thirty days
33 after it becomes due and payable, the attorney general, upon the
34 request of the director, shall bring an action in the name of the state
35 of Washington in the superior court of Thurston county or of any county
36 in which the violator may do business, to recover the penalty. In all
37 such actions, the procedure and rules of evidence are the same as an

1 ordinary civil action. The department is also entitled to recover
2 reasonable attorneys' fees and costs incurred in connection with the
3 penalty.

4 (h) The director shall establish by rule a penalty schedule. The
5 schedule must be developed in consideration of the following:

6 (i) Previous violation history;

7 (ii) Severity of the impact on fish and fish habitat;

8 (iii) Whether the violation of this chapter or its rules was
9 intentional;

10 (iv) Cooperation with the department;

11 (v) Reparability of the adverse effect from the violation; and

12 (vi) The extent to which a penalty to be imposed on a person for a
13 violation committed by another should be reduced if the person was
14 unaware of the violation and has not received a substantial economic
15 benefit from the violation.

16 (3) When receiving or recovering a penalty under this section, the
17 department may deposit an amount not to exceed its costs incurred in
18 connection with processing and recovering the penalty into the
19 hydraulic project approval account created in section 106 of this act.
20 The department shall deposit the remainder of the penalty recovered
21 into the general fund.

22 (4) The director may apply for an administrative inspection warrant
23 in either Thurston county superior court or the superior court in the
24 county where the project is located. The court may issue an
25 administrative inspection warrant where:

26 (a) Department personnel need to inspect the project site to ensure
27 that a person:

28 (i) Possesses a hydraulic project approval required under this
29 chapter for the construction of any form of hydraulic project or
30 performance of other work on a hydraulic project;

31 (ii) Complies with any requirements or conditions of the hydraulic
32 project approval for the construction or other activities;

33 (iii) Complies with any compliance order issued under subsection
34 (1) of this section; or

35 (iv) Complies with any department rule that identifies the
36 conditions under which a hydraulic project is approved; or

37 (b) Department personnel have reasonable cause to believe that a
38 person:

1 (i) Is constructing or has constructed any form of hydraulic
2 project or performs other work on a hydraulic project and fails to have
3 a hydraulic project approval required under this chapter for the
4 construction or work;

5 (ii) Is violating or has violated any requirements or conditions of
6 the hydraulic project approval for the construction or other
7 activities;

8 (iii) Is violating or has violated any compliance order issued
9 under subsection (1) of this section; or

10 (iv) Is violating or has violated any department rule that
11 identifies the conditions under which a hydraulic project is approved.

12 (5) The director may only delegate the authority to issue a
13 compliance order or levy a civil penalty under this section to
14 department personnel who report directly to the director.

15 (6) On and after the effective date of section 202 of this act,
16 nothing in this section applies to a forest practices hydraulic project
17 included in an approved forest practices application or to any
18 activities that are associated with such a project.

19 NEW SECTION. Sec. 109. A new section is added to chapter 77.55
20 RCW to read as follows:

21 The department shall make available to the public on its internet
22 site statistics on: (1) Civil enforcement actions taken and penalties
23 issued under RCW 77.55.291; and (2) criminal enforcement actions taken
24 under RCW 77.15.300. The statistics must include the number of civil
25 and criminal enforcement actions taken in each county. The department
26 must update the statistics at least twice a year.

27 **Sec. 110.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to
28 read as follows:

29 ~~(1) ((For a marina or marine terminal in existence on June 6, 1996,~~
30 ~~or a marina or marine terminal that has received a permit for its~~
31 ~~initial construction, a renewable, five year permit shall be issued,~~
32 ~~upon request, for regular maintenance activities of the marina or~~
33 ~~marine terminal.~~

34 ~~(2) Upon construction of a new marina or marine terminal that has~~
35 ~~received a permit, a renewable, five year permit shall be issued, upon~~

1 request, for regular maintenance activities of the marina or marine
2 terminal.

3 ~~(3) For the purposes of this section, regular maintenance~~
4 ~~activities are only those activities necessary to restore the marina or~~
5 ~~marine terminal to the conditions approved in the initial permit.~~
6 ~~These activities may include, but are not limited to, dredging, piling~~
7 ~~replacement, and float replacement.~~

8 ~~(4))~~ Upon application under RCW 77.55.021, the department shall
9 issue a renewable, five-year general permit to a marina or marine
10 terminal for its regular maintenance activities identified in the
11 application.

12 (2) For the purposes of this section, regular maintenance
13 activities may include, but are not limited to:

14 (a) Maintenance, repair, or replacement of a boat ramp, launch, or
15 float within the existing footprint;

16 (b) Maintenance or repair of an existing overwater structure within
17 the existing footprint;

18 (c) Maintenance or repair of boat lifts or railway launches;

19 (d) New, maintenance, or removal of pilings;

20 (e) Dredging of less than fifty cubic yards;

21 (f) Maintenance or repair of shoreline armoring or bank protection;

22 (g) Maintenance or repair of wetland, riparian, or estuarine
23 habitat; and

24 (h) Maintenance or repair of an existing outfall.

25 (3) The five-year permit must include a requirement that a
26 fourteen-day notice be given to the department before regular
27 maintenance activities begin.

28 (4) A permit under this section is subject to the fee for a general
29 permit provided in section 103 of this act.

30 NEW SECTION. Sec. 111. A new section is added to chapter 77.55
31 RCW to read as follows:

32 (1) By December 31, 2012, the department must make examples of
33 complete, high quality applications and the resulting issued hydraulic
34 project approvals readily available to the public on its internet site,
35 as well as the internet site of the office of regulatory assistance
36 established in RCW 43.42.010. The department must maximize assistance

1 to the public and interested parties by seeking to make readily
2 available examples from hydraulic projects that generate significant
3 permitting activity or frequent questions.

4 (2) The department must regularly review and update the examples
5 required to be made available on the internet under subsection (1) of
6 this section.

7 (3) The department must obtain the written permission of a permit
8 applicant or permittee before making publicly available that applicant
9 or permittee's application or permit under this section and must work
10 cooperatively with the permit applicant or permittee to ensure that no
11 personal or proprietary information is made available.

12 **Sec. 112.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to
13 read as follows:

14 (1) Conditions imposed upon a permit must be reasonably related to
15 the project. The permit conditions must ensure that the project
16 provides proper protection for fish life, but the department may not
17 impose conditions that attempt to optimize conditions for fish life
18 that are out of proportion to the impact of the proposed project.

19 (2) The permit must contain provisions allowing for minor
20 modifications to the plans and specifications without requiring
21 reissuance of the permit.

22 (3) The permit must contain provisions that allow for minor
23 modifications to the required work timing without requiring the
24 reissuance of the permit. Minor modifications to the required work
25 timing means a minor deviation from the timing window set forth in the
26 permit when there are no spawning or incubating fish present within the
27 vicinity of the project.

28 NEW SECTION. **Sec. 113.** A new section is added to chapter 77.55
29 RCW to read as follows:

30 The department shall prepare and distribute technical and
31 educational information to the general public to assist the public in
32 complying with the requirements of this chapter, including the changes
33 resulting from this act.

34 NEW SECTION. **Sec. 114.** A new section is added to chapter 77.55
35 RCW to read as follows:

1 This chapter may be known and cited as the hydraulic code.

2 NEW SECTION. **Sec. 115.** The fee provisions contained in section
3 103 of this act are prospective only. The department of fish and
4 wildlife may not charge fees for hydraulic project permits issued under
5 Title 77 RCW prior to the effective date of this section. However, if
6 a person requests modification of a hydraulic project permit that was
7 issued by the department of fish and wildlife prior to the effective
8 date of this section, the department of fish and wildlife shall charge
9 all applicable fees as provided in section 103 of this act.

10 NEW SECTION. **Sec. 116.** A new section is added to chapter 77.55
11 RCW to read as follows:

12 The department shall develop a system to provide local governments,
13 affected tribes, and other interested parties with access to hydraulic
14 project approval applications, including applications for a general
15 permit.

16 NEW SECTION. **Sec. 117.** A new section is added to chapter 77.55
17 RCW to read as follows:

18 (1) The department and cities or counties are authorized to enter
19 into voluntary agreements pursuant to chapter 39.34 RCW for the purpose
20 of integrating state and local permitting of hydraulic projects
21 conducted above the ordinary high water line as described under RCW
22 77.55.021(1)(a)(ii).

23 (2) The department may only enter into an agreement with a city or
24 county where the director, after coordination with affected tribes,
25 determines that the city or county's environmental or natural resources
26 regulatory programs together with best management practices adopted by
27 the department under this section are capable of providing for the
28 protection of fish life equivalent with this chapter.

29 (3) An agreement under this section must, at minimum:

30 (a) Require the city or county to implement the best management
31 practices as needed to achieve the standard in subsection (2) of this
32 section for those hydraulic project types included in the agreement;

33 (b) Provide for oversight and monitoring by the department;

34 (c) Describe respective enforcement responsibilities;

1 (d) Provide assurances that the city or county will provide
2 adequate resources to implement the agreement; and

3 (e) Authorize the department to terminate the memorandum of
4 agreement if the county or city acts in a manner inconsistent with the
5 agreement.

6 (4)(a) By December 31, 2013, the department shall by rule adopt
7 best management practices that provide for the protection of fish life
8 for those hydraulic projects to be permitted under an agreement adopted
9 under this section.

10 (b) The department of fish and wildlife shall collaborate with city
11 and county governments, appropriate state agencies, tribal governments,
12 and other stakeholders to assist in the development of the best
13 management practices.

14 (5) A city or county acting under an agreement adopted under this
15 section operates under the authority of the department. The department
16 retains the ultimate authority for the protection of fish life.

17 (6) Hydraulic projects regulated under an agreement adopted under
18 this section are subject to effectiveness monitoring under section 104
19 of this act.

20 (7) A city or county's decision to enter into an agreement adopted
21 under this section is voluntary.

22 (a) An agreement adopted under this section need not include each
23 hydraulic project type conducted above the ordinary high water line as
24 described under RCW 77.55.021(1)(a)(ii). The department retains the
25 authority for the protection of fish life for those projects that are
26 not included in the agreement.

27 (b) A city or county may adopt fees necessary to recover costs for
28 permit review, but the fees shall be no greater than permit fees
29 authorized under section 103 of this act.

30 NEW SECTION. **Sec. 118.** A new section is added to chapter 77.55
31 RCW to read as follows:

32 An applicant may enter into a cost-reimbursement agreement with the
33 department under RCW 43.300.080 for the purpose of preapplication
34 project coordination. The department must convene a meeting with the
35 applicant and invite other regulatory agencies to attend. The
36 department shall facilitate discussions between the applicant and

1 regulatory agencies on regulatory requirements and methods to improve
2 the proposed project to allow prompt review and approval upon the
3 submittal of a complete application.

4 **Sec. 119.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are
5 each reenacted and amended to read as follows:

6 (1) The hearings board shall only have jurisdiction to hear and
7 decide appeals from the following decisions of the department, the
8 director, local conservation districts, the air pollution control
9 boards or authorities as established pursuant to chapter 70.94 RCW,
10 local health departments, the department of natural resources, the
11 department of fish and wildlife, and the parks and recreation
12 commission:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
14 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
15 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
17 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
18 90.14.130, 90.46.250, 90.48.120, (~~and~~) 90.56.330, and 77.55.291.

19 (c) A final decision by the department or director made under
20 chapter 183, Laws of 2009.

21 (d) Except as provided in RCW 90.03.210(2), the issuance,
22 modification, or termination of any permit, certificate, or license by
23 the department or any air authority in the exercise of its
24 jurisdiction, including the issuance or termination of a waste disposal
25 permit, the denial of an application for a waste disposal permit, the
26 modification of the conditions or the terms of a waste disposal permit,
27 or a decision to approve or deny an application for a solid waste
28 permit exemption under RCW 70.95.300.

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

31 (f) Decisions of local health departments regarding the issuance
32 and enforcement of permits to use or dispose of biosolids under RCW
33 70.95J.080.

34 (g) Decisions of the department regarding waste-derived fertilizer
35 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
36 department regarding waste-derived soil amendments under RCW 70.95.205.

1 (h) Decisions of local conservation districts related to the denial
2 of approval or denial of certification of a dairy nutrient management
3 plan; conditions contained in a plan; application of any dairy nutrient
4 management practices, standards, methods, and technologies to a
5 particular dairy farm; and failure to adhere to the plan review and
6 approval timelines in RCW 90.64.026.

7 (i) Any other decision by the department or an air authority which
8 pursuant to law must be decided as an adjudicative proceeding under
9 chapter 34.05 RCW.

10 (j) Decisions of the department of natural resources, the
11 department of fish and wildlife, and the department that are reviewable
12 under chapter 76.09 RCW, and the department of natural resources'
13 appeals of county, city, or town objections under RCW 76.09.050(7).

14 (k) Forest health hazard orders issued by the commissioner of
15 public lands under RCW 76.06.180.

16 (l) Decisions of the department of fish and wildlife to issue,
17 deny, condition, or modify a hydraulic project approval permit under
18 chapter 77.55 RCW or decisions to enter into an agreement authorized
19 under section 117 of this act.

20 (m) Decisions of the department of natural resources that are
21 reviewable under RCW 78.44.270.

22 (n) Decisions of a state agency that is an authorized public entity
23 under RCW 79.100.010 to take temporary possession or custody of a
24 vessel or to contest the amount of reimbursement owed that are
25 reviewable under RCW 79.100.120.

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

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

30 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
31 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110 and
33 90.44.220.

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

36 (~~(e) Appeals of decisions by the department as provided in chapter~~
37 ~~43.211 RCW.~~)

1 (3) Review of rules and regulations adopted by the hearings board
2 shall be subject to review in accordance with the provisions of the
3 administrative procedure act, chapter 34.05 RCW.

4 NEW SECTION. **Sec. 120.** A new section is added to chapter 35.21
5 RCW to read as follows:

6 A city may enter into a voluntary agreement with the department of
7 fish and wildlife under chapter 39.34 RCW for the purpose of
8 integrating state and local permitting of hydraulic projects conducted
9 above the ordinary high water line as authorized under section 117 of
10 this act.

11 NEW SECTION. **Sec. 121.** A new section is added to chapter 36.01
12 RCW to read as follows:

13 A county may enter into a voluntary agreement with the department
14 of fish and wildlife under chapter 39.34 RCW for the purpose of
15 integrating state and local permitting of hydraulic projects conducted
16 above the ordinary high water line as authorized under section 117 of
17 this act.

18 NEW SECTION. **Sec. 122.** A new section is added to chapter 39.34
19 RCW to read as follows:

20 A city or county may enter into a voluntary agreement with the
21 department of fish and wildlife under this chapter for the purpose of
22 integrating state and local permitting of hydraulic projects conducted
23 above the ordinary high water line as authorized under section 117 of
24 this act.

25 NEW SECTION. **Sec. 123.** The director of fish and wildlife shall
26 adopt any rules required or deemed necessary to implement sections 101
27 through 122 of this act.

28 NEW SECTION. **Sec. 124.** Section 101 through 110, 112, 115 through
29 118, and 120 through 122 of this act expire July 1, 2016.

30 NEW SECTION. **Sec. 125.** Section 119 of this act expires June 30,
31 2019.

1 NEW SECTION. **Sec. 202.** A new section is added to chapter 76.09
2 RCW to read as follows:

3 (1) The department may request information and technical assistance
4 from the department of fish and wildlife regarding any forest practices
5 hydraulic project regulated under this chapter.

6 (2) A concurrence review process is established for certain forest
7 practices hydraulic projects, as follow:

8 (a) Prior to submitting an application to the department under RCW
9 76.09.050 that includes a forest practices hydraulic project involving
10 one or more water crossing structures meeting the criteria of (b) of
11 this subsection, the applicant shall submit water crossing structure
12 plans and specifications to the department of fish and wildlife for
13 concurrence review consistent with section 201(3) of this act.

14 (b) The concurrence review process applies only to:

15 (i) Culvert installation or replacement, and repair at or below the
16 bankfull width, as that term is defined in WAC 222-16-010 on the
17 effective date of this section, in fish bearing rivers and streams that
18 exceed five percent gradient;

19 (ii) Bridge construction or replacement, and repair at or below the
20 bankfull width, of fish bearing unconfined streams; or

21 (iii) Fill within the flood level - 100 year, as that term is
22 defined in WAC 222-16-010, as it existed on the effective date of this
23 section, of fish bearing unconfined streams.

24 (c) When submitting an application to the department under RCW
25 76.09.050, the applicant shall attach the following to the application:

26 (i) The concurrence review form issued by the department of fish
27 and wildlife; and

28 (ii) Plans and specifications for each water crossing structure
29 subject to concurrence review.

30 **Sec. 203.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to
31 read as follows:

32 (1)(a) Where necessary to accomplish the purposes and policies
33 stated in RCW 76.09.010, and to implement the provisions of this
34 chapter, the board shall adopt forest practices rules pursuant to
35 chapter 34.05 RCW and in accordance with the procedures enumerated in
36 this section that:

37 (i) Establish minimum standards for forest practices;

1 (ii) Provide procedures for the voluntary development of resource
2 management plans which may be adopted as an alternative to the minimum
3 standards in (a)(i) of this subsection if the plan is consistent with
4 the purposes and policies stated in RCW 76.09.010 and the plan meets or
5 exceeds the objectives of the minimum standards;

6 (iii) Set forth necessary administrative provisions;

7 (iv) Establish procedures for the collection and administration of
8 forest practice fees as set forth by this chapter; and

9 (v) Allow for the development of watershed analyses.

10 (b) Forest practices rules pertaining to water quality protection
11 shall be adopted by the board after reaching agreement with the
12 director of the department of ecology or the director's designee on the
13 board with respect ~~((thereto))~~ to these rules. All other forest
14 practices rules shall be adopted by the board.

15 (c) Forest practices rules shall be administered and enforced by
16 either the department or the local governmental entity as provided in
17 this chapter. Such rules shall be adopted and administered so as to
18 give consideration to all purposes and policies set forth in RCW
19 76.09.010.

20 (2)(a) The board shall prepare proposed forest practices rules
21 consistent with this section and chapter 34.05 RCW. In addition to any
22 forest practices rules relating to water quality protection proposed by
23 the board, the department of ecology may submit to the board proposed
24 forest practices rules relating to water quality protection.

25 ~~(b)(i) ((Prior to initiating the rule-making process, the proposed
26 rules shall be submitted for review and comments to the department of
27 fish and wildlife and to the counties of the state. After receipt of
28 the proposed forest practices rules, the department of fish and
29 wildlife and the counties of the state shall have thirty days in which
30 to review and submit comments to the board, and to the department of
31 ecology with respect to its proposed rules relating to water quality
32 protection.~~

33 ~~(ii) After the expiration of the thirty day period,))~~ The board
34 ~~((and the department of ecology))~~ shall ~~((jointly))~~ hold one or more
35 hearings on the proposed rules pursuant to chapter 34.05 RCW. Any
36 county representative may propose specific forest practices rules
37 relating to problems existing within the county at the hearings.

1 (~~(iii)~~) (ii) The board may adopt and the department of ecology
2 may approve such proposals if they find the proposals are consistent
3 with the purposes and policies of this chapter.

4 (3)(a) The board shall incorporate into the forest practices rules
5 those fish protection standards in the rules adopted under chapter
6 77.55 RCW, as the rules existed on the effective date of this section,
7 that are applicable to activities regulated under the forest practices
8 rules. If fish protection standards are incorporated by reference, the
9 board shall minimize administrative processes by utilizing the
10 exception from the administrative procedures controlling significant
11 legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation
12 of rules adopted by other state agencies.

13 (b) Thereafter, the board shall incorporate into the forest
14 practices rules any changes to those fish protection standards in the
15 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent
16 with section 201 of this act; and (ii) applicable to activities
17 regulated under the forest practices rules. If fish protection
18 standards are incorporated by reference, the board shall minimize
19 administrative processes by utilizing the exception from the
20 administrative procedures controlling significant legislative rules
21 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted
22 by other state agencies.

23 (c) The board shall establish and maintain technical guidance in
24 the forest practices board manual, as provided under WAC 222-12-090 as
25 it existed on the effective date of this section, to assist with
26 implementation of the standards incorporated into the forest practices
27 rules under this section. The guidance must include best management
28 practices and standard techniques to ensure fish protection.

29 (d) The board must complete the requirements of (a) of this
30 subsection and establish initial technical guidance under (c) of this
31 subsection by July 1, 2013.

32 (4)(a) The board shall establish by rule a program for the
33 acquisition of riparian open space and critical habitat for threatened
34 or endangered species as designated by the board. Acquisition must be
35 a conservation easement. Lands eligible for acquisition are forest
36 lands within unconfined channel migration zones or forest lands
37 containing critical habitat for threatened or endangered species as
38 designated by the board. Once acquired, these lands may be held and

1 managed by the department, transferred to another state agency,
2 transferred to an appropriate local government agency, or transferred
3 to a private nonprofit nature conservancy corporation, as defined in
4 RCW 64.04.130, in fee or transfer of management obligation. The board
5 shall adopt rules governing the acquisition by the state or donation to
6 the state of such interest in lands including the right of refusal if
7 the lands are subject to unacceptable liabilities. The rules shall
8 include definitions of qualifying lands, priorities for acquisition,
9 and provide for the opportunity to transfer such lands with limited
10 warranties and with a description of boundaries that does not require
11 full surveys where the cost of securing the surveys would be
12 unreasonable in relation to the value of the lands conveyed. The rules
13 shall provide for the management of the lands for ecological protection
14 or fisheries enhancement. For the purposes of conservation easements
15 entered into under this section, the following apply:

16 (i) For conveyances of a conservation easement in which the
17 landowner conveys an interest in the trees only, the compensation must
18 include the timber value component, as determined by the cruised volume
19 of any timber located within the channel migration zone or critical
20 habitat for threatened or endangered species as designated by the
21 board, multiplied by the appropriate quality code stumpage value for
22 timber of the same species shown on the appropriate table used for
23 timber harvest excise tax purposes under RCW 84.33.091;

24 (ii) For conveyances of a conservation easement in which the
25 landowner conveys interests in both land and trees, the compensation
26 must include the timber value component in (a)(i) of this subsection
27 plus such portion of the land value component as determined just and
28 equitable by the department. The land value component must be the
29 acreage of qualifying channel migration zone or critical habitat for
30 threatened or endangered species as determined by the board, to be
31 conveyed, multiplied by the average per acre value of all commercial
32 forest land in western Washington or the average for eastern
33 Washington, whichever average is applicable to the qualifying lands.
34 The department must determine the western and eastern Washington
35 averages based on the land value tables established by RCW 84.33.140
36 and revised annually by the department of revenue.

37 (b) Subject to appropriations sufficient to cover the cost of such
38 an acquisition program and the related costs of administering the

1 program, the department must establish a conservation easement in land
2 that an owner tenders for purchase; provided that such lands have been
3 taxed as forest lands and are located within an unconfined channel
4 migration zone or contain critical habitat for threatened or endangered
5 species as designated by the board. Lands acquired under this section
6 shall become riparian or habitat open space. These acquisitions shall
7 not be deemed to trigger the compensating tax of chapters 84.33 and
8 84.34 RCW.

9 (c) Instead of offering to sell interests in qualifying lands,
10 owners may elect to donate the interests to the state.

11 (d) Any acquired interest in qualifying lands by the state under
12 this section shall be managed as riparian open space or critical
13 habitat.

14 NEW SECTION. **Sec. 204.** A new section is added to chapter 77.55
15 RCW to read as follows:

16 (1) The department and the department of natural resources shall
17 enter into and maintain a memorandum of agreement between the two
18 agencies that describes how to implement integration of hydraulic
19 project approvals into forest practices applications consistent with
20 this act.

21 (2) The initial memorandum of agreement between the two departments
22 must be executed by December 31, 2012. The memorandum of agreement may
23 be amended as agreed to by the two departments.

24 **Sec. 205.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to
25 read as follows:

26 (1) The board shall establish by rule which forest practices shall
27 be included within each of the following classes:

28 Class I: Minimal or specific forest practices that have no direct
29 potential for damaging a public resource and that may be conducted
30 without submitting an application or a notification except that when
31 the regulating authority is transferred to a local governmental entity,
32 those Class I forest practices that involve timber harvesting or road
33 construction within "urban growth areas," designated pursuant to
34 chapter 36.70A RCW, are processed as Class IV forest practices, but are
35 not subject to environmental review under chapter 43.21C RCW;

1 Class II: Forest practices which have a less than ordinary
2 potential for damaging a public resource that may be conducted without
3 submitting an application and may begin five calendar days, or such
4 lesser time as the department may determine, after written notification
5 by the operator, in the manner, content, and form as prescribed by the
6 department, is received by the department. However, the work may not
7 begin until all forest practice fees required under RCW 76.09.065 have
8 been received by the department. Class II shall not include forest
9 practices:

10 (a) On forest lands that are being converted to another use;

11 (b) ~~((Which require approvals under the provisions of the
12 hydraulics act, RCW 77.55.021;~~

13 ~~(c))~~ Within "shorelines of the state" as defined in RCW 90.58.030;

14 ~~((d))~~ (c) Excluded from Class II by the board; or

15 ~~((e))~~ (d) Including timber harvesting or road construction within
16 "urban growth areas," designated pursuant to chapter 36.70A RCW, which
17 are Class IV;

18 Class III: Forest practices other than those contained in Class I,
19 II, or IV. A Class III application must be approved or disapproved by
20 the department within thirty calendar days from the date the department
21 receives the application. However, the applicant may not begin work on
22 that forest practice until all forest practice fees required under RCW
23 76.09.065 have been received by the department;

24 Class IV: Forest practices other than those contained in Class I
25 or II:

26 (a) On forest lands that are being converted to another use;

27 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
28 amended, are not to be reforested because of the likelihood of future
29 conversion to urban development;

30 (c) That involve timber harvesting or road construction on forest
31 lands that are contained within "urban growth areas," designated
32 pursuant to chapter 36.70A RCW, except where the forest landowner
33 provides:

34 (i) A written statement of intent signed by the forest landowner
35 not to convert to a use other than commercial forest product operations
36 for ten years, accompanied by either a written forest management plan
37 acceptable to the department or documentation that the land is enrolled
38 under the provisions of chapter 84.33 or 84.34 RCW; or

1 (ii) A conversion option harvest plan approved by the local
2 governmental entity and submitted to the department as part of the
3 application; and/or

4 (d) Which have a potential for a substantial impact on the
5 environment and therefore require an evaluation by the department as to
6 whether or not a detailed statement must be prepared pursuant to the
7 state environmental policy act, chapter 43.21C RCW. Such evaluation
8 shall be made within ten days from the date the department receives the
9 application: PROVIDED, That nothing herein shall be construed to
10 prevent any local or regional governmental entity from determining that
11 a detailed statement must be prepared for an action pursuant to a Class
12 IV forest practice taken by that governmental entity concerning the
13 land on which forest practices will be conducted. A Class IV
14 application must be approved or disapproved by the department within
15 thirty calendar days from the date the department receives the
16 application, (~~unless the department determines that a detailed
17 statement must be made, in which case the application must be approved
18 or disapproved by the department within sixty calendar days from the
19 date the department receives the application, unless the commissioner
20 of public lands, through the promulgation of a formal order, determines
21 that the process cannot be completed within such period~~) except that
22 the department must: Approve or disapprove an application within sixty
23 calendar days from the date the department receives the application if
24 the department determines that a detailed statement must be made,
25 unless the commissioner of public lands, through the promulgation of a
26 formal order, determines that the process cannot be completed within
27 such a period. However, the applicant may not begin work on that
28 forest practice until all forest practice fees required under RCW
29 76.09.065 have been received by the department.

30 Forest practices under Classes I, II, and III are exempt from the
31 requirements for preparation of a detailed statement under the state
32 environmental policy act.

33 (2) Except for those forest practices being regulated by local
34 governmental entities as provided elsewhere in this chapter, no Class
35 II, Class III, or Class IV forest practice shall be commenced or
36 continued after January 1, 1975, unless the department has received a
37 notification with regard to a Class II forest practice or approved an
38 application with regard to a Class III or Class IV forest practice

1 containing all information required by RCW 76.09.060 as now or
2 hereafter amended. However, in the event forest practices regulations
3 necessary for the scheduled implementation of this chapter and RCW
4 90.48.420 have not been adopted in time to meet such schedules, the
5 department shall have the authority to regulate forest practices and
6 approve applications on such terms and conditions consistent with this
7 chapter and RCW 90.48.420 and the purposes and policies of RCW
8 76.09.010 until applicable forest practices regulations are in effect.

9 (3) Except for those forest practices being regulated by local
10 governmental entities as provided elsewhere in this chapter, if a
11 notification or application is delivered in person to the department by
12 the operator or the operator's agent, the department shall immediately
13 provide a dated receipt thereof. In all other cases, the department
14 shall immediately mail a dated receipt to the operator.

15 (4) Except for those forest practices being regulated by local
16 governmental entities as provided elsewhere in this chapter, forest
17 practices shall be conducted in accordance with the forest practices
18 regulations, orders and directives as authorized by this chapter or the
19 forest practices regulations, and the terms and conditions of any
20 approved applications.

21 (5) Except for those forest practices being regulated by local
22 governmental entities as provided elsewhere in this chapter, the
23 department of natural resources shall notify the applicant in writing
24 of either its approval of the application or its disapproval of the
25 application and the specific manner in which the application fails to
26 comply with the provisions of this section or with the forest practices
27 regulations. Except as provided otherwise in this section, if the
28 department fails to either approve or disapprove an application or any
29 portion thereof within the applicable time limit, the application shall
30 be deemed approved and the operation may be commenced: PROVIDED, That
31 this provision shall not apply to applications which are neither
32 approved nor disapproved pursuant to the provisions of subsection (7)
33 of this section: PROVIDED, FURTHER, That if seasonal field conditions
34 prevent the department from being able to properly evaluate the
35 application, the department may issue an approval conditional upon
36 further review within sixty days(~~(:~~—PROVIDED, FURTHER, That the
37 department shall have until April 1, 1975, to approve or disapprove an
38 application involving forest practices allowed to continue to April 1,

1 ~~1975, under the provisions of subsection (2) of this section)).~~ Upon
2 receipt of any notification or any satisfactorily completed application
3 the department shall in any event no later than two business days after
4 such receipt transmit a copy to the departments of ecology and fish and
5 wildlife, and to the county, city, or town in whose jurisdiction the
6 forest practice is to be commenced. Any comments by such agencies
7 shall be directed to the department of natural resources.

8 (6) For those forest practices regulated by the board and the
9 department, if the county, city, or town believes that an application
10 is inconsistent with this chapter, the forest practices regulations, or
11 any local authority consistent with RCW 76.09.240 as now or hereafter
12 amended, it may so notify the department and the applicant, specifying
13 its objections.

14 (7) For those forest practices regulated by the board and the
15 department, the department shall not approve portions of applications
16 to which a county, city, or town objects if:

17 (a) The department receives written notice from the county, city,
18 or town of such objections within fourteen business days from the time
19 of transmittal of the application to the county, city, or town, or one
20 day before the department acts on the application, whichever is later;
21 and

22 (b) The objections relate to forest lands that are being converted
23 to another use.

24 The department shall either disapprove those portions of such
25 application or appeal the county, city, or town objections to the
26 appeals board. If the objections related to (b) of this subsection are
27 based on local authority consistent with RCW 76.09.240 as now or
28 hereafter amended, the department shall disapprove the application
29 until such time as the county, city, or town consents to its approval
30 or such disapproval is reversed on appeal. The applicant shall be a
31 party to all department appeals of county, city, or town objections.
32 Unless the county, city, or town either consents or has waived its
33 rights under this subsection, the department shall not approve portions
34 of an application affecting such lands until the minimum time for
35 county, city, or town objections has expired.

36 (8) For those forest practices regulated by the board and the
37 department, in addition to any rights under the above paragraph, the
38 county, city, or town may appeal any department approval of an

1 application with respect to any lands within its jurisdiction. The
2 appeals board may suspend the department's approval in whole or in part
3 pending such appeal where there exists potential for immediate and
4 material damage to a public resource.

5 (9) For those forest practices regulated by the board and the
6 department, appeals under this section shall be made to the appeals
7 board in the manner and time provided in RCW 76.09.205. In such
8 appeals there shall be no presumption of correctness of either the
9 county, city, or town or the department position.

10 (10) For those forest practices regulated by the board and the
11 department, the department shall, within four business days notify the
12 county, city, or town of all notifications, approvals, and disapprovals
13 of an application affecting lands within the county, city, or town,
14 except to the extent the county, city, or town has waived its right to
15 such notice.

16 (11) For those forest practices regulated by the board and the
17 department, a county, city, or town may waive in whole or in part its
18 rights under this section, and may withdraw or modify any such waiver,
19 at any time by written notice to the department.

20 (12) Notwithstanding subsections (2) through (5) of this section,
21 forest practices applications or notifications are not required for
22 exotic insect and disease control operations conducted in accordance
23 with RCW 76.09.060(8) where eradication can reasonably be expected.

24 **Sec. 206.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
25 each reenacted and amended to read as follows:

26 (1) The department shall prescribe the form and contents of the
27 notification and application. The forest practices rules shall specify
28 by whom and under what conditions the notification and application
29 shall be signed or otherwise certified as acceptable. Activities
30 conducted by the department or a contractor under the direction of the
31 department under the provisions of RCW 76.04.660, shall be exempt from
32 the landowner signature requirement on any forest practices application
33 required to be filed. The application or notification shall be
34 delivered in person to the department, sent by first-class mail to the
35 department or electronically filed in a form defined by the department.
36 The form for electronic filing shall be readily convertible to a paper

1 copy, which shall be available to the public pursuant to chapter 42.56
2 RCW. The information required may include, but is not limited to:

3 (a) Name and address of the forest landowner, timber owner, and
4 operator;

5 (b) Description of the proposed forest practice or practices to be
6 conducted;

7 (c) Legal description and tax parcel identification numbers of the
8 land on which the forest practices are to be conducted;

9 (d) Planimetric and topographic maps showing location and size of
10 all lakes and streams and other public waters in and immediately
11 adjacent to the operating area and showing all existing and proposed
12 roads and major tractor roads;

13 (e) Description of the silvicultural, harvesting, or other forest
14 practice methods to be used, including the type of equipment to be used
15 and materials to be applied;

16 (f) For an application submitted on or after the effective date of
17 section 202 of this act that includes a forest practices hydraulic
18 project, plans and specifications for the forest practices hydraulic
19 project to ensure the proper protection of fish life;

20 (g) Proposed plan for reforestation and for any revegetation
21 necessary to reduce erosion potential from roadsides and yarding roads,
22 as required by the forest practices rules;

23 (~~(g)~~) (h) Soil, geological, and hydrological data with respect to
24 forest practices;

25 (~~(h)~~) (i) The expected dates of commencement and completion of
26 all forest practices specified in the application;

27 (~~(i)~~) (j) Provisions for continuing maintenance of roads and
28 other construction or other measures necessary to afford protection to
29 public resources;

30 (~~(j)~~) (k) An affirmation that the statements contained in the
31 notification or application are true; and

32 (~~(k)~~) (l) All necessary application or notification fees.

33 (2) Long range plans may be submitted to the department for review
34 and consultation.

35 (3) The application for a forest practice or the notification of a
36 forest practice is subject to the reforestation requirement of RCW
37 76.09.070.

1 (a) If the application states that any land will be or is intended
2 to be converted:

3 (i) The reforestation requirements of this chapter and of the
4 forest practices rules shall not apply if the land is in fact converted
5 unless applicable alternatives or limitations are provided in forest
6 practices rules issued under RCW 76.09.070;

7 (ii) Completion of such forest practice operations shall be deemed
8 conversion of the lands to another use for purposes of chapters 84.33
9 and 84.34 RCW unless the conversion is to a use permitted under a
10 current use tax agreement permitted under chapter 84.34 RCW;

11 (iii) The forest practices described in the application are subject
12 to applicable county, city, town, and regional governmental authority
13 permitted under RCW 76.09.240 as well as the forest practices rules.

14 (b) Except as provided elsewhere in this section, if the landowner
15 harvests without an approved application or notification or the
16 landowner does not state that any land covered by the application or
17 notification will be or is intended to be converted, and the department
18 or the county, city, town, or regional governmental entity becomes
19 aware of conversion activities to a use other than commercial timber
20 operations, as that term is defined in RCW 76.09.020, then the
21 department shall send to the department of ecology and the appropriate
22 county, city, town, and regional governmental entities the following
23 documents:

24 (i) A notice of a conversion to nonforestry use;

25 (ii) A copy of the applicable forest practices application or
26 notification, if any; and

27 (iii) Copies of any applicable outstanding final orders or
28 decisions issued by the department related to the forest practices
29 application or notification.

30 (c) Failure to comply with the reforestation requirements contained
31 in any final order or decision shall constitute a removal of
32 designation under the provisions of RCW 84.33.140, and a change of use
33 under the provisions of RCW 84.34.080, and, if applicable, shall
34 subject such lands to the payments and/or penalties resulting from such
35 removals or changes.

36 (d) Conversion to a use other than commercial forest product
37 operations within six years after approval of the forest practices
38 application or notification without the consent of the county, city, or

1 town shall constitute a violation of each of the county, municipal
2 city, town, and regional authorities to which the forest practice
3 operations would have been subject if the application had stated an
4 intent to convert.

5 (e) Land that is the subject of a notice of conversion to a
6 nonforestry use produced by the department and sent to the department
7 of ecology and a local government under this subsection is subject to
8 the development prohibition and conditions provided in RCW 76.09.460.

9 (f) Landowners who have not stated an intent to convert the land
10 covered by an application or notification and who decide to convert the
11 land to a nonforestry use within six years of receiving an approved
12 application or notification must do so in a manner consistent with RCW
13 76.09.470.

14 (g) The application or notification must include a statement
15 requiring an acknowledgment by the forest landowner of his or her
16 intent with respect to conversion and acknowledging that he or she is
17 familiar with the effects of this subsection.

18 (4) Whenever an approved application authorizes a forest practice
19 which, because of soil condition, proximity to a water course or other
20 unusual factor, has a potential for causing material damage to a public
21 resource, as determined by the department, the applicant shall, when
22 requested on the approved application, notify the department two days
23 before the commencement of actual operations.

24 (5) Before the operator commences any forest practice in a manner
25 or to an extent significantly different from that described in a
26 previously approved application or notification, there shall be
27 submitted to the department a new application or notification form in
28 the manner set forth in this section.

29 (6)(a) Except as provided in RCW 76.09.350(4), the notification to
30 or the approval given by the department to an application to conduct a
31 forest practice shall be effective for a term of ~~((two))~~ three years
32 from the date of approval or notification ~~((and shall not be renewed
33 unless a new application is filed and approved or a new notification
34 has been filed))~~.

35 (b) A notification or application may be renewed for an additional
36 three-year term by the filing and approval of a notification or
37 application, as applicable, prior to the expiration of the original
38 application or notification. A renewal application or notification is

1 subject to the forest practices rules in effect at the time the renewal
2 application or notification is filed. Nothing in this section
3 precludes the applicant from applying for a new application or
4 notification after the renewal period has lapsed.

5 (c) At the option of the applicant, an application or notification
6 may be submitted to cover a single forest practice or a number of
7 forest practices within reasonable geographic or political boundaries
8 as specified by the department. An application or notification that
9 covers more than one forest practice may have an effective term of more
10 than ~~((two))~~ three years.

11 (d) The board shall adopt rules that establish standards and
12 procedures for approving an application or notification that has an
13 effective term of more than ~~((two))~~ three years. Such rules shall
14 include extended time periods for application or notification approval
15 or disapproval. ~~((On an approved application with a term of more than~~
16 ~~two years, the applicant shall inform the department before commencing~~
17 ~~operations))~~ The department may require the applicant to provide
18 advance notice before commencing operations on an approved application
19 or notification.

20 (7) Notwithstanding any other provision of this section, no prior
21 application or notification shall be required for any emergency forest
22 practice necessitated by fire, flood, windstorm, earthquake, or other
23 emergency as defined by the board, but the operator shall submit an
24 application or notification, whichever is applicable, to the department
25 within forty-eight hours after commencement of such practice or as
26 required by local regulations.

27 (8) Forest practices applications or notifications are not required
28 for forest practices conducted to control exotic forest insect or
29 disease outbreaks, when conducted by or under the direction of the
30 department of agriculture in carrying out an order of the governor or
31 director of the department of agriculture to implement pest control
32 measures as authorized under chapter 17.24 RCW, and are not required
33 when conducted by or under the direction of the department in carrying
34 out emergency measures under a forest health emergency declaration by
35 the commissioner of public lands as provided in RCW 76.06.130.

36 (a) For the purposes of this subsection, exotic forest insect or
37 disease has the same meaning as defined in RCW 76.06.020.

1 (b) In order to minimize adverse impacts to public resources,
2 control measures must be based on integrated pest management, as
3 defined in RCW 17.15.010, and must follow forest practices rules
4 relating to road construction and maintenance, timber harvest, and
5 forest chemicals, to the extent possible without compromising control
6 objectives.

7 (c) Agencies conducting or directing control efforts must provide
8 advance notice to the appropriate regulatory staff of the department of
9 the operations that would be subject to exemption from forest practices
10 application or notification requirements.

11 (d) When the appropriate regulatory staff of the department are
12 notified under (c) of this subsection, they must consult with the
13 landowner, interested agencies, and affected tribes, and assist the
14 notifying agencies in the development of integrated pest management
15 plans that comply with forest practices rules as required under (b) of
16 this subsection.

17 (e) Nothing under this subsection relieves agencies conducting or
18 directing control efforts from requirements of the federal clean water
19 act as administered by the department of ecology under RCW 90.48.260.

20 (f) Forest lands where trees have been cut as part of an exotic
21 forest insect or disease control effort under this subsection are
22 subject to reforestation requirements under RCW 76.09.070.

23 (g) The exemption from obtaining approved forest practices
24 applications or notifications does not apply to forest practices
25 conducted after the governor, the director of the department of
26 agriculture, or the commissioner of public lands have declared that an
27 emergency no longer exists because control objectives have been met,
28 that there is no longer an imminent threat, or that there is no longer
29 a good likelihood of control.

30 **Sec. 207.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read
31 as follows:

32 (1) The department shall make inspections of forest lands, before,
33 during, and after the conducting of forest practices as necessary for
34 the purpose of ensuring compliance with this chapter (~~and~~), the
35 forest practices rules, including forest practices rules incorporated
36 under RCW 76.09.040(3), and to ensure that no material damage occurs to

1 the natural resources of this state as a result of ((such)) forest
2 practices.

3 (2) Any duly authorized representative of the department shall have
4 the right to enter upon forest land at any reasonable time to enforce
5 the provisions of this chapter and the forest practices rules.

6 (3) The department or the department of ecology may apply for an
7 administrative inspection warrant to either Thurston county superior
8 court, or the superior court in the county in which the property is
9 located. An administrative inspection warrant may be issued where:

10 (a) The department has attempted an inspection of forest lands
11 under this chapter to ensure compliance with this chapter and the
12 forest practices rules or to ensure that no potential or actual
13 material damage occurs to the natural resources of this state, and
14 access to all or part of the forest lands has been actually or
15 constructively denied; or

16 (b) The department has reasonable cause to believe that a violation
17 of this chapter or of rules adopted under this chapter is occurring or
18 has occurred.

19 (4) In connection with any watershed analysis, any review of a
20 pending application by an identification team appointed by the
21 department, any compliance studies, any effectiveness monitoring, or
22 other research that has been agreed to by a landowner, the department
23 may invite representatives of other agencies, tribes, and interest
24 groups to accompany a department representative and, at the landowner's
25 election, the landowner, on any such inspections. Reasonable efforts
26 shall be made by the department to notify the landowner of the persons
27 being invited onto the property and the purposes for which they are
28 being invited.

29 NEW SECTION. **Sec. 208.** A new section is added to chapter 43.30
30 RCW to read as follows:

31 (1) By December 31, 2013, the department must make examples of
32 complete, high quality forest practices applications and the resulting
33 approvals readily available to the public on its internet site, as well
34 as the internet site of the office of regulatory assistance established
35 in RCW 43.42.010. The department must maximize assistance to the
36 public and interested parties by seeking to make readily available

1 examples from forest practices that generate significant permitting
2 activity or frequent questions.

3 (2) The department must regularly review and update the examples
4 required to be made available on the internet under subsection (1) of
5 this section.

6 (3) The department must obtain the written permission of an
7 applicant before making publicly available that applicant's application
8 or approval under this section and must work cooperatively with the
9 applicant to ensure that no personal or proprietary information is made
10 available.

11 **Sec. 209.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read
12 as follows:

13 (1) (~~Effective July 1, 1997,~~) An applicant shall pay an
14 application fee (~~and a recording fee~~), if applicable, at the time an
15 application or notification is submitted to the department or to the
16 local governmental entity as provided in this chapter.

17 (2) (~~For applications and notifications submitted to the~~
18 ~~department, the application fee~~) (a) If sections 201 through 203 and
19 206 of this act are not enacted into law by June 30, 2012, then the fee
20 for applications and notifications submitted to the department shall be
21 fifty dollars for class II, III, and IV forest practices applications
22 or notifications relating to the commercial harvest of timber.
23 However, the fee shall be five hundred dollars for class IV forest
24 practices applications on lands being converted to other uses or on
25 lands which are not to be reforested because of the likelihood of
26 future conversion to urban development or on lands that are contained
27 within "urban growth areas," designated pursuant to chapter 36.70A RCW,
28 except the fee shall be fifty dollars on those lands where the forest
29 landowner provides:

30 (~~(a)~~) (i) A written statement of intent signed by the forest
31 landowner not to convert to a use other than commercial forest product
32 operations for ten years, accompanied by either a written forest
33 management plan acceptable to the department or documentation that the
34 land is enrolled under the provisions of chapter 84.33 RCW; or

35 (~~(b)~~) (ii) A conversion option harvest plan approved by the local
36 governmental entity and submitted to the department as part of the
37 forest practices application.

1 (b)(i) If sections 201 through 203 and 206 of this act are enacted
2 into law by June 30, 2012, then the fee for applications and
3 notifications submitted to the department shall be one hundred fifty
4 dollars for class II applications and notifications, class III
5 applications, and class IV forest practices that have a potential for
6 a substantial impact on the environment and therefore require an
7 evaluation by the department as to whether or not a detailed statement
8 must be prepared pursuant to the state environmental policy act,
9 chapter 43.21C RCW. The fee shall be one thousand five hundred dollars
10 for class IV forest practices applications on lands being converted to
11 other uses or on lands that are not to be reforested because of the
12 likelihood of future conversion to urban development or on lands that
13 are contained within urban growth areas, designated pursuant to chapter
14 36.70A RCW, except the fee shall be the same as for a class III forest
15 practices application where the forest landowner provides:

16 (A) A written statement of intent signed by the forest landowner
17 not to convert to a use other than commercial forest product operations
18 for ten years, accompanied by either a written forest management plan
19 acceptable to the department or documentation that the land is enrolled
20 under the provisions of chapter 84.33 RCW; or

21 (B) A conversion option harvest plan approved by the local
22 governmental entity and submitted to the department as part of the
23 forest practices application.

24 (ii) If the board has not incorporated fish protection standards
25 adopted under chapter 77.55 RCW into the forest practices rules and
26 approved technical guidance as required under RCW 76.09.040 by July 1,
27 2013, the fee for applications and notifications submitted to the
28 department shall be as provided under (a) of this subsection until the
29 rules are adopted and technical guidance approved.

30 (3) The forest practices application account is created in the
31 state treasury. Moneys in the account may be spent only after
32 appropriation. All money collected from fees under ((this)) subsection
33 (2) of this section shall be deposited in the ((state general fund))
34 forest practices application account for the purposes of implementing
35 this chapter, chapter 76.13 RCW, and Title 222 WAC.

36 ((+3)) (4) For applications submitted to ((the)) a local
37 governmental entity as provided in this chapter, the fee shall be
38 ((five hundred dollars for class IV forest practices on lands being

1 converted to other uses or lands that are contained within "urban
2 growth areas," designated pursuant to chapter 36.70A RCW, except as
3 otherwise provided in this section, unless a different fee is otherwise
4 provided)) determined, collected, and retained by the local
5 governmental entity.

6 ((4) Recording fees shall be as provided in chapter 36.18 RCW.

7 (5) An application fee under subsection (2) of this section shall
8 be refunded or credited to the applicant if either the application or
9 notification is disapproved by the department or the application or
10 notification is withdrawn by the applicant due to restrictions imposed
11 by the department.))

12 **Sec. 210.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to
13 read as follows:

14 (1) If a landowner who did not state an intent to convert his or
15 her land to a nonforestry use decides to convert his or her land to a
16 nonforestry use within six years of receiving an approved forest
17 practices application or notification under this chapter, the landowner
18 must:

19 (a) Stop all forest practices activities on the parcels subject to
20 the proposed land use conversion to a nonforestry use;

21 (b) Contact the department of ecology and the applicable county,
22 city, town, or regional governmental entity to begin the permitting
23 process; and

24 (c) Notify the department ~~((and))~~, withdraw any applicable
25 applications or notifications ((or request)), and submit a new
26 application for the conversion. The fee for a new application for
27 conversion under this subsection (1)(c) is the difference between the
28 applicable fee for the new application under RCW 76.09.065 and the fee
29 previously paid for the original application or notification, which
30 must be deposited in the forest practices application account created
31 in RCW 76.09.065.

32 (2) Upon being contacted by a landowner under this section, the
33 county, city, town, or regional governmental entity must:

34 (a) Notify the department and request from the department the
35 status of any applicable forest practices applications, notifications,
36 or final orders or decisions; and

37 (b) Complete the following activities:

- 1 (i) Require that the landowner be in full compliance with chapter
2 43.21C RCW, if applicable;
- 3 (ii) Receive notification from the department that the landowner
4 has resolved any outstanding final orders or decisions issued by the
5 department; and
- 6 (iii) Make a determination as to whether or not the condition of
7 the land in question is in full compliance with local ordinances and
8 regulations. If full compliance is not found, a mitigation plan to
9 address violations of local ordinances or regulations must be required
10 for the parcel in question by the county, city, town, or regional
11 governmental entity. Required mitigation plans must be prepared by the
12 landowner and approved by the county, city, town, or regional
13 governmental entity. Once approved, the mitigation plan must be
14 implemented by the landowner. Mitigation measures that may be required
15 include, but are not limited to, revegetation requirements to plant and
16 maintain trees of sufficient maturity and appropriate species
17 composition to restore critical area and buffer function or to be in
18 compliance with applicable local government regulations.

19 **Sec. 211.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read
20 as follows:

21 (1) There is hereby created the forest practices board of the state
22 of Washington as an agency of state government consisting of members as
23 follows:

24 (a) The commissioner of public lands or the commissioner's
25 designee;

26 (b) The director of the department of (~~community, trade, and~~
27 ~~economic development~~) commerce or the director's designee;

28 (c) The director of the department of agriculture or the director's
29 designee;

30 (d) The director of the department of ecology or the director's
31 designee;

32 (e) The director of the department of fish and wildlife or the
33 director's designee;

34 (f) An elected member of a county legislative authority appointed
35 by the governor(~~(:~~ ~~PROVIDED, That such~~)). However, the county
36 member's service on the board shall be conditioned on the member's
37 continued service as an elected county official;

1 (g) One member representing a timber products union, appointed by
2 the governor from a list of three names submitted by a timber labor
3 coalition affiliated with a statewide labor organization that
4 represents a majority of the timber product unions in the state; and

5 (h) Six members of the general public appointed by the governor,
6 one of whom shall be a small forest landowner who actively manages his
7 or her land, and one of whom shall be an independent logging
8 contractor.

9 ~~(2) ((The director of the department of fish and wildlife's service
10 on the board may be terminated two years after August 18, 1999, if the
11 legislature finds that after two years the department has not made
12 substantial progress toward integrating the laws, rules, and programs
13 governing forest practices, chapter 76.09 RCW, and the laws, rules, and
14 programs governing hydraulic projects, chapter 77.55 RCW. Such a
15 finding shall be based solely on whether the department of fish and
16 wildlife makes substantial progress as defined in this subsection, and
17 will not be based on other actions taken as a member of the board.
18 Substantial progress shall include recommendations to the legislature
19 for closer integration of the existing rule-making authorities of the
20 board and the department of fish and wildlife, and closer integration
21 of the forest practices and hydraulics permitting processes, including
22 exploring the potential for a consolidated permitting process. These
23 recommendations shall be designed to resolve problems currently
24 associated with the existing dual regulatory and permitting processes.~~

25 ~~(3))~~ The members of the initial board appointed by the governor
26 shall be appointed so that the term of one member shall expire December
27 31, 1975, the term of one member shall expire December 31, 1976, the
28 term of one member shall expire December 31, 1977, the terms of two
29 members shall expire December 31, 1978, and the terms of two members
30 shall expire December 31, 1979. Thereafter, each member shall be
31 appointed for a term of four years. Vacancies on the board shall be
32 filled in the same manner as the original appointments. Each member of
33 the board shall continue in office until his or her successor is
34 appointed and qualified. The commissioner of public lands or the
35 commissioner's designee shall be the chair of the board.

36 ~~((4))~~ (3) The board shall meet at such times and places as shall
37 be designated by the chair or upon the written request of the majority

1 of the board. The principal office of the board shall be at the state
2 capital.

3 ((+5)) (4) Members of the board, except public employees and
4 elected officials, shall be compensated in accordance with RCW
5 43.03.250. Each member shall be entitled to reimbursement for travel
6 expenses incurred in the performance of their duties as provided in RCW
7 43.03.050 and 43.03.060.

8 ((+6)) (5) The board may employ such clerical help and staff
9 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

10 **Sec. 212.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are
11 each reenacted and amended to read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Adaptive management" means reliance on scientific methods to
15 test the results of actions taken so that the management and related
16 policy can be changed promptly and appropriately.

17 (2) "Appeals board" means the pollution control hearings board
18 created by RCW 43.21B.010.

19 (3) "Application" means the application required pursuant to RCW
20 76.09.050.

21 (4) "Aquatic resources" includes water quality, salmon, other
22 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
23 identified in the forests and fish report, the Columbia torrent
24 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
25 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
26 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
27 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
28 their respective habitats.

29 (5) "Board" means the forest practices board created in RCW
30 76.09.030.

31 (6) "Commissioner" means the commissioner of public lands.

32 (7) "Contiguous" means land adjoining or touching by common corner
33 or otherwise. Land having common ownership divided by a road or other
34 right-of-way shall be considered contiguous.

35 (8) "Conversion to a use other than commercial timber operation"
36 means a bona fide conversion to an active use which is incompatible
37 with timber growing and as may be defined by forest practices rules.

1 (9) "Date of receipt" has the same meaning as defined in RCW
2 43.21B.001.

3 (10) "Department" means the department of natural resources.

4 (11) "Ecosystem services" means the benefits that the public enjoys
5 as a result of natural processes and biological diversity.

6 (12) "Ecosystem services market" means a system in which providers
7 of ecosystem services can access financing or market capital to
8 protect, restore, and maintain ecological values, including the full
9 spectrum of regulatory, quasiregulatory, and voluntary markets.

10 (13) "Fish passage barrier" means any artificial instream structure
11 that impedes the free passage of fish.

12 (14) "Forest land" means all land which is capable of supporting a
13 merchantable stand of timber and is not being actively used for a use
14 which is incompatible with timber growing. Forest land does not
15 include agricultural land that is or was enrolled in the conservation
16 reserve enhancement program by contract if such agricultural land was
17 historically used for agricultural purposes and the landowner intends
18 to continue to use the land for agricultural purposes in the future.
19 As it applies to the operation of the road maintenance and abandonment
20 plan element of the forest practices rules on small forest landowners,
21 the term "forest land" excludes:

22 (a) Residential home sites, which may include up to five acres; and

23 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
24 and the land on which appurtenances necessary to the production,
25 preparation, or sale of crops, fruit, dairy products, fish, and
26 livestock exist.

27 (15) "Forest landowner" means any person in actual control of
28 forest land, whether such control is based either on legal or equitable
29 title, or on any other interest entitling the holder to sell or
30 otherwise dispose of any or all of the timber on such land in any
31 manner. However, any lessee or other person in possession of forest
32 land without legal or equitable title to such land shall be excluded
33 from the definition of "forest landowner" unless such lessee or other
34 person has the right to sell or otherwise dispose of any or all of the
35 timber located on such forest land.

36 (16) "Forest practice" means any activity conducted on or directly
37 pertaining to forest land and relating to growing, harvesting, or
38 processing timber, including but not limited to:

1 (a) Road and trail construction, including forest practices
2 hydraulic projects that include water crossing structures, and
3 associated activities and maintenance;

4 (b) Harvesting, final and intermediate;

5 (c) Precommercial thinning;

6 (d) Reforestation;

7 (e) Fertilization;

8 (f) Prevention and suppression of diseases and insects;

9 (g) Salvage of trees; and

10 (h) Brush control.

11 "Forest practice" shall not include preparatory work such as tree
12 marking, surveying and road flagging, and removal or harvesting of
13 incidental vegetation from forest lands such as berries, ferns,
14 greenery, mistletoe, herbs, mushrooms, and other products which cannot
15 normally be expected to result in damage to forest soils, timber, or
16 public resources.

17 (17) "Forest practices rules" means any rules adopted pursuant to
18 RCW 76.09.040.

19 (18) "Forest road," as it applies to the operation of the road
20 maintenance and abandonment plan element of the forest practices rules
21 on small forest landowners, means a road or road segment that crosses
22 land that meets the definition of forest land, but excludes residential
23 access roads.

24 (19) "Forest trees" does not include hardwood trees cultivated by
25 agricultural methods in growing cycles shorter than fifteen years if
26 the trees were planted on land that was not in forest use immediately
27 before the trees were planted and before the land was prepared for
28 planting the trees. "Forest trees" includes Christmas trees, but does
29 not include Christmas trees that are cultivated by agricultural
30 methods, as that term is defined in RCW 84.33.035.

31 (20) "Forests and fish report" means the forests and fish report to
32 the board dated April 29, 1999.

33 (21) "Operator" means any person engaging in forest practices
34 except an employee with wages as his or her sole compensation.

35 (22) "Person" means any individual, partnership, private, public,
36 or municipal corporation, county, the department or other state or
37 local governmental entity, or association of individuals of whatever
38 nature.

1 (23) "Public resources" means water, fish and wildlife, and in
2 addition shall mean capital improvements of the state or its political
3 subdivisions.

4 (24) "Small forest landowner" has the same meaning as defined in
5 RCW 76.09.450.

6 (25) "Timber" means forest trees, standing or down, of a commercial
7 species, including Christmas trees. However, "timber" does not include
8 Christmas trees that are cultivated by agricultural methods, as that
9 term is defined in RCW 84.33.035.

10 (26) "Timber owner" means any person having all or any part of the
11 legal interest in timber. Where such timber is subject to a contract
12 of sale, "timber owner" shall mean the contract purchaser.

13 (27) "Unconfined channel migration zone" means the area within
14 which the active channel of an unconfined stream is prone to move and
15 where the movement would result in a potential near-term loss of
16 riparian forest adjacent to the stream. Sizeable islands with
17 productive timber may exist within the zone.

18 (28) "Unconfined stream" means generally fifth order or larger
19 waters that experience abrupt shifts in channel location, creating a
20 complex floodplain characterized by extensive gravel bars, disturbance
21 species of vegetation of variable age, numerous side channels, wall-
22 based channels, oxbow lakes, and wetland complexes. Many of these
23 streams have dikes and levees that may temporarily or permanently
24 restrict channel movement.

25 (29) "Forest practices hydraulic project" means a hydraulic
26 project, as defined under RCW 77.55.011, that requires a forest
27 practices application under this chapter.

28 (30) "Fill" means the placement of earth material or aggregate for
29 road or landing construction or other similar activities.

30 NEW SECTION. Sec. 213. A new section is added to chapter 43.21C
31 RCW to read as follows:

32 The incorporation of fish protection standards adopted under
33 chapter 77.55 RCW into the forest practices rules as required under RCW
34 76.09.040(3) is exempt from compliance with this chapter.

35 NEW SECTION. Sec. 214. (1) The departments of natural resources
36 and fish and wildlife must jointly provide a report to the appropriate

1 committees of the legislature containing findings and any
2 recommendations relating to the regulatory integration of hydraulic
3 projects and forest practices as provided in this act, including:

4 (a) Progress made in implementing the integration required under
5 this act, including rule incorporation and development of forest
6 practices board manual guidance;

7 (b) An update on and potential for permitting efficiencies in
8 addition to the integration required under this act;

9 (c) The process for and outcomes from review of forest practices
10 applications that include forest practices hydraulic projects by the
11 department of fish and wildlife; and

12 (d) Compliance monitoring for forest practices hydraulic projects
13 through the review processes provided under WAC 222-08-160 as it
14 existed on the effective date of this section.

15 (2) The departments of natural resources and fish and wildlife must
16 provide an initial report by September 1, 2014, and a second report by
17 September 1, 2016.

18 (3) This section expires December 31, 2016.

19 NEW SECTION. **Sec. 215.** Sections 202 and 205 of this act take
20 effect on the date the forest practices board incorporates fish
21 protection standards adopted under chapter 77.55 RCW into the forest
22 practices rules and approves technical guidance as required under RCW
23 76.09.040. The department of natural resources must provide written
24 notice of the effective date of these sections to affected parties, the
25 chief clerk of the house of representatives, the secretary of the
26 senate, the office of the code reviser, and others as deemed
27 appropriate by the department of natural resources.

28 NEW SECTION. **Sec. 216.** Nothing in this act affects any rules,
29 processes, or procedures of the department of fish and wildlife and the
30 department of natural resources existing on the effective date of this
31 section that provide for regulatory integration of hydraulic projects
32 and forest practices for projects in nonfish-bearing waters.

33 NEW SECTION. **Sec. 217.** Nothing in this act authorizes the
34 department of fish and wildlife to assume authority over approval,

1 disapproval, conditioning, or enforcement of applications submitted
2 under chapter 76.09 RCW.

3 NEW SECTION. **Sec. 218.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 **PART THREE**

8 **State Environmental Policy Act and Local Development Regulations**

9 NEW SECTION. **Sec. 301.** (1) The legislature recognizes that the
10 rule-based categorical exemption thresholds to chapter 43.21C RCW,
11 found in WAC 197-11-800, have not been updated in recent years, and
12 should be reviewed in light of the increased environmental protections
13 in place under chapters 36.70A and 90.58 RCW, and other laws. It is
14 the intent of the legislature to direct the department of ecology to
15 conduct two phases of rule making over the next two years to increase
16 the thresholds for these categorical exemptions.

17 (2) By December 31, 2012, the department of ecology shall update
18 the rule-based categorical exemptions to chapter 43.21C RCW found in
19 WAC 197-11-800 and update the environmental checklist found in WAC 197-
20 11-960. In updating the categorical exemptions, the department of
21 ecology must:

22 (a) At a minimum, increase the existing maximum threshold levels
23 for the following project types:

24 (i) The construction or location of single-family residential
25 developments;

26 (ii) The construction or location of multifamily residential
27 developments;

28 (iii) The construction of an agricultural structure, other than a
29 feed lot, that is similar to the following: A barn, a loafing shed, a
30 farm equipment storage building, or a produce storing or packing
31 structure;

32 (iv) The construction of the following, including any associated
33 parking areas or facilities: An office, a school, a commercial
34 building, a recreational building, a service building, or a storage
35 building;

1 (v) Landfilling or excavation activities; and
2 (vi) The installation of an electric facility, lines, equipment, or
3 appurtenances, other than substations.

4 (b) Establish maximum exemption levels for action types that differ
5 based on whether the project is proposed to occur in:

- 6 (i) An incorporated city;
7 (ii) An unincorporated area within an urban growth area;
8 (iii) An unincorporated area outside of an urban growth area but
9 within a county planning under chapter 36.70A RCW; or
10 (iv) An unincorporated area within a county not planning under
11 chapter 36.70A RCW.

12 (c) In updating the environmental checklist found in WAC 197-11-
13 960, the department of ecology shall:

14 (i) Reduce duplication in the checklist that has occurred due to
15 subsequent amendments to chapter 43.21C RCW and chapter 197-11 WAC that
16 have occurred since the checklist was last updated; and

17 (ii) Not include any new subjects into the scope of the checklist.

18 (d) Until the completion of the rule making required under this
19 section, any actions located within a city or a city's urban growth
20 area may apply the highest categorical exemption levels authorized
21 under WAC 197-11-800, regardless if the city or county with
22 jurisdiction has exercised its authority to raise the exemption levels
23 above the established minimums, unless the city or county with
24 jurisdiction passes an ordinance or resolution that lowers the
25 exemption levels to a level below the allowed maximum but not less than
26 the default minimum levels detailed in WAC 197-11-800.

27 (3) By December 31, 2013, the department of ecology shall update
28 the thresholds for all other project actions not specified in
29 subsection (2) of this section. During this process, the department of
30 ecology may also review and update the thresholds resulting from the
31 2012 rule-making process outlined in subsection (2) of this section.

32 (4) For both rule-making processes under subsections (2) and (3) of
33 this section, the department of ecology shall:

34 (a) Convene an advisory committee consisting of members
35 representing, at minimum, cities, counties, business interests,
36 environmental interests, agricultural interests, cultural resources
37 interests, state agencies, and tribal governments to assist in updating

1 the environmental checklist and updating the thresholds for other
2 project actions; and

3 (b) Consider opportunities to ensure that state agencies and other
4 interested parties can continue to receive notice about projects of
5 interest through a means other than through notice under chapter 43.21C
6 RCW.

7 (5) This section expires July 31, 2013.

8 **Sec. 302.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to
9 read as follows:

10 (1) An environmental impact statement (the detailed statement
11 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
12 legislation and other major actions having a probable significant,
13 adverse environmental impact. The environmental impact statement may
14 be combined with the recommendation or report on the proposal or issued
15 as a separate document. The substantive decisions or recommendations
16 shall be clearly identifiable in the combined document. Actions
17 categorically exempt under RCW 43.21C.110(1)(a) do not require
18 environmental review or the preparation of an environmental impact
19 statement under this chapter. (~~In a county, city, or town planning
20 under RCW 36.70A.040, a planned action, as provided for in subsection
21 (2) of this section, does not require a threshold determination or the
22 preparation of an environmental impact statement under this chapter,
23 but is subject to environmental review and mitigation as provided in
24 this chapter.~~)

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

1 ~~((2)(a) For purposes of this section, a planned action means one~~
2 ~~or more types of project action that:~~

3 ~~(i) Are designated planned actions by an ordinance or resolution~~
4 ~~adopted by a county, city, or town planning under RCW 36.70A.040;~~

5 ~~(ii) Have had the significant impacts adequately addressed in an~~
6 ~~environmental impact statement prepared in conjunction with (A) a~~
7 ~~comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or~~
8 ~~(B) a fully contained community, a master planned resort, a master~~
9 ~~planned development, or a phased project;~~

10 ~~(iii) Are subsequent or implementing projects for the proposals~~
11 ~~listed in (a)(ii) of this subsection;~~

12 ~~(iv) Are located within an urban growth area, as defined in RCW~~
13 ~~36.70A.030;~~

14 ~~(v) Are not essential public facilities, as defined in RCW~~
15 ~~36.70A.200; and~~

16 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~
17 ~~36.70A RCW.~~

18 ~~(b) A county, city, or town shall limit planned actions to certain~~
19 ~~types of development or to specific geographical areas that are less~~
20 ~~extensive than the jurisdictional boundaries of the county, city, or~~
21 ~~town and may limit a planned action to a time period identified in the~~
22 ~~environmental impact statement or the ordinance or resolution adopted~~
23 ~~under this subsection.))~~

24 **Sec. 303.** RCW 43.21C.087 and 1974 ex.s. c 179 s 14 are each
25 amended to read as follows:

26 (1) The department of ecology shall prepare a list of all filings
27 required by RCW 43.21C.080 each week and shall make such list available
28 to any interested party. The list of filings shall include a brief
29 description of the governmental action and the project involved in such
30 action, along with the location of where information on the project or
31 action may be obtained. Failure of the department to include any
32 project or action shall not affect the running of the statute of
33 limitations provided in RCW 43.21C.080.

34 (2) The department of ecology shall accept electronic submittal of
35 all required filings from lead agencies under this section.

1 NEW SECTION. **Sec. 304.** A new section is added to chapter 43.21C
2 RCW to read as follows:

3 (1) For purposes of this chapter, a planned action means one or
4 more types of development or redevelopment that meet the following
5 criteria:

6 (a) Are designated as planned actions by an ordinance or resolution
7 adopted by a county, city, or town planning under RCW 36.70A.040;

8 (b) Have had the significant impacts adequately addressed in an
9 environmental impact statement under the requirements of this chapter
10 in conjunction with, or to implement, a comprehensive plan or subarea
11 plan adopted under chapter 36.70A RCW, or a fully contained community,
12 a master planned resort, a master planned development, or a phased
13 project;

14 (c) Are subsequent or implementing projects for the proposals
15 listed in (b) of this subsection;

16 (d) Are located within an urban growth area designated pursuant to
17 RCW 36.70A.110;

18 (e) Are not essential public facilities, as defined in RCW
19 36.70A.200, unless an essential public facility is accessory to or part
20 of a residential, office, school, commercial, recreational, service, or
21 industrial development that is designated a planned action under this
22 subsection; and

23 (f) Are consistent with a comprehensive plan or subarea plan
24 adopted under chapter 36.70A RCW.

25 (2) A county, city, or town shall define the types of development
26 included in the planned action or a specific geographical area that is
27 less extensive than the jurisdictional boundaries of the county, city,
28 or town, and may limit a planned action to a time period identified in
29 the ordinance or resolution adopted under this subsection.

30 (3)(a) A county, city, or town shall determine during permit review
31 whether a proposal is consistent with a planned action ordinance
32 adopted by the jurisdiction. To determine project consistency with a
33 planned action ordinance, a county, city, or town may utilize a
34 modified checklist pursuant to the rules adopted to implement RCW
35 43.21C.110, a form that is designated within the planned action
36 ordinance, or a form contained in agency rules adopted pursuant to RCW
37 43.21C.120.

1 (b) Except for impacts that are specifically deferred for
2 consideration at the project level, a county, city, or town is not
3 required to make a threshold determination and may not require
4 additional environmental review for a proposal that is determined to be
5 consistent with the development or redevelopment described in the
6 planned action ordinance. The determination of consistency, and the
7 adequacy of any environmental review that was specifically deferred, is
8 subject to any administrative appeal that the county, city, or town
9 provides consistent with RCW 36.70B.060.

10 **Sec. 305.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to
11 read as follows:

12 (1) In order to accommodate infill development and thereby realize
13 the goals and policies of comprehensive plans adopted according to
14 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is
15 authorized by this section to establish categorical exemptions from the
16 requirements of this chapter. An exemption adopted under this section
17 applies even if it differs from the categorical exemptions adopted by
18 rule of the department under RCW 43.21C.110(1)(a) and section 301 of
19 this act. An exemption may be adopted by a city or county under this
20 section if it meets the following criteria:

21 (a) It categorically exempts government action related to
22 development (~~((that is new residential or mixed use development))~~)
23 proposed to fill in an urban growth area, designated according to RCW
24 36.70A.110, where current density and intensity of use in the area is
25 lower than called for in the goals and policies of the applicable
26 comprehensive plan and the development is either new:

27 (i) Residential development; or

28 (ii) Mixed-use development;

29 (b) It does not exempt government action related to development
30 that would be for a use or would exceed the density or intensity of use
31 called for in the goals and policies of the applicable comprehensive
32 plan; and

33 (c)(i) The city or county's applicable comprehensive plan was
34 previously subjected to environmental analysis through an environmental
35 impact statement under the requirements of this chapter prior to
36 adoption; or

1 (ii) The city has prepared an environmental impact statement for
2 the area where the exemption created by this section applies if the
3 underlying environmental impact statement considered the proposed use
4 or intensity of use.

5 (2) Any categorical exemption adopted by a city or county under
6 this section shall be subject to the rules of the department adopted
7 according to RCW 43.21C.110(1)(a) and section 301 of this act that
8 provide exceptions to the use of categorical exemptions adopted by the
9 department.

10 NEW SECTION. Sec. 306. A new section is added to chapter 43.21C
11 RCW to read as follows:

12 (1) This chapter does not apply to projects designed exclusively to
13 restore natural wildlife or fishery habitats or projects that serve as
14 environmental mitigation for other projects, except for:

15 (a) Projects that are stand-alone commercial wetland mitigation
16 banks located on more than five acres;

17 (b) Projects that are fish hatcheries; and

18 (c) Projects that are located on, or that would affect lands
19 designated as, agricultural lands of long-term commercial significance
20 pursuant to chapter 36.70A RCW.

21 (2) The lead agency permitting a project that qualifies for an
22 exemption under this section must still consult with the department of
23 archaeology and historic preservation to evaluate any potential impacts
24 to historic or archaeological sites.

25 NEW SECTION. Sec. 307. A new section is added to chapter 43.21C
26 RCW to read as follows:

27 (1) The legislature recognizes that a county, city, or town that
28 prepares a nonproject environmental review under RCW 43.21C.030(2),
29 including reviews necessary for compliance with RCW 43.21C.420, must
30 endure a substantial financial burden.

31 (2) A county, city, or town may recover reasonable expenses
32 incurred by the preparation of a nonproject environmental impact
33 statement prepared under RCW 43.21C.030(2):

34 (a) Through access to financial assistance under RCW 36.70A.490;

35 (b) With funding from private sources; and

1 (c) By the assessment of a reasonable and proportionate fee upon
2 subsequent development that is consistent with the plan and development
3 regulations adopted under RCW 43.21C.030(2), as long as the development
4 makes use of and benefits from, as described in RCW 43.21C.030(2), the
5 nonproject environmental review prepared by the county, city, or town.

6 (3) In order to collect fees under this section, the county, city,
7 or town must enact an ordinance that sets forth objective standards for
8 determining how the fees to be imposed upon each development will be
9 proportionate to the impacts of each development and to the benefits
10 accruing to each development from the nonproject environmental review.

11 (4) Any assessment of fees collected under this section from
12 subsequent development may be used to reimburse funding received from
13 private sources.

14 (5)(a) Any disagreement about the reasonableness or amount of the
15 fees imposed upon a development may not be the basis for delay in
16 issuance of a project permit for that development.

17 (b) The fee assessed by the county, city, or town may be paid with
18 the written stipulation "paid under protest" and, if the city provides
19 for an administrative appeal of its decision on the project for which
20 the fees are imposed, any dispute about the amount of the fees must be
21 resolved in the same administrative appeal process.

22 **Sec. 308.** RCW 43.21C.420 and 2010 c 153 s 2 are each amended to
23 read as follows:

24 (1) Cities with a population greater than five thousand, in
25 accordance with their existing comprehensive planning and development
26 regulation authority under chapter 36.70A RCW, and in accordance with
27 this section, may adopt optional elements of their comprehensive plans
28 and optional development regulations that apply within specified
29 subareas of the cities, that are either:

30 (a) Areas designated as mixed-use or urban centers in a land use or
31 transportation plan adopted by a regional transportation planning
32 organization; or

33 (b) Areas within one-half mile of a major transit stop that are
34 zoned to have an average minimum density of fifteen dwelling units or
35 more per gross acre.

36 (2) Cities located on the east side of the Cascade mountains and
37 located in a county with a population of two hundred thirty thousand or

1 less, in accordance with their existing comprehensive planning and
2 development regulation authority under chapter 36.70A RCW, and in
3 accordance with this section, may adopt optional elements of their
4 comprehensive plans and optional development regulations that apply
5 within the mixed-use or urban centers. The optional elements of their
6 comprehensive plans and optional development regulations must enhance
7 pedestrian, bicycle, transit, or other nonvehicular transportation
8 methods.

9 (3) A major transit stop is defined as:

10 (a) A stop on a high capacity transportation service funded or
11 expanded under the provisions of chapter 81.104 RCW;

12 (b) Commuter rail stops;

13 (c) Stops on rail or fixed guideway systems, including transitways;

14 (d) Stops on bus rapid transit routes or routes that run on high
15 occupancy vehicle lanes; or

16 (e) Stops for a bus or other transit mode providing fixed route
17 service at intervals of at least thirty minutes during the peak hours
18 of operation.

19 (4)(a) A city that elects to adopt such an optional comprehensive
20 plan element and optional development regulations shall prepare a
21 nonproject environmental impact statement, pursuant to RCW 43.21C.030,
22 assessing and disclosing the probable significant adverse environmental
23 impacts of the optional comprehensive plan element and development
24 regulations and of future development that is consistent with the plan
25 and regulations.

26 (b) At least one community meeting must be held on the proposed
27 subarea plan before the scoping notice for such a nonproject
28 environmental impact statement is issued. Notice of scoping for such
29 a nonproject environmental impact statement and notice of the community
30 meeting required by this section must be mailed to all property owners
31 of record within the subarea to be studied, to all property owners
32 within one hundred fifty feet of the boundaries of such a subarea, to
33 all affected federally recognized tribal governments whose ceded area
34 is within one-half mile of the boundaries of the subarea, and to
35 agencies with jurisdiction over the future development anticipated
36 within the subarea.

37 (c) In cities with over five hundred thousand residents, notice of
38 scoping for such a nonproject environmental impact statement and notice

1 of the community meeting required by this section must be mailed to all
2 small businesses as defined in RCW 19.85.020, and to all community
3 preservation and development authorities established under chapter
4 43.167 RCW, located within the subarea to be studied or within one
5 hundred fifty feet of the boundaries of such subarea. The process for
6 community involvement must have the goal of fair treatment and
7 meaningful involvement of all people with respect to the development
8 and implementation of the subarea planning process.

9 (d) The notice of the community meeting must include general
10 illustrations and descriptions of buildings generally representative of
11 the maximum building envelope that will be allowed under the proposed
12 plan and indicate that future appeals of proposed developments that are
13 consistent with the plan will be limited. Notice of the community
14 meeting must include signs located on major travel routes in the
15 subarea. If the building envelope increases during the process,
16 another notice complying with the requirements of this section must be
17 issued before the next public involvement opportunity.

18 (e) Any person that has standing to appeal the adoption of this
19 subarea plan or the implementing regulations under RCW 36.70A.280 has
20 standing to bring an appeal of the nonproject environmental impact
21 statement required by this subsection.

22 (f) Cities with over five hundred thousand residents shall prepare
23 a study that accompanies or is appended to the nonproject environmental
24 impact statement, but must not be part of that statement, that analyzes
25 the extent to which the proposed subarea plan may result in the
26 displacement or fragmentation of existing businesses, existing
27 residents, including people living with poverty, families with
28 children, and intergenerational households, or cultural groups within
29 the proposed subarea plan. The city shall also discuss the results of
30 the analysis at the community meeting.

31 (g) As an incentive for development authorized under this section,
32 a city shall consider establishing a transfer of development rights
33 program in consultation with the county where the city is located, that
34 conserves county-designated agricultural and forest land of long-term
35 commercial significance. If the city decides not to establish a
36 transfer of development rights program, the city must state in the
37 record the reasons for not adopting the program. The city's decision
38 not to establish a transfer of development rights program is not

1 subject to appeal. Nothing in this subsection (4)(g) may be used as a
2 basis to challenge the optional comprehensive plan or subarea plan
3 policies authorized under this section.

4 (5)(a) Until July 1, 2018, a proposed development that is
5 consistent with the optional comprehensive plan or subarea plan
6 policies and development regulations adopted under subsection (1) or
7 (2) of this section and that is environmentally reviewed under
8 subsection (4) of this section may not be challenged in administrative
9 or judicial appeals for noncompliance with this chapter as long as a
10 complete application for such a development that vests the application
11 or would later lead to vested status under city or state law is
12 submitted to the city within a time frame established by the city, but
13 not to exceed ten years from the date of issuance of the final
14 environmental impact statement.

15 (b) After July 1, 2018, the immunity from appeals under this
16 chapter of any application that vests or will vest under this
17 subsection or the ability to vest under this subsection is still valid,
18 provided that the final subarea environmental impact statement is
19 issued by July 1, 2018. (~~After July 1, 2018, a city may continue to~~
20 ~~collect reimbursement fees under subsection (6) of this section for the~~
21 ~~proportionate share of a subarea environmental impact statement issued~~
22 ~~prior to July 1, 2018.))~~

23 (~~It is recognized that a city that prepares a nonproject~~
24 ~~environmental impact statement under subsection (4) of this section~~
25 ~~must endure a substantial financial burden. A city may recover its~~
26 ~~reasonable expenses of preparation of a nonproject environmental impact~~
27 ~~statement prepared under subsection (4) of this section through access~~
28 ~~to financial assistance under RCW 36.70A.490 or funding from private~~
29 ~~sources. In addition, a city is authorized to recover a portion of its~~
30 ~~reasonable expenses of preparation of such a nonproject environmental~~
31 ~~impact statement by the assessment of reasonable and proportionate fees~~
32 ~~upon subsequent development that is consistent with the plan and~~
33 ~~development regulations adopted under subsection (5) of this section,~~
34 ~~as long as the development makes use of and benefits [from], as~~
35 ~~described in subsection (5) of this section, from the nonproject~~
36 ~~environmental impact statement prepared by the city. Any assessment~~
37 ~~fees collected from subsequent development may be used to reimburse~~
38 ~~funding received from private sources. In order to collect such fees,~~

1 ~~the city must enact an ordinance that sets forth objective standards~~
2 ~~for determining how the fees to be imposed upon each development will~~
3 ~~be proportionate to the impacts of each development and to the benefits~~
4 ~~accruing to each development from the nonproject environmental impact~~
5 ~~statement. Any disagreement about the reasonableness or amount of the~~
6 ~~fees imposed upon a development may not be the basis for delay in~~
7 ~~issuance of a project permit for that development. The fee assessed by~~
8 ~~the city may be paid with the written stipulation "paid under protest"~~
9 ~~and if the city provides for an administrative appeal of its decision~~
10 ~~on the project for which the fees are imposed, any dispute about the~~
11 ~~amount of the fees must be resolved in the same administrative appeal~~
12 ~~process.~~

13 (7)) If a proposed development is inconsistent with the optional
14 comprehensive plan or subarea plan policies and development regulations
15 adopted under subsection (1) of this section, the city shall require
16 additional environmental review in accordance with this chapter.

17 NEW SECTION. **Sec. 309.** A new section is added to chapter 43.21C
18 RCW to read as follows:

19 (1)(a) Except as otherwise provided in this subsection (1), the
20 proposed actions contained in subsections (2) and (3) of this section
21 are categorically exempt from the requirements of this chapter. If a
22 proposed action is located in more than one county, city, or town, the
23 lower of the agencies' adopted categorical exemption levels controls,
24 regardless of which agency is the lead agency.

25 (b) An ordinance or resolution may be adopted by a city, county, or
26 town to establish lower exemption levels for specific geographic areas
27 within the city, county, or town and remove the otherwise exempt
28 proposed actions identified in subsections (2) and (3) of this section
29 from being considered exempt.

30 (2) Except as provided in subsection (1)(b) of this section, the
31 following actions are categorically exempt from the requirements of
32 this chapter if the proposed action is located within an urban growth
33 area designated pursuant to RCW 36.70A.110. The following are
34 nonproject actions:

35 (a) Amendments to development regulations that are required to
36 ensure consistency with an adopted comprehensive plan pursuant to RCW

1 36.70A.040, where the comprehensive plan was previously subjected to
2 environmental review pursuant to this chapter;

3 (b) Amendments to development regulations that are required to
4 ensure consistency with a shoreline master program approved pursuant to
5 RCW 90.58.090, where the shoreline master program was previously
6 subjected to environmental review pursuant to this chapter;

7 (c) Amendments to development regulations that, upon implementation
8 of a project action, will provide increased environmental protection,
9 limited to the following:

10 (i) Increased protections for critical areas, such as enhanced
11 buffers or setbacks;

12 (ii) Increased vegetation retention or decreased impervious surface
13 areas in shoreline jurisdiction; and

14 (iii) Increased vegetation retention or decreased impervious
15 surface areas in critical areas;

16 (d) Amendments to technical codes adopted by a county, city, or
17 town to ensure consistency with minimum standards contained in state
18 law, including the following:

19 (i) Building codes required by chapter 19.27 RCW;

20 (ii) Energy codes required by chapter 19.27A RCW; and

21 (iii) Electrical codes required by chapter 19.28 RCW.

22 (3) Except as provided in subsection (1)(b) of this section, the
23 following types of construction are categorically exempt from the
24 requirements of this chapter if the proposed action is located outside
25 an urban growth area designated pursuant to RCW 36.70A.110. The
26 following are nonproject actions:

27 (a) Amendments to development regulations that are required to
28 ensure consistency with an adopted comprehensive plan pursuant to RCW
29 36.70A.040, where the comprehensive plan was previously subjected to
30 environmental review pursuant to this chapter;

31 (b) Amendments to development regulations that are required to
32 ensure consistency with a shoreline master program approved pursuant to
33 RCW 90.58.090, where the shoreline master program was previously
34 subjected to environmental review pursuant to this chapter;

35 (c) Amendments to development regulations that, upon implementation
36 of a project action, will provide increased environmental protection,
37 limited to the following:

1 (i) Increased protections for critical areas such as enhanced
2 buffers or setbacks;

3 (ii) Increased vegetation retention or decreased impervious surface
4 areas in shoreline jurisdiction; and

5 (iii) Increased vegetation retention or decreased impervious
6 surface areas in critical areas;

7 (d) Amendments to technical codes adopted by a county, city, or
8 town to ensure consistency with minimum standards contained in state
9 law, including the following:

10 (i) Building codes required by chapter 19.27 RCW;

11 (ii) Energy codes required by chapter 19.27A RCW; and

12 (iii) Electrical codes required by chapter 19.28 RCW.

13 NEW SECTION. **Sec. 310.** A new section is added to chapter 43.21C
14 RCW to read as follows:

15 (1) The lead agency for an environmental review under this chapter
16 utilizing an environmental checklist developed by the department of
17 ecology pursuant to RCW 43.21C.110 may satisfy the requirements of the
18 checklist by identifying instances where questions on the checklist are
19 adequately covered by a locally adopted ordinance, development
20 regulation, land use plan, or other legal authority.

21 (2) In instances where the locally adopted ordinance, development
22 regulation, land use plan, or other legal authority provide the
23 necessary information to answer a specific question, the lead agency
24 must explain how the proposed project satisfies the underlying local
25 legal authority.

26 (3) If the lead agency identifies instances where questions on the
27 checklist are adequately covered by a locally adopted ordinance,
28 development regulation, land use plan, or other legal authority, an
29 applicant may still provide answers to any questions on the checklist.

30 (4) Nothing in this section authorizes a lead agency to ignore or
31 delete a question on the checklist.

32 (5) Nothing in this section affects the appeal provisions provided
33 in this chapter.

34 **Sec. 311.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to
35 read as follows:

36 The growth management planning and environmental review fund is

1 hereby established in the state treasury. Moneys may be placed in the
2 fund from the proceeds of bond sales, tax revenues, budget transfers,
3 federal appropriations, gifts, or any other lawful source. Moneys in
4 the fund may be spent only after appropriation. Moneys in the fund
5 shall be used to make grants or loans to local governments for the
6 purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any
7 payment of either principal or interest, or both, derived from loans
8 made from this fund must be deposited into the fund.

9 **Sec. 312.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to
10 read as follows:

11 (1) The department of (~~community, trade, and economic~~
12 ~~development~~) commerce shall provide management services for the growth
13 management planning and environmental review fund created by RCW
14 36.70A.490. The department shall establish procedures for fund
15 management. The department shall encourage participation in the grant
16 or loan program by other public agencies. The department shall develop
17 the grant or loan criteria, monitor the grant or loan program, and
18 select grant or loan recipients in consultation with state agencies
19 participating in the grant or loan program through the provision of
20 grant or loan funds or technical assistance.

21 (2) A grant or loan may be awarded to a county or city that is
22 required to or has chosen to plan under RCW 36.70A.040 and that is
23 qualified pursuant to this section. The grant or loan shall be
24 provided to assist a county or city in paying for the cost of preparing
25 an environmental analysis under chapter 43.21C RCW, that is integrated
26 with a comprehensive plan, subarea plan, plan element, countywide
27 planning policy, development regulation, monitoring program, or other
28 planning activity adopted under or implementing this chapter that:

29 (a) Improves the process for project permit review while
30 maintaining environmental quality; or

31 (b) Encourages use of plans and information developed for purposes
32 of complying with this chapter to satisfy requirements of other state
33 programs.

34 (3) In order to qualify for a grant or loan, a county or city
35 shall:

36 (a) Demonstrate that it will prepare an environmental analysis
37 pursuant to chapter 43.21C RCW and subsection (2) of this section that

1 is integrated with a comprehensive plan, subarea plan, plan element,
2 countywide planning policy, development regulations, monitoring
3 program, or other planning activity adopted under or implementing this
4 chapter;

5 (b) Address environmental impacts and consequences, alternatives,
6 and mitigation measures in sufficient detail to allow the analysis to
7 be adopted in whole or in part by applicants for development permits
8 within the geographic area analyzed in the plan;

9 (c) Demonstrate that procedures for review of development permit
10 applications will be based on the integrated plans and environmental
11 analysis;

12 (d) Include mechanisms to monitor the consequences of growth as it
13 occurs in the plan area and to use the resulting data to update the
14 plan, policy, or implementing mechanisms and associated environmental
15 analysis;

16 (e) Demonstrate substantial progress towards compliance with the
17 requirements of this chapter. A county or city that is more than six
18 months out of compliance with a requirement of this chapter is deemed
19 not to be making substantial progress towards compliance; and

20 (f) Provide local funding, which may include financial
21 participation by the private sector.

22 (4) In awarding grants or loans, the department shall give
23 preference to proposals that include one or more of the following
24 elements:

25 (a) Financial participation by the private sector, or a
26 public/private partnering approach;

27 (b) Identification and monitoring of system capacities for elements
28 of the built environment, and to the extent appropriate, of the natural
29 environment;

30 (c) Coordination with state, federal, and tribal governments in
31 project review;

32 (d) Furtherance of important state objectives related to economic
33 development, protection of areas of statewide significance, and siting
34 of essential public facilities;

35 (e) Programs to improve the efficiency and effectiveness of the
36 permitting process by greater reliance on integrated plans and
37 prospective environmental analysis;

1 (f) Programs for effective citizen and neighborhood involvement
2 that contribute to greater likelihood that planning decisions can be
3 implemented with community support; (~~and~~)

4 (g) Programs to identify environmental impacts and establish
5 mitigation measures that provide effective means to satisfy concurrency
6 requirements and establish project consistency with the plans; or

7 (h) Environmental review that addresses the impacts of increased
8 density or intensity of comprehensive plans, subarea plans, or
9 receiving areas designated by a city or town under the regional
10 transfer of development rights program in chapter 43.362 RCW.

11 (5) If the local funding includes funding provided by other state
12 functional planning programs, including open space planning and
13 watershed or basin planning, the functional plan shall be integrated
14 into and be consistent with the comprehensive plan.

15 (6) State agencies shall work with grant or loan recipients to
16 facilitate state and local project review processes that will implement
17 the projects receiving grants or loans under this section.

18 NEW SECTION. Sec. 313. A new section is added to chapter 82.02
19 RCW to read as follows:

20 (1) The legislature finds that:

21 (a) Detailed environmental analysis integrated with comprehensive
22 plans, subarea plans, and development regulations will facilitate
23 planning for and managing growth, allow greater protection of the
24 environment, and benefit both the general public and private property
25 owners;

26 (b) Compact development in urban growth areas, or transfer of
27 development rights programs, will assist in the conservation of rural,
28 agricultural, and forest land by redirecting growth from this land to
29 areas designated for compact development or receiving areas in cities
30 and towns where growth should occur;

31 (c) Cities and towns planning for increased growth in receiving
32 areas under chapter 43.362 RCW must comply with chapter 43.21C RCW;

33 (d) Planning for compact or increased growth in urban growth areas,
34 or receiving areas under chapter 43.362 RCW in compliance with chapter
35 43.21C RCW, presents a financial burden on cities and towns;

36 (e) Planning for compact or increased growth in urban growth areas,
37 or receiving areas under chapter 43.362 RCW in compliance with chapter

1 43.21C RCW, should be encouraged to ensure that the quality of life in
2 receiving neighborhoods and the protection of environmental values over
3 time are maintained by providing financial assistance through the
4 growth management planning and environmental review fund created in RCW
5 36.70A.490;

6 (f) Access to financial assistance through the growth management
7 planning and environmental review fund created in RCW 36.70A.490 may be
8 increased by allowing the fund to become a revolving loan program
9 rather than only a grant program; and

10 (g) Counties, cities, and towns will have the ability to repay
11 loans from the growth management planning and environmental review fund
12 created in RCW 36.70A.490, or recoup their own costs associated with
13 environmental review conducted at a comprehensive plan or subarea plan
14 level, with fees they collect from developers who will benefit from the
15 environmental review that the city or county has already conducted
16 under chapter 43.21C RCW on a comprehensive plan or subarea plan, or in
17 conjunction with the designation of a receiving area under chapter
18 43.362 RCW, and that addresses the impacts of compact development or
19 projects using transferable development rights.

20 (2) Counties, cities, and towns that conduct detailed environmental
21 review under chapter 43.21C RCW, integrated with a comprehensive plan
22 or subarea plan within urban growth areas, are authorized to impose
23 environmental fees on development activity as part of the financing for
24 environmental review conducted under chapter 43.21C RCW on a
25 comprehensive plan or subarea plan.

26 (3) The environmental fees:

27 (a) May only be imposed for environmental review costs that have
28 been identified as reasonably related to the new development;

29 (b) May not exceed the proportionate share of the costs of
30 environmental review conducted for a comprehensive plan or subarea
31 plan; and

32 (c) May, if applicable, be used to repay a loan from the growth
33 management planning and environmental review fund created in RCW
34 36.70A.490.

35 **Sec. 314.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to
36 read as follows:

37 Except only as expressly provided in chapters 67.28, 81.104, and

1 82.14 RCW, the state preempts the field of imposing retail sales and
2 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
3 67.16.060, conveyances, and cigarettes, and no county, town, or other
4 municipal subdivision shall have the right to impose taxes of that
5 nature. Except as provided in RCW 64.34.440, section 313 of this act,
6 and RCW 82.02.050 through 82.02.090, no county, city, town, or other
7 municipal corporation shall impose any tax, fee, or charge, either
8 direct or indirect, on the construction or reconstruction of
9 residential buildings, commercial buildings, industrial buildings, or
10 on any other building or building space or appurtenance thereto, or on
11 the development, subdivision, classification, or reclassification of
12 land. However, this section does not preclude dedications of land or
13 easements within the proposed development or plat which the county,
14 city, town, or other municipal corporation can demonstrate are
15 reasonably necessary as a direct result of the proposed development or
16 plat to which the dedication of land or easement is to apply.

17 This section does not prohibit voluntary agreements with counties,
18 cities, towns, or other municipal corporations that allow a payment in
19 lieu of a dedication of land or to mitigate a direct impact that has
20 been identified as a consequence of a proposed development,
21 subdivision, or plat. A local government shall not use such voluntary
22 agreements for local off-site transportation improvements within the
23 geographic boundaries of the area or areas covered by an adopted
24 transportation program authorized by chapter 39.92 RCW. Any such
25 voluntary agreement is subject to the following provisions:

26 (1) The payment shall be held in a reserve account and may only be
27 expended to fund a capital improvement agreed upon by the parties to
28 mitigate the identified, direct impact;

29 (2) The payment shall be expended in all cases within five years of
30 collection; and

31 (3) Any payment not so expended shall be refunded with interest to
32 be calculated from the original date the deposit was received by the
33 county and at the same rate applied to tax refunds pursuant to RCW
34 84.69.100; however, if the payment is not expended within five years
35 due to delay attributable to the developer, the payment shall be
36 refunded without interest.

37 No county, city, town, or other municipal corporation shall require
38 any payment as part of such a voluntary agreement which the county,

1 city, town, or other municipal corporation cannot establish is
2 reasonably necessary as a direct result of the proposed development or
3 plat.

4 Nothing in this section prohibits cities, towns, counties, or other
5 municipal corporations from collecting reasonable fees from an
6 applicant for a permit or other governmental approval to cover the cost
7 to the city, town, county, or other municipal corporation of processing
8 applications, inspecting and reviewing plans, or preparing detailed
9 statements required by chapter 43.21C RCW, including reasonable fees
10 that are consistent with ((RCW 43.21C.420(6))) section 307 of this act.

11 This section does not limit the existing authority of any county,
12 city, town, or other municipal corporation to impose special
13 assessments on property specifically benefited thereby in the manner
14 prescribed by law.

15 Nothing in this section prohibits counties, cities, or towns from
16 imposing or permits counties, cities, or towns to impose water, sewer,
17 natural gas, drainage utility, and drainage system charges. However,
18 no such charge shall exceed the proportionate share of such utility or
19 system's capital costs which the county, city, or town can demonstrate
20 are attributable to the property being charged. Furthermore, these
21 provisions may not be interpreted to expand or contract any existing
22 authority of counties, cities, or towns to impose such charges.

23 Nothing in this section prohibits a transportation benefit district
24 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
25 the legislative authority of a county, city, or town from approving the
26 imposition of such fees within a transportation benefit district.

27 Nothing in this section prohibits counties, cities, or towns from
28 imposing transportation impact fees authorized pursuant to chapter
29 39.92 RCW.

30 Nothing in this section prohibits counties, cities, or towns from
31 requiring property owners to provide relocation assistance to tenants
32 under RCW 59.18.440 and 59.18.450.

33 Nothing in this section limits the authority of counties, cities,
34 or towns to implement programs consistent with RCW 36.70A.540, nor to
35 enforce agreements made pursuant to such programs.

36 This section does not apply to special purpose districts formed and
37 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority
38 conferred by these titles affected.

1 **Sec. 315.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to
2 read as follows:

3 It shall be the duty and function of the department of ecology:

4 (1) To adopt and amend (~~((thereafter))~~) rules of interpretation and
5 implementation of this chapter, subject to the requirements of chapter
6 34.05 RCW, for the purpose of providing uniform rules and guidelines to
7 all branches of government including state agencies, political
8 subdivisions, public and municipal corporations, and counties. The
9 proposed rules shall be subject to full public hearings requirements
10 associated with rule (~~((promulgation))~~) adoption. Suggestions for
11 modifications of the proposed rules shall be considered on their
12 merits, and the department shall have the authority and responsibility
13 for full and appropriate independent (~~((promulgation-and))~~) adoption of
14 rules, assuring consistency with this chapter as amended and with the
15 preservation of protections afforded by this chapter. The rule-making
16 powers authorized in this section shall include, but shall not be
17 limited to, the following phases of interpretation and implementation
18 of this chapter:

19 (a) Categories of governmental actions which are not to be
20 considered as potential major actions significantly affecting the
21 quality of the environment, including categories pertaining to
22 applications for water right permits pursuant to chapters 90.03 and
23 90.44 RCW. The types of actions included as categorical exemptions in
24 the rules shall be limited to those types which are not major actions
25 significantly affecting the quality of the environment. The rules
26 shall provide for certain circumstances where actions which potentially
27 are categorically exempt require environmental review. An action that
28 is categorically exempt under the rules adopted by the department may
29 not be conditioned or denied under this chapter.

30 (b) Rules for criteria and procedures applicable to the
31 determination of when an act of a branch of government is a major
32 action significantly affecting the quality of the environment for which
33 a detailed statement is required to be prepared pursuant to RCW
34 43.21C.030.

35 (c) Rules and procedures applicable to the preparation of detailed
36 statements and other environmental documents, including but not limited
37 to rules for timing of environmental review, obtaining comments, data

1 and other information, and providing for and determining areas of
2 public participation which shall include the scope and review of draft
3 environmental impact statements.

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

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

11 (f) Definition of terms relevant to the implementation of this
12 chapter including the establishment of a list of elements of the
13 environment. Analysis of environmental considerations under RCW
14 43.21C.030(2) may be required only for those subjects listed as
15 elements of the environment (or portions thereof). The list of
16 elements of the environment shall consist of the "natural" and "built"
17 environment. The elements of the built environment shall consist of
18 public services and utilities (such as water, sewer, schools, fire and
19 police protection), transportation, environmental health (such as
20 explosive materials and toxic waste), and land and shoreline use
21 (including housing, and a description of the relationships with land
22 use and shoreline plans and designations, including population).

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

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

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

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

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

37 (l) Rules relating to the use of environmental documents in

1 planning and decision making and the implementation of the substantive
2 policies and requirements of this chapter, including procedures for
3 appeals under this chapter.

4 (m) Rules and procedures that provide for the integration of
5 environmental review with project review as provided in RCW 43.21C.240.
6 The rules and procedures shall be jointly developed with the department
7 of (~~community, trade, and economic development~~) commerce and shall be
8 applicable to the preparation of environmental documents for actions in
9 counties, cities, and towns planning under RCW 36.70A.040. The rules
10 and procedures shall also include procedures and criteria to analyze
11 planned actions under (~~RCW 43.21C.031(2)~~) section 304 of this act and
12 revisions to the rules adopted under this section to ensure that they
13 are compatible with the requirements and authorizations of chapter 347,
14 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or
15 procedures adopted by a county, city, or town to implement the
16 provisions of chapter 347, Laws of 1995 prior to the effective date of
17 rules adopted under this subsection (1)(m) shall continue to be
18 effective until the adoption of any new or revised ordinances or
19 procedures that may be required. If any revisions are required as a
20 result of rules adopted under this subsection (1)(m), those revisions
21 shall be made within the time limits specified in RCW 43.21C.120.

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

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

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

34 (3) Rules adopted pursuant to this section shall be subject to the
35 review procedures of chapter 34.05 RCW.

36 **Sec. 316.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to
37 read as follows:

1 The rules (~~promulgated~~) adopted under RCW 43.21C.110 and section
2 301 of this act shall be accorded substantial deference in the
3 interpretation of this chapter.

4 **Sec. 317.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to
5 read as follows:

6 (1) The growth management hearings board shall hear and determine
7 only those petitions alleging either:

8 (a) That, except as provided otherwise by this subsection, a state
9 agency, county, or city planning under this chapter is not in
10 compliance with the requirements of this chapter, chapter 90.58 RCW as
11 it relates to the adoption of shoreline master programs or amendments
12 thereto, or chapter 43.21C RCW as it relates to plans, development
13 regulations, or amendments, adopted under RCW 36.70A.040 or chapter
14 90.58 RCW(~~Nothing in this subsection authorizes the board to hear~~
15 ~~petitions alleging noncompliance with RCW 36.70A.5801~~);

16 (b) That the twenty-year growth management planning population
17 projections adopted by the office of financial management pursuant to
18 RCW 43.62.035 should be adjusted;

19 (c) That the approval of a work plan adopted under RCW
20 36.70A.735(1)(a) is not in compliance with the requirements of the
21 program established under RCW 36.70A.710;

22 (d) That regulations adopted under RCW 36.70A.735(1)(b) are not
23 regionally applicable and cannot be adopted, wholly or partially, by
24 another jurisdiction; or

25 (e) That a department certification under RCW 36.70A.735(1)(c) is
26 erroneous.

27 (2) A petition may be filed only by: (a) The state, or a county or
28 city that plans under this chapter; (b) (~~a person who has participated~~
29 ~~orally or in writing before the county or city regarding the matter on~~
30 ~~which a review is being requested; (c)~~) a person who is certified by
31 the governor within sixty days of filing the request with the board; or
32 (~~(d)~~) (c) a person qualified pursuant to RCW 34.05.530.

33 (3) For purposes of this section "person" means any individual,
34 partnership, corporation, association, state agency, governmental
35 subdivision or unit thereof, or public or private organization or
36 entity of any character.

1 (4) (~~To establish participation standing under subsection (2)(b)~~
2 ~~of this section, a person must show that his or her participation~~
3 ~~before the county or city was reasonably related to the person's issue~~
4 ~~as presented to the board.~~

5 (5)) When considering a possible adjustment to a growth management
6 planning population projection prepared by the office of financial
7 management, the board shall consider the implications of any such
8 adjustment to the population forecast for the entire state.

9 The rationale for any adjustment that is adopted by the board must
10 be documented and filed with the office of financial management within
11 ten working days after adoption.

12 If adjusted by the board, a county growth management planning
13 population projection shall only be used for the planning purposes set
14 forth in this chapter and shall be known as the "board adjusted
15 population projection." None of these changes shall affect the
16 official state and county population forecasts prepared by the office
17 of financial management, which shall continue to be used for state
18 budget and planning purposes.

--- END ---