

2 **ESB 6094** - H AMD
3 By Representative

4 ADOPTED AS AMENDED 4/27/97

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70A
8 RCW to read as follows:

9 In enacting the section 7(5), chapter . . . , Laws of 1997 (section
10 7(5) of this act) amendments to RCW 36.70A.070(5), the legislature
11 finds that chapter 36.70A RCW is intended to recognize the importance
12 of agriculture, forestry, and rural lands and rural character to
13 Washington's economy, its people, and its environment, while respecting
14 regional differences and, in accordance with one of the goals of the
15 growth management act, protecting the property rights of landowners
16 from arbitrary and discriminatory actions. Rural lands and rural-based
17 economies, including agriculture and forest uses that are located
18 outside of designated resource lands, enhance the economic desirability
19 of the state, help to preserve traditional economic activities, and
20 contribute to the state's overall quality of life. The legislature
21 also finds that in developing its rural element under RCW
22 36.70A.070(5), a county should foster land use patterns and develop a
23 local vision of rural character that: Will help preserve rural-based
24 economies and traditional rural lifestyles; will encourage the economic
25 prosperity of rural residents; will foster opportunities for small-
26 scale, rural-based employment and self-employment; will permit the
27 operation of rural-based agricultural, commercial, recreational, and
28 tourist businesses that are consistent with existing and planned land
29 use patterns; will foster the private stewardship of the land and
30 preservation of open space; and will enhance the rural sense of
31 community and quality of life. The legislature recognizes that there
32 will be a variety of interpretations by counties of how best to
33 implement a rural element, reflecting the diverse needs and local
34 circumstances found across the state. RCW 36.70A.070(5) provides a
35 framework for local elected officials to make these determinations.
36 References to both wildlife and water are intended in RCW 36.70A.030

1 and 36.70A.070 to acknowledge their importance as features or
2 components of rural character. It is expected that these matters will
3 be addressed in comprehensive plans, but that counties may not
4 necessarily need to adopt new regulations to account adequately for
5 them in establishing a pattern of land use and development for rural
6 areas.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW
8 to read as follows:

9 In amending RCW 36.70A.320(3) by section 20(3), chapter . . ., Laws
10 of 1997 (section 20(3) of this act), the legislature intends that the
11 boards apply a more deferential standard of review to actions of
12 counties and cities than the preponderance of the evidence standard
13 provided for under existing law. In recognition of the broad range of
14 discretion that may be exercised by counties and cities consistent with
15 the requirements of this chapter, the legislature intends for the
16 boards to grant deference to counties and cities in how they plan for
17 growth, consistent with the requirements and goals of this chapter.
18 Local comprehensive plans and development regulations require counties
19 and cities to balance priorities and options for action in full
20 consideration of local circumstances. The legislature finds that while
21 this chapter requires local planning to take place within a framework
22 of state goals and requirements, the ultimate burden and responsibility
23 for planning, harmonizing the planning goals of this chapter, and
24 implementing a county's or city's future rests with that community.

25 **Sec. 3.** RCW 36.70A.030 and 1995 c 382 s 9 are each amended to read
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Adopt a comprehensive land use plan" means to enact a new
30 comprehensive land use plan or to update an existing comprehensive land
31 use plan.

32 (2) "Agricultural land" means land primarily devoted to the
33 commercial production of horticultural, viticultural, floricultural,
34 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
35 straw, turf, seed, Christmas trees not subject to the excise tax
36 imposed by RCW 84.33.100 through 84.33.140, finfish in upland

1 hatcheries, or livestock, and that has long-term commercial
2 significance for agricultural production.

3 (3) "City" means any city or town, including a code city.

4 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
5 means a generalized coordinated land use policy statement of the
6 governing body of a county or city that is adopted pursuant to this
7 chapter.

8 (5) "Critical areas" include the following areas and ecosystems:

9 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
10 used for potable water; (c) fish and wildlife habitat conservation
11 areas; (d) frequently flooded areas; and (e) geologically hazardous
12 areas.

13 (6) "Department" means the department of community, trade, and
14 economic development.

15 (7) "Development regulations" or "regulation" means the controls
16 placed on development or land use activities by a county or city,
17 including, but not limited to, zoning ordinances, critical areas
18 ordinances, shoreline master programs, official controls, planned unit
19 development ordinances, subdivision ordinances, and binding site plan
20 ordinances together with any amendments thereto. A development
21 regulation does not include a decision to approve a project permit
22 application, as defined in RCW 36.70B.020, even though the decision may
23 be expressed in a resolution or ordinance of the legislative body of
24 the county or city.

25 (8) "Forest land" means land primarily devoted to growing trees for
26 long-term commercial timber production on land that can be economically
27 and practically managed for such production, including Christmas trees
28 subject to the excise tax imposed under RCW 84.33.100 through
29 84.33.140, and that has long-term commercial significance. In
30 determining whether forest land is primarily devoted to growing trees
31 for long-term commercial timber production on land that can be
32 economically and practically managed for such production, the following
33 factors shall be considered: (a) The proximity of the land to urban,
34 suburban, and rural settlements; (b) surrounding parcel size and the
35 compatibility and intensity of adjacent and nearby land uses; (c) long-
36 term local economic conditions that affect the ability to manage for
37 timber production; and (d) the availability of public facilities and
38 services conducive to conversion of forest land to other uses.

1 (9) "Geologically hazardous areas" means areas that because of
2 their susceptibility to erosion, sliding, earthquake, or other
3 geological events, are not suited to the siting of commercial,
4 residential, or industrial development consistent with public health or
5 safety concerns.

6 (10) "Long-term commercial significance" includes the growing
7 capacity, productivity, and soil composition of the land for long-term
8 commercial production, in consideration with the land's proximity to
9 population areas, and the possibility of more intense uses of the land.

10 (11) "Minerals" include gravel, sand, and valuable metallic
11 substances.

12 (12) "Public facilities" include streets, roads, highways,
13 sidewalks, street and road lighting systems, traffic signals, domestic
14 water systems, storm and sanitary sewer systems, parks and recreational
15 facilities, and schools.

16 (13) "Public services" include fire protection and suppression, law
17 enforcement, public health, education, recreation, environmental
18 protection, and other governmental services.

19 (14) "Rural character" refers to the patterns of land use and
20 development established by a county in the rural element of its
21 comprehensive plan:

22 (a) In which open space, the natural landscape, and vegetation
23 predominate over the built environment;

24 (b) That foster traditional rural lifestyles, rural-based
25 economies, and opportunities to both live and work in rural areas;

26 (c) That provide visual landscapes that are traditionally found in
27 rural areas and communities;

28 (d) That are compatible with the use of the land by wildlife and
29 for fish and wildlife habitat;

30 (e) That reduce the inappropriate conversion of undeveloped land
31 into sprawling, low-density development;

32 (f) That generally do not require the extension of urban
33 governmental services; and

34 (g) That are consistent with the protection of natural surface
35 water flows and ground water and surface water recharge and discharge
36 areas.

37 (15) "Rural development" refers to development outside the urban
38 growth area and outside agricultural, forest, and mineral resource
39 lands designated pursuant to RCW 36.70A.170. Rural development can

1 consist of a variety of uses and residential densities, including
2 clustered residential development, at levels that are consistent with
3 the preservation of rural character and the requirements of the rural
4 element. Rural development does not refer to agriculture or forestry
5 activities that may be conducted in rural areas.

6 (16) "Rural governmental services" or "rural services" include
7 those public services and public facilities historically and typically
8 delivered at an intensity usually found in rural areas, and may include
9 domestic water systems, fire and police protection services,
10 transportation and public transit services, and other public utilities
11 associated with rural development and normally not associated with
12 urban areas. Rural services do not include storm or sanitary sewers,
13 except as otherwise authorized by RCW 36.70A.110(4).

14 (17) "Urban growth" refers to growth that makes intensive use of
15 land for the location of buildings, structures, and impermeable
16 surfaces to such a degree as to be incompatible with the primary use of
17 ((such)) land for the production of food, other agricultural products,
18 or fiber, or the extraction of mineral resources, rural uses, rural
19 development, and natural resource lands designated pursuant to RCW
20 36.70A.170. A pattern of more intensive rural development, as provided
21 in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread
22 over wide areas, urban growth typically requires urban governmental
23 services. "Characterized by urban growth" refers to land having urban
24 growth located on it, or to land located in relationship to an area
25 with urban growth on it as to be appropriate for urban growth.

26 ((+15+)) (18) "Urban growth areas" means those areas designated by
27 a county pursuant to RCW 36.70A.110.

28 ((+16+)) (19) "Urban governmental services" or "urban services"
29 include those ((governmental)) public services and public facilities at
30 an intensity historically and typically ((delivered by)) provided in
31 cities, ((and include)) specifically including storm and sanitary sewer
32 systems, domestic water systems, street cleaning services, fire and
33 police protection services, public transit services, and other public
34 utilities associated with urban areas and normally not associated with
35 ((nonurban)) rural areas.

36 ((+17+)) (20) "Wetland" or "wetlands" means areas that are
37 inundated or saturated by surface water or ground water at a frequency
38 and duration sufficient to support, and that under normal circumstances
39 do support, a prevalence of vegetation typically adapted for life in

1 saturated soil conditions. Wetlands generally include swamps, marshes,
2 bogs, and similar areas. Wetlands do not include those artificial
3 wetlands intentionally created from nonwetland sites, including, but
4 not limited to, irrigation and drainage ditches, grass-lined swales,
5 canals, detention facilities, wastewater treatment facilities, farm
6 ponds, and landscape amenities, or those wetlands created after July 1,
7 1990, that were unintentionally created as a result of the construction
8 of a road, street, or highway. Wetlands may include those artificial
9 wetlands intentionally created from nonwetland areas created to
10 mitigate conversion of wetlands.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
12 to read as follows:

13 (1) A county, after conferring with its cities, may develop
14 alternative methods of achieving the planning goals established by RCW
15 36.70A.020.

16 (2) The authority provided by this section may not be used to
17 modify:

18 (a) Requirements for the designation and protection of critical
19 areas or for the designation of natural resource lands under RCW
20 36.70A.060(2), 36.70A.170, and 36.70A.172;

21 (b) The requirement that wetlands be delineated consistent with the
22 requirements of RCW 36.70A.175; or

23 (c) The requirement to establish a process for the siting of
24 essential public facilities pursuant to RCW 36.70A.200.

25 (3) Before adopting any alternative methods of achieving the
26 planning goals established by RCW 36.70A.020, a county shall provide an
27 opportunity for public review and comment. An ordinance or resolution
28 proposing or adopting alternative methods must be submitted to the
29 department in the same manner as provided in RCW 36.70A.106 for
30 submittal of proposed and adopted comprehensive plans and development
31 regulations.

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW
33 to read as follows:

34 The legislature finds that it is the goal of the state of
35 Washington to achieve no overall net loss of wetland functions.
36 Wetlands can provide public benefits related to flood control,
37 groundwater recharge, water quality, and wildlife habitat. The

1 legislature further finds that consideration should be given to the
2 functions wetlands provide and to the needs of private property owners
3 to assure that wetlands regulations both reflect the impact to wetland
4 functions and allow for a reasonable use of property. In adopting
5 critical areas development regulations, counties and cities should
6 consider and balance all of the goals under RCW 36.70A.020. The
7 legislature intends that no goal takes precedence over any of the
8 others, but that counties and cities may prioritize the goals in
9 accordance with local history, conditions, circumstances, and choice.

10 **Sec. 6.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
11 to read as follows:

12 (1) Each county that is required or chooses to plan under RCW
13 36.70A.040, and each city within such county, shall adopt development
14 regulations on or before September 1, 1991, to assure the conservation
15 of agricultural, forest, and mineral resource lands designated under
16 RCW 36.70A.170. Regulations adopted under this subsection may not
17 prohibit uses legally existing on any parcel prior to their adoption
18 and shall remain in effect until the county or city adopts development
19 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
20 that the use of lands adjacent to agricultural, forest, or mineral
21 resource lands shall not interfere with the continued use, in the
22 accustomed manner and in accordance with best management practices, of
23 these designated lands for the production of food, agricultural
24 products, or timber, or for the extraction of minerals. Counties and
25 cities shall require that all plats, short plats, development permits,
26 and building permits issued for development activities on, or within
27 three hundred feet of, lands designated as agricultural lands, forest
28 lands, or mineral resource lands, contain a notice that the subject
29 property is within or near designated agricultural lands, forest lands,
30 or mineral resource lands on which a variety of commercial activities
31 may occur that are not compatible with residential development for
32 certain periods of limited duration.

33 (2) Each county and city shall adopt development regulations that
34 protect critical areas that are required to be designated under RCW
35 36.70A.170. For counties and cities that are required or choose to
36 plan under RCW 36.70A.040, such development regulations shall be
37 adopted on or before September 1, 1991. For the remainder of the

1 counties and cities, such development regulations shall be adopted on
2 or before March 1, 1992.

3 (3) Such counties and cities shall review these designations and
4 development regulations when adopting their comprehensive plans under
5 RCW 36.70A.040 and implementing development regulations under RCW
6 36.70A.120 and may alter such designations and development regulations
7 to insure consistency.

8 (4) Forest land and agricultural land located within urban growth
9 areas shall not be designated by a county or city as forest land or
10 agricultural land of long-term commercial significance under RCW
11 36.70A.170 unless the city or county has enacted a program authorizing
12 transfer or purchase of development rights.

13 (5) Counties and cities may exempt the following from critical
14 areas development regulations:

15 (a) Emergency activities; and

16 (b) Activities with minor impacts on critical areas.

17 **Sec. 7.** RCW 36.70A.070 and 1996 c 239 s 1 are each amended to read
18 as follows:

19 The comprehensive plan of a county or city that is required or
20 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
21 and descriptive text covering objectives, principles, and standards
22 used to develop the comprehensive plan. The plan shall be an
23 internally consistent document and all elements shall be consistent
24 with the future land use map. A comprehensive plan shall be adopted
25 and amended with public participation as provided in RCW 36.70A.140.

26 Each comprehensive plan shall include a plan, scheme, or design for
27 each of the following:

28 (1) A land use element designating the proposed general
29 distribution and general location and extent of the uses of land, where
30 appropriate, for agriculture, timber production, housing, commerce,
31 industry, recreation, open spaces, general aviation airports, public
32 utilities, public facilities, and other land uses. The land use
33 element shall include population densities, building intensities, and
34 estimates of future population growth. The land use element shall
35 provide for protection of the quality and quantity of ground water used
36 for public water supplies. Where applicable, the land use element
37 shall review drainage, flooding, and storm water run-off in the area
38 and nearby jurisdictions and provide guidance for corrective actions to

1 mitigate or cleanse those discharges that pollute waters of the state,
2 including Puget Sound or waters entering Puget Sound.

3 (2) A housing element ensuring the vitality and character of
4 established residential neighborhoods that: (a) Includes an inventory
5 and analysis of existing and projected housing needs; (b) includes a
6 statement of goals, policies, objectives, and mandatory provisions for
7 the preservation, improvement, and development of housing, including
8 single-family residences; (c) identifies sufficient land for housing,
9 including, but not limited to, government-assisted housing, housing for
10 low-income families, manufactured housing, multifamily housing, and
11 group homes and foster care facilities; and (d) makes adequate
12 provisions for existing and projected needs of all economic segments of
13 the community.

14 (3) A capital facilities plan element consisting of: (a) An
15 inventory of existing capital facilities owned by public entities,
16 showing the locations and capacities of the capital facilities; (b) a
17 forecast of the future needs for such capital facilities; (c) the
18 proposed locations and capacities of expanded or new capital
19 facilities; (d) at least a six-year plan that will finance such capital
20 facilities within projected funding capacities and clearly identifies
21 sources of public money for such purposes; and (e) a requirement to
22 reassess the land use element if probable funding falls short of
23 meeting existing needs and to ensure that the land use element, capital
24 facilities plan element, and financing plan within the capital
25 facilities plan element are coordinated and consistent.

26 (4) A utilities element consisting of the general location,
27 proposed location, and capacity of all existing and proposed utilities,
28 including, but not limited to, electrical lines, telecommunication
29 lines, and natural gas lines.

30 (5) Rural element. Counties shall include a rural element
31 including lands that are not designated for urban growth, agriculture,
32 forest, or mineral resources. The following provisions shall apply to
33 the rural element:

34 (a) Growth management act goals and local circumstances. Because
35 circumstances vary from county to county, in establishing patterns of
36 rural densities and uses, a county may consider local circumstances,
37 but shall develop a written record explaining how the rural element
38 harmonizes the planning goals in RCW 36.70A.020 and meets the
39 requirements of this chapter.

1 (b) Rural development. The rural element shall permit
2 ((appropriate land uses that are compatible with the rural character of
3 such lands and)) rural development, forestry, and agriculture in rural
4 areas. The rural element shall provide for a variety of rural
5 densities ((and)), uses ((and may also provide)), essential public
6 facilities, and rural governmental services needed to serve the
7 permitted densities and uses. In order to achieve a variety of rural
8 densities and uses, counties may provide for clustering, density
9 transfer, design guidelines, conservation easements, and other
10 innovative techniques that will accommodate appropriate rural densities
11 and uses that are not characterized by urban growth and that are
12 consistent with rural character.

13 (c) Measures governing rural development. The rural element shall
14 include measures that apply to rural development and protect the rural
15 character of the area, as established by the county, by:

16 (i) Containing or otherwise controlling rural development;

17 (ii) Assuring visual compatibility of rural development with the
18 surrounding rural area;

19 (iii) Reducing the inappropriate conversion of undeveloped land
20 into sprawling, low-density development in the rural area;

21 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and
22 surface water and ground water resources; and

23 (v) Protecting against conflicts with the use of agricultural,
24 forest, and mineral resource lands designated under RCW 36.70A.170.

25 (d) Limited areas of more intensive rural development. Subject to
26 the requirements of this subsection and except as otherwise
27 specifically provided in this subsection (5)(d), the rural element may
28 allow for limited areas of more intensive rural development, including
29 necessary public facilities and public services to serve the limited
30 area as follows:

31 (i) Rural development consisting of the infill, development, or
32 redevelopment of existing commercial, industrial, residential, or
33 mixed-use areas, whether characterized as shoreline development,
34 villages, hamlets, rural activity centers, or crossroads developments.
35 A commercial, industrial, residential, shoreline, or mixed-use area
36 shall be subject to the requirements of (d)(iv) of this subsection, but
37 shall not be subject to the requirements of (c)(ii) and (iii) of this
38 subsection. An industrial area is not required to be principally
39 designed to serve the existing and projected rural population;

1 (ii) The intensification of development on lots containing, or new
2 development of, small-scale recreational or tourist uses, including
3 commercial facilities to serve those recreational or tourist uses, that
4 rely on a rural location and setting, but that do not include new
5 residential development. A small-scale recreation or tourist use is
6 not required to be principally designed to serve the existing and
7 projected rural population. Public services and public facilities
8 shall be limited to those necessary to serve the recreation or tourist
9 use and shall be provided in a manner that does not permit low-density
10 sprawl;

11 (iii) The intensification of development on lots containing
12 isolated nonresidential uses or new development of isolated cottage
13 industries and isolated small-scale businesses that are not principally
14 designed to serve the existing and projected rural population and
15 nonresidential uses, but do provide job opportunities for rural
16 residents. Public services and public facilities shall be limited to
17 those necessary to serve the isolated nonresidential use and shall be
18 provided in a manner that does not permit low-density sprawl;

19 (iv) A county shall adopt measures to minimize and contain the
20 existing areas or uses of more intensive rural development, as
21 appropriate, authorized under this subsection. Lands included in such
22 existing areas or uses shall not extend beyond the logical outer
23 boundary of the existing area or use, thereby allowing a new pattern of
24 low-density sprawl. Existing areas are those that are clearly
25 identifiable and contained and where there is a logical boundary
26 delineated predominately by the built environment, but that may also
27 include undeveloped lands if limited as provided in this subsection.
28 The county shall establish the logical outer boundary of an area of
29 more intensive rural development. In establishing the logical outer
30 boundary the county shall address (A) the need to preserve the
31 character of existing natural neighborhoods and communities, (B)
32 physical boundaries such as bodies of water, streets and highways, and
33 land forms and contours, (C) the prevention of abnormally irregular
34 boundaries, and (D) the ability to provide public facilities and public
35 services in a manner that does not permit low-density sprawl;

36 (v) For purposes of (d) of this subsection, an existing area or
37 existing use is one that was in existence:

38 (A) On July 1, 1990, in a county that was initially required to
39 plan under all of the provisions of this chapter;

1 (B) On the date the county adopted a resolution under RCW
2 36.70A.040(2), in a county that is planning under all of the provisions
3 of this chapter under RCW 36.70A.040(2); or

4 (C) On the date the office of financial management certifies the
5 county's population as provided in RCW 36.70A.040(5), in a county that
6 is planning under all of the provisions of this chapter pursuant to RCW
7 36.70A.040(5).

8 (e) Exception. This subsection shall not be interpreted to permit
9 in the rural area a major industrial development or a master planned
10 resort unless otherwise specifically permitted under RCW 36.70A.360 and
11 36.70A.365.

12 (6) A transportation element that implements, and is consistent
13 with, the land use element. The transportation element shall include
14 the following subelements:

15 (a) Land use assumptions used in estimating travel;

16 (b) Facilities and services needs, including:

17 (i) An inventory of air, water, and ground transportation
18 facilities and services, including transit alignments and general
19 aviation airport facilities, to define existing capital facilities and
20 travel levels as a basis for future planning;

21 (ii) Level of service standards for all arterials and transit
22 routes to serve as a gauge to judge performance of the system. These
23 standards should be regionally coordinated;

24 (iii) Specific actions and requirements for bringing into
25 compliance any facilities or services that are below an established
26 level of service standard;

27 (iv) Forecasts of traffic for at least ten years based on the
28 adopted land use plan to provide information on the location, timing,
29 and capacity needs of future growth;

30 (v) Identification of system expansion needs and transportation
31 system management needs to meet current and future demands;

32 (c) Finance, including:

33 (i) An analysis of funding capability to judge needs against
34 probable funding resources;

35 (ii) A multiyear financing plan based on the needs identified in
36 the comprehensive plan, the appropriate parts of which shall serve as
37 the basis for the six-year street, road, or transit program required by
38 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
39 35.58.2795 for public transportation systems;

1 (iii) If probable funding falls short of meeting identified needs,
2 a discussion of how additional funding will be raised, or how land use
3 assumptions will be reassessed to ensure that level of service
4 standards will be met;

5 (d) Intergovernmental coordination efforts, including an assessment
6 of the impacts of the transportation plan and land use assumptions on
7 the transportation systems of adjacent jurisdictions;

8 (e) Demand-management strategies.

9 After adoption of the comprehensive plan by jurisdictions required
10 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
11 must adopt and enforce ordinances which prohibit development approval
12 if the development causes the level of service on a transportation
13 facility to decline below the standards adopted in the transportation
14 element of the comprehensive plan, unless transportation improvements
15 or strategies to accommodate the impacts of development are made
16 concurrent with the development. These strategies may include
17 increased public transportation service, ride sharing programs, demand
18 management, and other transportation systems management strategies.
19 For the purposes of this subsection (6) "concurrent with the
20 development" shall mean that improvements or strategies are in place at
21 the time of development, or that a financial commitment is in place to
22 complete the improvements or strategies within six years.

23 The transportation element described in this subsection, and the
24 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
25 counties, and RCW 35.58.2795 for public transportation systems, must be
26 consistent.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70A RCW
28 to read as follows:

29 (1) Except as otherwise provided in this chapter, residential and
30 nonresidential uses in the rural element shall not require urban
31 services and nonresidential rural development shall be principally
32 designed to serve and provide jobs for the existing and projected rural
33 population or serve existing nonresidential uses.

34 (2) This section applies to (a) a county with a population of
35 ninety-five thousand or more; and (b) a county that has committed five
36 percent or more of its land base to urban growth areas under RCW
37 36.70A.110 and that has no more than eighty percent of its land base in

1 public ownership or resource lands of long-term commercial significance
2 designated under RCW 36.70A.170.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 36.70A RCW
4 to read as follows:

5 (1) The public participation requirements of this chapter shall
6 include notice procedures that are reasonably calculated to provide
7 notice to property owners and other affected and interested
8 individuals, tribes, government agencies, businesses, and organizations
9 of proposed amendments to comprehensive plans and development
10 regulation. Examples of reasonable notice provisions include:

11 (a) Posting the property for site-specific proposals;

12 (b) Publishing notice in a newspaper of general circulation in the
13 county, city, or general area where the proposal is located or that
14 will be affected by the proposal;

15 (c) Notifying public or private groups with known interest in a
16 certain proposal or in the type of proposal being considered;

17 (d) Placing notices in appropriate regional, neighborhood, ethnic,
18 or trade journals; and

19 (e) Publishing notice in agency newsletters or sending notice to
20 agency mailing lists, including general lists or lists for specific
21 proposals or subject areas.

22 (2)(a) Except as otherwise provided in (b) of this subsection, if
23 the legislative body for a county or city chooses to consider a change
24 to an amendment to a comprehensive plan or development regulation, and
25 the change is proposed after the opportunity for review and comment has
26 passed under the county's or city's procedures, an opportunity for
27 review and comment on the proposed change shall be provided before the
28 local legislative body votes on the proposed change.

29 (b) An additional opportunity for public review and comment is not
30 required under (a) of this subsection if:

31 (i) An environmental impact statement has been prepared under
32 chapter 43.21C RCW for the pending resolution or ordinance and the
33 proposed change is within the range of alternatives considered in the
34 environmental impact statement;

35 (ii) The proposed change is within the scope of the alternatives
36 available for public comment;

37 (iii) The proposed change only corrects typographical errors,
38 corrects cross-references, makes address or name changes, or clarifies

1 language of a proposed ordinance or resolution without changing its
2 effect;

3 (iv) The proposed change is to a resolution or ordinance making a
4 capital budget decision as provided in RCW 36.70A.120; or

5 (v) The proposed change is to a resolution or ordinance enacting a
6 moratorium or interim control adopted under RCW 36.70A.390.

7 (3) This section is prospective in effect and does not apply to a
8 comprehensive plan, development regulation, or amendment adopted before
9 the effective date of this section.

10 **Sec. 10.** RCW 36.70A.130 and 1995 c 347 s 106 are each amended to
11 read as follows:

12 (1) Each comprehensive land use plan and development regulations
13 shall be subject to continuing (~~evaluation and~~) review and evaluation
14 by the county or city that adopted them. Not later than September 1,
15 2002, and at least every five years thereafter, a county or city shall
16 take action to review and, if needed, revise its comprehensive land use
17 plan and development regulations to ensure that the plan and
18 regulations are complying with the requirements of this chapter. The
19 review and evaluation required by this subsection may be combined with
20 the review required by subsection (3) of this section.

21 Any amendment or revision to a comprehensive land use plan shall
22 conform to this chapter, and any change to development regulations
23 shall be consistent with and implement the comprehensive plan.

24 (2)(a) Each county and city shall establish and broadly disseminate
25 to the public a public participation program identifying procedures
26 whereby proposed amendments or revisions of the comprehensive plan are
27 considered by the governing body of the county or city no more
28 frequently than once every year except that amendments may be
29 considered more frequently under the following circumstances:

30 (i) The initial adoption of a subarea plan; (~~and~~)

31 (ii) The adoption or amendment of a shoreline master program under
32 the procedures set forth in chapter 90.58 RCW; and

33 (iii) The amendment of the capital facilities element of a
34 comprehensive plan that occurs concurrently with the adoption or
35 amendment of a county or city budget.

36 (b) Except as otherwise provided in (a) of this subsection, all
37 proposals shall be considered by the governing body concurrently so the
38 cumulative effect of the various proposals can be ascertained.

1 However, after appropriate public participation a county or city may
2 adopt amendments or revisions to its comprehensive plan that conform
3 with this chapter whenever an emergency exists or to resolve an appeal
4 of a comprehensive plan filed with a growth management hearings board
5 or with the court.

6 (3) Each county that designates urban growth areas under RCW
7 36.70A.110 shall review, at least every ten years, its designated urban
8 growth area or areas, and the densities permitted within both the
9 incorporated and unincorporated portions of each urban growth area. In
10 conjunction with this review by the county, each city located within an
11 urban growth area shall review the densities permitted within its
12 boundaries, and the extent to which the urban growth occurring within
13 the county has located within each city and the unincorporated portions
14 of the urban growth areas. The county comprehensive plan designating
15 urban growth areas, and the densities permitted in the urban growth
16 areas by the comprehensive plans of the county and each city located
17 within the urban growth areas, shall be revised to accommodate the
18 urban growth projected to occur in the county for the succeeding
19 twenty-year period. The review required by this subsection may be
20 combined with the review and evaluation required by section 25 of this
21 act.

22 **Sec. 11.** RCW 36.70A.270 and 1996 c 325 s 1 are each amended to
23 read as follows:

24 Each growth management hearings board shall be governed by the
25 following rules on conduct and procedure:

26 (1) Any board member may be removed for inefficiency, malfeasance,
27 and misfeasance in office, under specific written charges filed by the
28 governor. The governor shall transmit such written charges to the
29 member accused and the chief justice of the supreme court. The chief
30 justice shall thereupon designate a tribunal composed of three judges
31 of the superior court to hear and adjudicate the charges. Removal of
32 any member of a board by the tribunal shall disqualify such member for
33 reappointment.

34 (2) Each board member shall receive reimbursement for travel
35 expenses incurred in the discharge of his or her duties in accordance
36 with RCW 43.03.050 and 43.03.060. If it is determined that the review
37 boards shall operate on a full-time basis, each member shall receive an
38 annual salary to be determined by the governor pursuant to RCW

1 43.03.040. If it is determined that a review board shall operate on a
2 part-time basis, each member shall receive compensation pursuant to RCW
3 43.03.250, provided such amount shall not exceed the amount that would
4 be set if they were a full-time board member. The principal office of
5 each board shall be located by the governor within the jurisdictional
6 boundaries of each board. The boards shall operate on either a part-
7 time or full-time basis, as determined by the governor.

8 (3) Each board member shall not: (a) Be a candidate for or hold
9 any other public office or trust; (b) engage in any occupation or
10 business interfering with or inconsistent with his or her duty as a
11 board member; and (c) for a period of one year after the termination of
12 his or her board membership, act in a representative capacity before
13 the board on any matter.

14 (4) A majority of each board shall constitute a quorum for making
15 orders or decisions, adopting rules necessary for the conduct of its
16 powers and duties, or transacting other official business, and may act
17 even though one position of the board is vacant. One or more members
18 may hold hearings and take testimony to be reported for action by the
19 board when authorized by rule or order of the board. The board shall
20 perform all the powers and duties specified in this chapter or as
21 otherwise provided by law.

22 (5) The board may appoint one or more hearing examiners to assist
23 the board in its hearing function, to make conclusions of law and
24 findings of fact and, if requested by the board, to make
25 recommendations to the board for decisions in cases before the board.
26 Such hearing examiners must have demonstrated knowledge of land use
27 planning and law. The boards shall specify in their joint rules of
28 practice and procedure, as required by subsection (7) of this section,
29 the procedure and criteria to be employed for designating hearing
30 examiners as a presiding officer. Hearing examiners selected by a
31 board shall meet the requirements of subsection (3) of this section.
32 The findings and conclusions of the hearing examiner shall not become
33 final until they have been formally approved by the board. This
34 authorization to use hearing examiners does not waive the requirement
35 of RCW 36.70A.300 that final orders be issued within one hundred eighty
36 days of board receipt of a petition.

37 (6) Each board shall make findings of fact and prepare a written
38 decision in each case decided by it, and such findings and decision
39 shall be effective upon being signed by two or more members of the

1 board and upon being filed at the board's principal office, and shall
2 be open for public inspection at all reasonable times.

3 (7) All proceedings before the board, any of its members, or a
4 hearing examiner appointed by the board shall be conducted in
5 accordance with such administrative rules of practice and procedure as
6 the boards jointly prescribe. All three boards shall jointly meet to
7 develop and adopt joint rules of practice and procedure, including
8 rules regarding expeditious and summary disposition of appeals. The
9 boards shall publish such rules and decisions they render and arrange
10 for the reasonable distribution of the rules and decisions. Except as
11 it conflicts with specific provisions of this chapter, the
12 administrative procedure act, chapter 34.05 RCW, and specifically
13 including the provisions of RCW 34.05.455 governing ex parte
14 communications, shall govern the practice and procedure of the boards.

15 (8) A board member or hearing examiner is subject to
16 disqualification under chapter 34.05 RCW. The joint rules of practice
17 of the boards shall establish procedures by which a party to a hearing
18 conducted before the board may file with the board a motion to
19 disqualify, with supporting affidavit, against a board member or
20 hearing examiner assigned to preside at the hearing.

21 (9) The members of the boards shall meet jointly on at least an
22 annual basis with the objective of sharing information that promotes
23 the goals and purposes of this chapter.

24 **Sec. 12.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
25 read as follows:

26 (1) All requests for review to a growth management hearings board
27 shall be initiated by filing a petition that includes a detailed
28 statement of issues presented for resolution by the board. The board
29 shall render written decisions articulating the basis for its holdings.
30 The board shall not issue advisory opinions on issues not presented to
31 the board in the statement of issues, as modified by any prehearing
32 order.

33 (2) All petitions relating to whether or not an adopted
34 comprehensive plan, development regulation, or permanent amendment
35 thereto, is in compliance with the goals and requirements of this
36 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
37 after publication by the legislative bodies of the county or city.

1 (a) Except as provided in (c) of this subsection, the date of
2 publication for a city shall be the date the city publishes the
3 ordinance, or summary of the ordinance, adopting the comprehensive plan
4 or development regulations, or amendment thereto, as is required to be
5 published.

6 (b) Promptly after adoption, a county shall publish a notice that
7 it has adopted the comprehensive plan or development regulations, or
8 amendment thereto.

9 Except as provided in (c) of this subsection, for purposes of this
10 section the date of publication for a county shall be the date the
11 county publishes the notice that it has adopted the comprehensive plan
12 or development regulations, or amendment thereto.

13 (c) For local governments planning under RCW 36.70A.040, promptly
14 after approval or disapproval of a local government s shoreline master
15 program or amendment thereto by the department of ecology as provided
16 in RCW 90.58.090, the local government shall publish a notice that the
17 shoreline master program or amendment thereto has been approved or
18 disapproved by the department of ecology. For purposes of this
19 section, the date of publication for the adoption or amendment of a
20 shoreline master program is the date the local government publishes
21 notice that the shoreline master program or amendment thereto has been
22 approved or disapproved by the department of ecology.

23 (3) Unless the board dismisses the petition as frivolous or finds
24 that the person filing the petition lacks standing, or the parties have
25 filed an agreement to have the case heard in superior court as provided
26 in section 13 of this act, the board shall, within ten days of receipt
27 of the petition, set a time for hearing the matter.

28 (4) The board shall base its decision on the record developed by
29 the city, county, or the state and supplemented with additional
30 evidence if the board determines that such additional evidence would be
31 necessary or of substantial assistance to the board in reaching its
32 decision.

33 (5) The board, shall consolidate, when appropriate, all petitions
34 involving the review of the same comprehensive plan or the same
35 development regulation or regulations.

36 NEW SECTION. **Sec. 13.** A new section is added to chapter 36.70A
37 RCW to read as follows:

1 (1) The superior court may directly review a petition for review
2 filed under RCW 36.70A.290 if all parties to the proceeding before the
3 board have agreed to direct review in the superior court. The
4 agreement of the parties shall be in writing and signed by all of the
5 parties to the proceeding or their designated representatives. The
6 agreement shall include the parties' agreement to proper venue as
7 provided in RCW 36.70A.300(5). The parties shall file their agreement
8 with the board within ten days after the date the petition is filed, or
9 if multiple petitions have been filed and the board has consolidated
10 the petitions pursuant to RCW 36.70A.300, within ten days after the
11 board serves its order of consolidation.

12 (2) Within ten days of receiving the timely and complete agreement
13 of the parties, the board shall file a certificate of agreement with
14 the designated superior court and shall serve the parties with copies
15 of the certificate. The superior court shall obtain exclusive
16 jurisdiction over a petition when it receives the certificate of
17 agreement. With the certificate of agreement the board shall also file
18 the petition for review, any orders entered by the board, all other
19 documents in the board's files regarding the action, and the written
20 agreement of the parties.

21 (3) For purposes of a petition that is subject to direct review,
22 the superior court's subject matter jurisdiction shall be equivalent to
23 that of the board. Consistent with the requirements of the superior
24 court civil rules, the superior court may consolidate a petition
25 subject to direct review under this section with a separate action
26 filed in the superior court.

27 (4)(a) Except as otherwise provided in (b) and (c) of this
28 subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which
29 specify the nature and extent of board review, shall apply to the
30 superior court's review.

31 (b) The superior court:

32 (i) Shall not have jurisdiction to directly review or modify an
33 office of financial management population projection;

34 (ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall
35 render its decision on the petition within one hundred eighty days of
36 receiving the certification of agreement; and

37 (iii) Shall give a compliance hearing under RCW 36.70A.330(2) the
38 highest priority of all civil matters before the court.

1 (c) An aggrieved party may secure appellate review of a final
2 judgment of the superior court under this section by the supreme court
3 or the court of appeals. The review shall be secured in the manner
4 provided by law for review of superior court decisions in other civil
5 cases.

6 (5) If, following a compliance hearing, the court finds that the
7 state agency, county, or city is not in compliance with the court's
8 prior order, the court may use its remedial and contempt powers to
9 enforce compliance.

10 (6) The superior court shall transmit a copy of its decision and
11 order on direct review to the board, the department, and the governor.
12 If the court has determined that a county or city is not in compliance
13 with the provisions of this chapter, the governor may impose sanctions
14 against the county or city in the same manner as if a board had
15 recommended the imposition of sanctions as provided in RCW 36.70A.330.

16 (7) After the court has assumed jurisdiction over a petition for
17 review under this section, the superior court civil rules shall govern
18 a request for intervention and all other procedural matters not
19 specifically provided for in this section.

20 **Sec. 14.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
21 read as follows:

22 (1) The board shall issue a final order (~~((within one hundred eighty~~
23 ~~days of receipt of the petition for review, or, when multiple petitions~~
24 ~~are filed, within one hundred eighty days of receipt of the last~~
25 ~~petition that is consolidated. Such a final order))~~ that shall be
26 based exclusively on whether or not a state agency, county, or city is
27 in compliance with the requirements of this chapter, chapter 90.58 RCW
28 as it relates to adoption or amendment of shoreline master programs, or
29 chapter 43.21C RCW as it relates to adoption of plans, development
30 regulations, and amendments thereto, (~~(adopted)~~) under RCW 36.70A.040
31 or chapter 90.58 RCW.

32 (2)(a) Except as provided in (b) of this subsection, the final
33 order shall be issued within one hundred eighty days of receipt of the
34 petition for review, or, if multiple petitions are filed, within one
35 hundred eighty days of receipt of the last petition that is
36 consolidated.

37 (b) The board may extend the period of time for issuing a decision
38 to enable the parties to settle the dispute if additional time is

1 necessary to achieve a settlement, and (i) an extension is requested by
2 all parties, or (ii) an extension is requested by the petitioner and
3 respondent and the board determines that a negotiated settlement
4 between the remaining parties could resolve significant issues in
5 dispute. The request must be filed with the board not later than seven
6 days before the date scheduled for the hearing on the merits of the
7 petition. The board may authorize one or more extensions for up to
8 ninety days each, subject to the requirements of this section.

9 (3) In the final order, the board shall either:

10 (a) Find that the state agency, county, or city is in compliance
11 with the requirements of this chapter ~~((or))~~, chapter 90.58 RCW as it
12 relates to the adoption or amendment of shoreline master programs, or
13 chapter 43.21C RCW as it relates to adoption of plans, development
14 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
15 90.58 RCW; or

16 (b) Find that the state agency, county, or city is not in
17 compliance with the requirements of this chapter ~~((or))~~, chapter 90.58
18 RCW as it relates to the adoption or amendment of shoreline master
19 programs, or chapter 43.21C RCW as it relates to adoption of plans,
20 development regulations, and amendments thereto, under RCW 36.70A.040
21 or chapter 90.58 RCW, in which case the board shall remand the matter
22 to the affected state agency, county, or city ~~((and))~~. The board shall
23 specify a reasonable time not in excess of one hundred eighty days, or
24 such longer period as determined by the board in cases of unusual scope
25 or complexity, within which the state agency, county, or city shall
26 comply with the requirements of this chapter. The board may require
27 periodic reports to the board on the progress the jurisdiction is
28 making towards compliance.

29 ~~((+2))~~ (4) Unless the board makes a determination of invalidity as
30 provided in section 16 of this act, a finding of noncompliance and an
31 order of remand shall not affect the validity of comprehensive plans
32 and development regulations during the period of remand~~((, unless the~~
33 ~~board's final order also:~~

34 ~~(a) Includes a determination, supported by findings of fact and~~
35 ~~conclusions of law, that the continued validity of the plan or~~
36 ~~regulation would substantially interfere with the fulfillment of the~~
37 ~~goals of this chapter; and~~

1 ~~(b) Specifies the particular part or parts of the plan or~~
2 ~~regulation that are determined to be invalid, and the reasons for their~~
3 ~~invalidity.~~

4 ~~(3) A determination of invalidity shall:~~

5 ~~(a) Be prospective in effect and shall not extinguish rights that~~
6 ~~vested under state or local law before the date of the board's order;~~
7 ~~and~~

8 ~~(b) Subject any development application that would otherwise vest~~
9 ~~after the date of the board's order to the local ordinance or~~
10 ~~resolution that both is enacted in response to the order of remand and~~
11 ~~determined by the board pursuant to RCW 36.70A.330 to comply with the~~
12 ~~requirements of this chapter.~~

13 ~~(4) If the ordinance that adopts a plan or development regulation~~
14 ~~under this chapter includes a savings clause intended to revive prior~~
15 ~~policies or regulations in the event the new plan or regulations are~~
16 ~~determined to be invalid, the board shall determine under subsection~~
17 ~~(2) of this section whether the prior policies or regulations are valid~~
18 ~~during the period of remand)).~~

19 (5) Any party aggrieved by a final decision of the hearings board
20 may appeal the decision to superior court as provided in RCW 34.05.514
21 or 36.01.050 within thirty days of the final order of the board.

22 NEW SECTION. Sec. 15. A new section is added to chapter 36.70A
23 RCW to read as follows:

24 After the effective date of this section, all appeals of a decision
25 taken from a final decision of a board shall be filed in the court of
26 appeals for assignment by the chief presiding judge.

27 NEW SECTION. Sec. 16. A new section is added to chapter 36.70A
28 RCW to read as follows:

29 (1) A board may determine that part or all of a comprehensive plan
30 or development regulations are invalid if the board:

31 (a) Makes a finding of noncompliance and issues an order of remand
32 under RCW 36.70A.300;

33 (b) Includes in the final order a determination, supported by
34 findings of fact and conclusions of law, that the continued validity of
35 part or parts of the plan or regulation would substantially interfere
36 with the fulfillment of the goals of this chapter; and

1 (c) Specifies in the final order the particular part or parts of
2 the plan or regulation that are determined to be invalid, and the
3 reasons for their invalidity.

4 (2) A determination of invalidity is prospective in effect and does
5 not extinguish rights that vested under state or local law before
6 receipt of the board's order by the city or county. The determination
7 of invalidity does not apply to a completed development permit
8 application for a project that vested under state or local law before
9 receipt of the board's order by the county or city or to related
10 construction permits for that project.

11 (3)(a) Except as otherwise provided in subsection (2) of this
12 section and (b) of this subsection, a development permit application
13 not vested under state or local law before receipt of the board's order
14 by the county or city vests to the local ordinance or resolution that
15 is determined by the board not to substantially interfere with the
16 fulfillment of the goals of this chapter.

17 (b) Even though the application is not vested under state or local
18 law before receipt by the county or city of the board's order, a
19 determination of invalidity does not apply to a development permit
20 application for:

21 (i) A permit for construction by any owner, lessee, or contract
22 purchaser of a single-family residence for his or her own use or for
23 the use of his or her family on a lot existing before receipt by the
24 county or city of the board's order, except as otherwise specifically
25 provided in the board's order to protect the public health and safety;

26 (ii) A building permit and related construction permits for
27 remodeling, tenant improvements, or expansion of an existing structure
28 on a lot existing before receipt of the board's order by the county or
29 city; and

30 (iii) A boundary line adjustment or a division of land that does
31 not increase the number of buildable lots existing before receipt of
32 the board's order by the county or city.

33 (4) If the ordinance that adopts a plan or development regulation
34 under this chapter includes a savings clause intended to revive prior
35 policies or regulations in the event the new plan or regulations are
36 determined to be invalid, the board shall determine under subsection
37 (1) of this section whether the prior policies or regulations are valid
38 during the period of remand.

1 (5) A county or city subject to a determination of invalidity may
2 adopt interim controls and other measures to be in effect until it
3 adopts a comprehensive plan and development regulations that comply
4 with the requirements of this chapter. A development permit
5 application may vest under an interim control or measure upon
6 determination by the board that the interim controls and other measures
7 do not substantially interfere with the fulfillment of the goals of
8 this chapter.

9 (6) A county or city subject to a determination of invalidity may
10 file a motion requesting that the board clarify, modify, or rescind the
11 order. The board shall expeditiously schedule a hearing on the motion.
12 At the hearing on the motion, the parties may present information to
13 the board to clarify the part or parts of the comprehensive plan or
14 development regulations to which the final order applies. The board
15 shall issue any supplemental order based on the information provided at
16 the hearing not later than thirty days after the date of the hearing.

17 (7)(a) If a determination of invalidity has been made and the
18 county or city has enacted an ordinance or resolution amending the
19 invalidated part or parts of the plan or regulation or establishing
20 interim controls on development affected by the order of invalidity,
21 after a compliance hearing, the board shall modify or rescind the
22 determination of invalidity if it determines under the standard in
23 subsection (1) of this section that the plan or regulation, as amended
24 or made subject to such interim controls, will no longer substantially
25 interfere with the fulfillment of the goals of this chapter.

26 (b) If the board determines that part or parts of the plan or
27 regulation are no longer invalid as provided in this subsection, but
28 does not find that the plan or regulation is in compliance with all of
29 the requirements of this chapter, the board, in its order, may require
30 periodic reports to the board on the progress the jurisdiction is
31 making towards compliance.

32 NEW SECTION. **Sec. 17.** A board shall determine that part or all of
33 a comprehensive plan or development regulations, or amendments thereto,
34 are invalid only if, in addition to the requirements of section 16 of
35 this act, the board finds that in adopting plans or development
36 regulations, or amendments thereto, the county or city acted in an
37 arbitrary and capricious manner.

1 **Sec. 18.** RCW 36.70A.305 and 1996 c 325 s 4 are each amended to
2 read as follows:

3 (1) The court shall provide expedited review of ~~((a determination~~
4 ~~of invalidity or))~~ an order ~~((effectuating))~~ that includes a
5 determination of invalidity made or issued under RCW 36.70A.300 and
6 section 16 of this act. The matter must be set for hearing within
7 sixty days of the date set for submitting the board's record, absent a
8 showing of good cause for a different date or a stipulation of the
9 parties.

10 (2) A determination of substantial interference under this chapter
11 must be based on evidence of actual development or development permit
12 applications that would substantially interfere with the goals of this
13 chapter, and not on hypothetical or speculative development potential.

14 NEW SECTION. **Sec. 19.** A new section is added to chapter 36.70A
15 RCW to read as follows:

16 A court, in reviewing an order of the board, may:

17 (1) Affirm the board's order;

18 (2) Set aside the board's order, enjoin or stay the board's order,
19 remand the matter for further proceedings, order the board to rescind
20 or modify an order; or

21 (3) Enter a declaratory judgment order of compliance or
22 noncompliance, which may include a determination of invalidity if (a)
23 the determination is supported by findings of fact and conclusions of
24 law that the continued validity of part or parts of the plan or
25 regulation would substantially interfere with the fulfillment of the
26 goals of this chapter and (b) the court's order specifies the
27 particular part or parts of the plan or regulation that are determined
28 to be invalid, and the reasons for their invalidity.

29 **Sec. 20.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
30 read as follows:

31 (1) Except as provided in subsection ~~((+2))~~ (5) of this section,
32 comprehensive plans and development regulations, and amendments
33 thereto, adopted under this chapter are presumed valid upon adoption.

34 (2) Except as otherwise provided in subsection (4) of this section,
35 the burden is on the petitioner to demonstrate that any action taken by
36 a state agency, county, or city under this chapter is not in compliance
37 with the requirements of this chapter.

1 (3) In any petition under this chapter, the board, after full
2 consideration of the petition, shall determine whether there is
3 compliance with the requirements of this chapter. In making its
4 determination, the board shall consider the criteria adopted by the
5 department under RCW 36.70A.190(4). The board shall find compliance
6 unless it ~~((finds by a preponderance of the evidence that the state
7 agency, county, or city erroneously interpreted or applied this
8 chapter))~~ determines that the action by the state agency, county, or
9 city is clearly erroneous in view of the entire record before the board
10 and in light of the goals and requirements of this chapter.

11 ~~((2))~~ (4) A county or city subject to a determination of
12 invalidity made under RCW 36.70A.300 or section 16 of this act has the
13 burden of demonstrating that the ordinance or resolution it has enacted
14 in response to the determination of invalidity will no longer
15 substantially interfere with the fulfillment of the goals of this
16 chapter under the standard in section 16(1) of this act.

17 (5) The shoreline element of a comprehensive plan and the
18 applicable development regulations adopted by a county or city shall
19 take effect as provided in chapter 90.58 RCW.

20 **Sec. 21.** RCW 36.70A.330 and 1995 c 347 s 112 are each amended to
21 read as follows:

22 (1) After the time set for complying with the requirements of this
23 chapter under RCW ~~((36.70A.300(1)(b)))~~ 36.70A.300(3)(b) has expired, or
24 at an earlier time upon the motion of a county or city subject to a
25 determination of invalidity under RCW 36.70A.300, the board shall set
26 a hearing for the purpose of determining whether the state agency,
27 county, or city is in compliance with the requirements of this chapter.

28 (2) The board shall conduct a hearing and issue a finding of
29 compliance or noncompliance with the requirements of this chapter and
30 with any compliance schedule established by the board in its final
31 order. A person with standing to challenge the legislation enacted in
32 response to the board's final order may participate in the hearing
33 along with the petitioner and the state agency, ~~((city, or))~~ county, or
34 city. A hearing under this subsection shall be given the highest
35 priority of business to be conducted by the board, and a finding shall
36 be issued within forty-five days of the filing of the motion under
37 subsection (1) of this section with the board. The board shall issue

1 any order necessary to make adjustments to the compliance schedule and
2 set additional hearings as provided in subsection (5) of this section.

3 (3) If the board after a compliance hearing finds that the state
4 agency, county, or city is not in compliance, the board shall transmit
5 its finding to the governor. The board may recommend to the governor
6 that the sanctions authorized by this chapter be imposed. The board
7 shall take into consideration the county's or city's efforts to meet
8 its compliance schedule in making the decision to recommend sanctions
9 to the governor.

10 (4) In a compliance hearing upon petition of a party, the board
11 shall also reconsider its final order and decide((÷

12 ~~(a) If a determination of invalidity has been made, whether such a~~
13 ~~determination should be rescinded or modified under the standards in~~
14 ~~RCW 36.70A.300(2); or~~

15 ~~(b)),~~ if no determination of invalidity has been made, whether one
16 now should be made ((under the standards in RCW 36.70A.300(2)) under
17 section 16 of this act.

18 (5) The board shall schedule additional hearings as appropriate
19 pursuant to subsections (1) and (2) of this section.

20 NEW SECTION. Sec. 22. A new section is added to chapter 36.70A
21 RCW to read as follows:

22 A county or city subject to an order of invalidity issued before
23 the effective date of section 14 of this act, by motion may request the
24 board to review the order of invalidity in light of the section 14,
25 chapter . . . , Laws of 1997 (section 14 of this act) amendments to RCW
26 36.70A.300, the section 21, chapter . . . , Laws of 1997 (section 21 of
27 this act) amendments to RCW 36.70A.330, and section 16 of this act. If
28 a request is made, the board shall rescind or modify the order of
29 invalidity as necessary to make it consistent with the section 14,
30 chapter . . . , Laws of 1997 (section 14 of this act) amendments to RCW
31 36.70A.300, and to the section 21, chapter . . . , Laws of 1997 (section
32 21 of this act) amendments to RCW 36.70A.330, and section 16 of this
33 act.

34 NEW SECTION. Sec. 23. A new section is added to chapter 36.70A
35 RCW to read as follows:

36 (1) A county or a city may use a variety of innovative zoning
37 techniques in areas designated as agricultural lands of long-term

1 commercial significance under RCW 36.70A.170. The innovative zoning
2 techniques should be designed to conserve agricultural lands and
3 encourage the agricultural economy. A county or city should encourage
4 nonagricultural uses to be limited to lands with poor soils or
5 otherwise not suitable for agricultural purposes.

6 (2) Innovative zoning techniques a county or city may consider
7 include, but are not limited to:

8 (a) Agricultural zoning, which limits the density of development
9 and restricts or prohibits nonfarm uses of agricultural land;

10 (b) Cluster zoning, which allows new development on one portion of
11 the land, leaving the remainder in agricultural or open space uses;

12 (c) Large lot zoning, which establishes as a minimum lot size the
13 amount of land necessary to achieve a successful farming practice;

14 (d) Quarter/quarter zoning, which permits one residential dwelling
15 on a one-acre minimum lot for each one-sixteenth of a section of land;
16 and

17 (e) Sliding scale zoning, which allows the number of lots for
18 single-family residential purposes with a minimum lot size of one acre
19 to increase inversely as the size of the total acreage increases.

20 **Sec. 24.** RCW 36.70A.110 and 1995 c 400 s 2 are each amended to
21 read as follows:

22 (1) Each county that is required or chooses to plan under RCW
23 36.70A.040 shall designate an urban growth area or areas within which
24 urban growth shall be encouraged and outside of which growth can occur
25 only if it is not urban in nature. Each city that is located in such
26 a county shall be included within an urban growth area. An urban
27 growth area may include more than a single city. An urban growth area
28 may include territory that is located outside of a city only if such
29 territory already is characterized by urban growth whether or not the
30 urban growth area includes a city, or is adjacent to territory already
31 characterized by urban growth, or is a designated new fully contained
32 community as defined by RCW 36.70A.350.

33 (2) Based upon the growth management population projection made for
34 the county by the office of financial management, (~~the urban growth~~
35 ~~areas in~~)) the county and each city within the county shall include
36 areas and densities sufficient to permit the urban growth that is
37 projected to occur in the county or city for the succeeding twenty-year
38 period. Each urban growth area shall permit urban densities and shall

1 include greenbelt and open space areas. An urban growth area
2 determination may include a reasonable land market supply factor and
3 shall permit a range of urban densities and uses. In determining this
4 market factor, cities and counties may consider local circumstances.
5 Cities and counties have discretion in their comprehensive plans to
6 make many choices about accommodating growth.

7 Within one year of July 1, 1990, each county that as of June 1,
8 1991, was required or chose to plan under RCW 36.70A.040, shall begin
9 consulting with each city located within its boundaries and each city
10 shall propose the location of an urban growth area. Within sixty days
11 of the date the county legislative authority of a county adopts its
12 resolution of intention or of certification by the office of financial
13 management, all other counties that are required or choose to plan
14 under RCW 36.70A.040 shall begin this consultation with each city
15 located within its boundaries. The county shall attempt to reach
16 agreement with each city on the location of an urban growth area within
17 which the city is located. If such an agreement is not reached with
18 each city located within the urban growth area, the county shall
19 justify in writing why it so designated the area an urban growth area.
20 A city may object formally with the department over the designation of
21 the urban growth area within which it is located. Where appropriate,
22 the department shall attempt to resolve the conflicts, including the
23 use of mediation services.

24 (3) Urban growth should be located first in areas already
25 characterized by urban growth that have adequate existing public
26 facility and service capacities to serve such development, second in
27 areas already characterized by urban growth that will be served
28 adequately by a combination of both existing public facilities and
29 services and any additional needed public facilities and services that
30 are provided by either public or private sources, and third in the
31 remaining portions of the urban growth areas. Urban growth may also be
32 located in designated new fully contained communities as defined by RCW
33 36.70A.350.

34 (4) In general, cities are the units of local government most
35 appropriate to provide urban governmental services. In general, it is
36 not appropriate that urban governmental services be extended to or
37 expanded in rural areas except in those limited circumstances shown to
38 be necessary to protect basic public health and safety and the

1 environment and when such services are financially supportable at rural
2 densities and do not permit urban development.

3 (5) On or before October 1, 1993, each county that was initially
4 required to plan under RCW 36.70A.040(1) shall adopt development
5 regulations designating interim urban growth areas under this chapter.
6 Within three years and three months of the date the county legislative
7 authority of a county adopts its resolution of intention or of
8 certification by the office of financial management, all other counties
9 that are required or choose to plan under RCW 36.70A.040 shall adopt
10 development regulations designating interim urban growth areas under
11 this chapter. Adoption of the interim urban growth areas may only
12 occur after public notice; public hearing; and compliance with the
13 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
14 Such action may be appealed to the appropriate growth management
15 hearings board under RCW 36.70A.280. Final urban growth areas shall be
16 adopted at the time of comprehensive plan adoption under this chapter.

17 (6) Each county shall include designations of urban growth areas in
18 its comprehensive plan.

19 NEW SECTION. **Sec. 25.** A new section is added to chapter 36.70A
20 RCW to read as follows:

21 (1) Subject to the limitations in subsection (7) of this section,
22 a county shall adopt, in consultation with its cities, county-wide
23 planning policies to establish a review and evaluation program. This
24 program shall be in addition to the requirements of RCW 36.70A.110,
25 36.70A.130, and 36.70A.210. In developing and implementing the review
26 and evaluation program required by this section, the county and its
27 cities shall consider information from other appropriate jurisdictions
28 and sources. The purpose of the review and evaluation program shall be
29 to:

30 (a) Determine whether a county and its cities are achieving urban
31 densities within urban growth areas by comparing growth and development
32 assumptions, targets, and objectives contained in the county-wide
33 planning policies and the county and city comprehensive plans with
34 actual growth and development that has occurred in the county and its
35 cities; and

36 (b) Identify reasonable measures, other than adjusting urban growth
37 areas, that will be taken to comply with the requirements of this
38 chapter.

1 (2) The review and evaluation program shall:

2 (a) Encompass land uses and activities both within and outside of
3 urban growth areas and provide for annual collection of data on urban
4 and rural land uses, development, critical areas, and capital
5 facilities to the extent necessary to determine the quantity and type
6 of land suitable for development, both for residential and employment-
7 based activities;

8 (b) Provide for evaluation of the data collected under (a) of this
9 subsection every five years as provided in subsection (3) of this
10 section. The first evaluation shall be completed not later than
11 September 1, 2002. The county and its cities may establish in the
12 county-wide planning policies indicators, benchmarks, and other similar
13 criteria to use in conducting the evaluation;

14 (c) Provide for methods to resolve disputes among jurisdictions
15 relating to the county-wide planning policies required by this section
16 and procedures to resolve inconsistencies in collection and analysis of
17 data; and

18 (d) Provide for the amendment of the county-wide policies and
19 county and city comprehensive plans as needed to remedy an
20 inconsistency identified through the evaluation required by this
21 section, or to bring these policies into compliance with the
22 requirements of this chapter.

23 (3) At a minimum, the evaluation component of the program required
24 by subsection (1) of this section shall:

25 (a) Determine whether there is sufficient suitable land to
26 accommodate the county-wide population projection established for the
27 county pursuant to RCW 43.62.035 and the subsequent population
28 allocations within the county and between the county and its cities and
29 the requirements of RCW 36.70A.110;

30 (b) Determine the actual density of housing that has been
31 constructed and the actual amount of land developed for commercial and
32 industrial uses within the urban growth area since the adoption of a
33 comprehensive plan under this chapter or since the last periodic
34 evaluation as required by subsection (1) of this section; and

35 (c) Based on the actual density of development as determined under
36 (b) of this subsection, review commercial, industrial, and housing
37 needs by type and density range to determine the amount of land needed
38 for commercial, industrial, and housing for the remaining portion of

1 the twenty-year planning period used in the most recently adopted
2 comprehensive plan.

3 (4) If the evaluation required by subsection (3) of this section
4 demonstrates an inconsistency between what has occurred since the
5 adoption of the county-wide planning policies and the county and city
6 comprehensive plans and development regulations and what was envisioned
7 in those policies and plans and the planning goals and the requirements
8 of this chapter, as the inconsistency relates to the evaluation factors
9 specified in subsection (3) of this section, the county and its cities
10 shall adopt and implement measures that are reasonably likely to
11 increase consistency during the subsequent five-year period. If
12 necessary, a county, in consultation with its cities as required by RCW
13 36.70A.210, shall adopt amendments to county-wide planning policies to
14 increase consistency. The county and its cities shall annually monitor
15 the measures adopted under this subsection to determine their effect
16 and may revise or rescind them as appropriate.

17 (5)(a) Not later than July 1, 1998, the department shall prepare a
18 list of methods used by counties and cities in carrying out the types
19 of activities required by this section. The department shall provide
20 this information and appropriate technical assistance to counties and
21 cities required to or choosing to comply with the provisions of this
22 section.

23 (b) By December 31, 2007, the department shall submit to the
24 appropriate committees of the legislature a report analyzing the
25 effectiveness of the activities described in this section in achieving
26 the goals envisioned by the county-wide planning policies and the
27 comprehensive plans and development regulations of the counties and
28 cities.

29 (6) From funds appropriated by the legislature for this purpose,
30 the department shall provide grants to counties, cities, and regional
31 planning organizations required under subsection (7) of this section to
32 conduct the review and perform the evaluation required by this section.

33 (7) The provisions of this section shall apply to counties, and the
34 cities within those counties, that were greater than one hundred fifty
35 thousand in population in 1995 as determined by office of financial
36 management population estimates and that are located west of the crest
37 of the Cascade mountain range. Any other county planning under RCW
38 36.70A.040 may carry out the review, evaluation, and amendment programs
39 and procedures as provided in this section.

1 **Sec. 26.** RCW 43.62.035 and 1995 c 162 s 1 are each amended to read
2 as follows:

3 The office of financial management shall determine the population
4 of each county of the state annually as of April 1st of each year and
5 on or before July 1st of each year shall file a certificate with the
6 secretary of state showing its determination of the population for each
7 county. The office of financial management also shall determine the
8 percentage increase in population for each county over the preceding
9 ten-year period, as of April 1st, and shall file a certificate with the
10 secretary of state by July 1st showing its determination. At least
11 once every (~~ten~~) five years or upon the availability of decennial
12 census data, whichever is later, the office of financial management
13 shall prepare twenty-year growth management planning population
14 projections required by RCW 36.70A.110 for each county that adopts a
15 comprehensive plan under RCW 36.70A.040 and shall review these
16 projections with such counties and the cities in those counties before
17 final adoption. The county and its cities may provide to the office
18 such information as they deem relevant to the office's projection, and
19 the office shall consider and comment on such information before
20 adoption. Each projection shall be expressed as a reasonable range
21 developed within the standard state high and low projection. The
22 middle range shall represent the office's estimate of the most likely
23 population projection for the county. If any city or county believes
24 that a projection will not accurately reflect actual population growth
25 in a county, it may petition the office to revise the projection
26 accordingly. The office shall complete the first set of ranges for
27 every county by December 31, 1995.

28 A comprehensive plan adopted or amended before December 31, 1995,
29 shall not be considered to be in noncompliance with the twenty-year
30 growth management planning population projection if the projection used
31 in the comprehensive plan is in compliance with the range later adopted
32 under this section.

33 NEW SECTION. **Sec. 27.** In order to ensure that there will be no
34 unfunded responsibilities imposed on counties and cities, if specific
35 funding for the purposes of section 25 of this act, referencing this
36 act by bill or chapter number, is not provided by June 30, 1997, in the
37 omnibus appropriations act, section 25 of this act is null and void.

1 **Sec. 28.** RCW 36.70A.500 and 1995 c 347 s 116 are each amended to
2 read as follows:

3 (1) The department of community, trade, and economic development
4 shall provide management services for the fund created by RCW
5 36.70A.490. The department (~~by rule~~) shall establish procedures for
6 fund management. The department shall encourage participation in the
7 grant program by other public agencies. The department shall develop
8 the grant criteria, monitor the grant program, and select grant
9 recipients in consultation with state agencies participating in the
10 grant program through the provision of grant funds or technical
11 assistance.

12 (2) A grant may be awarded to a county or city that is required to
13 or has chosen to plan under RCW 36.70A.040 and that is qualified
14 pursuant to this section. The grant shall be provided to assist a
15 county or city in paying for the cost of preparing (~~a detailed~~
16 ~~environmental impact statement~~) an environmental analysis under
17 chapter 43.21C RCW, that is integrated with a comprehensive plan
18 (~~or~~), subarea plan (~~and~~), plan element, county-wide planning
19 policy, development regulation(~~s~~), monitoring program, or other
20 planning activity adopted under or implementing this chapter that:

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

23 (b) Encourages use of plans and information developed for purposes
24 of complying with this chapter to satisfy requirements of other state
25 programs.

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

27 (a) Demonstrate that it will prepare an environmental analysis
28 pursuant to chapter 43.21C RCW and subsection (2) of this section that
29 is integrated with a comprehensive plan (~~or~~), subarea plan (~~and~~),
30 plan element, county-wide planning policy, development regulations,
31 monitoring program, or other planning activity adopted under or
32 implementing this chapter;

33 (b) Address environmental impacts and consequences, alternatives,
34 and mitigation measures in sufficient detail to allow the analysis to
35 be adopted in whole or in part by (~~subsequent~~) applicants for
36 development permits within the geographic area analyzed in the plan;

37 (c) Demonstrate that procedures for review of development permit
38 applications will be based on the integrated plans and environmental
39 analysis;

1 ~~(d)~~ Include mechanisms ~~((in the plan))~~ to monitor the consequences
2 of growth as it occurs in the plan area and ~~((provide ongoing))~~ to use
3 the resulting data to update the plan, policy, or implementing
4 mechanisms and associated environmental analysis;

5 ~~((d) Be making))~~ (e) Demonstrate substantial progress towards
6 compliance with the requirements of this chapter. A county or city
7 that is more than six months out of compliance with a requirement of
8 this chapter is deemed not to be making substantial progress towards
9 compliance; and

10 ~~((e))~~ (f) Provide local funding, which may include financial
11 participation by the private sector.

12 (4) In awarding grants, the department shall give preference to
13 proposals that include one or more of the following elements:

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

16 (b) ~~((Comprehensive and subarea plan proposals that are designed to~~
17 ~~identify and monitor))~~ Identification and monitoring of system
18 capacities for elements of the built environment, and to the extent
19 appropriate, of the natural environment;

20 (c) Coordination with state, federal, and tribal governments in
21 project review;

22 (d) Furtherance of important state objectives related to economic
23 development, protection of areas of state-wide significance, and siting
24 of essential public facilities;

25 (e) Programs to improve the efficiency and effectiveness of the
26 permitting process by greater reliance on integrated plans and
27 prospective environmental analysis;

28 ~~((d))~~ (f) Programs for effective citizen and neighborhood
29 involvement that contribute to greater ((certainty)) likelihood that
30 planning decisions ((will)) can be implemented with community support;
31 and

32 ~~((e) Plans that))~~ (g) Programs to identify environmental impacts
33 and establish mitigation measures that provide effective means to
34 satisfy concurrency requirements and establish project consistency with
35 the plans.

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

1 (6) State agencies shall work with grant recipients to facilitate
2 state and local project review processes that will implement the
3 projects receiving grants under this section.

4 **Sec. 29.** RCW 43.155.070 and 1996 c 168 s 3 are each amended to
5 read as follows:

6 (1) To qualify for loans or pledges under this chapter the board
7 must determine that a local government meets all of the following
8 conditions:

9 (a) The city or county must be imposing a tax under chapter 82.46
10 RCW at a rate of at least one-quarter of one percent;

11 (b) The local government must have developed a long-term plan for
12 financing public works needs;

13 (c) The local government must be using all local revenue sources
14 which are reasonably available for funding public works, taking into
15 consideration local employment and economic factors; and

16 (d) Except where necessary to address a public health need or
17 substantial environmental degradation, a county, city, or town that is
18 required or chooses to plan under RCW 36.70A.040 must have adopted a
19 comprehensive plan in conformance with the requirements of chapter
20 36.70A RCW, after it is required that the comprehensive plan be
21 adopted, and must have adopted development regulations in conformance
22 with the requirements of chapter 36.70A RCW, after it is required that
23 development regulations be adopted.

24 (2) The board shall develop a priority process for public works
25 projects as provided in this section. The intent of the priority
26 process is to maximize the value of public works projects accomplished
27 with assistance under this chapter. The board shall attempt to assure
28 a geographical balance in assigning priorities to projects. The board
29 shall consider at least the following factors in assigning a priority
30 to a project:

31 (a) Whether the local government receiving assistance has
32 experienced severe fiscal distress resulting from natural disaster or
33 emergency public works needs;

34 (b) Whether the project is critical in nature and would affect the
35 health and safety of a great number of citizens;

36 (c) The cost of the project compared to the size of the local
37 government and amount of loan money available;

38 (d) The number of communities served by or funding the project;

1 (e) Whether the project is located in an area of high unemployment,
2 compared to the average state unemployment;

3 (f) Whether the project is the acquisition, expansion, improvement,
4 or renovation by a local government of a public water system that is in
5 violation of health and safety standards, including the cost of
6 extending existing service to such a system;

7 (g) The relative benefit of the project to the community,
8 considering the present level of economic activity in the community and
9 the existing local capacity to increase local economic activity in
10 communities that have low economic growth; and

11 (h) Other criteria that the board considers advisable.

12 (3) Existing debt or financial obligations of local governments
13 shall not be refinanced under this chapter. Each local government
14 applicant shall provide documentation of attempts to secure additional
15 local or other sources of funding for each public works project for
16 which financial assistance is sought under this chapter.

17 (4) Before November 1 of each year, the board shall develop and
18 submit to the appropriate fiscal committees of the senate and house of
19 representatives a description of the loans made under RCW 43.155.065,
20 43.155.068, and subsection (7) of this section during the preceding
21 fiscal year and a prioritized list of projects which are recommended
22 for funding by the legislature, including one copy to the staff of each
23 of the committees. The list shall include, but not be limited to, a
24 description of each project and recommended financing, the terms and
25 conditions of the loan or financial guarantee, the local government
26 jurisdiction and unemployment rate, demonstration of the jurisdiction's
27 critical need for the project and documentation of local funds being
28 used to finance the public works project. The list shall also include
29 measures of fiscal capacity for each jurisdiction recommended for
30 financial assistance, compared to authorized limits and state averages,
31 including local government sales taxes; real estate excise taxes;
32 property taxes; and charges for or taxes on sewerage, water, garbage,
33 and other utilities.

34 (5) The board shall not sign contracts or otherwise financially
35 obligate funds from the public works assistance account before the
36 legislature has appropriated funds for a specific list of public works
37 projects. The legislature may remove projects from the list
38 recommended by the board. The legislature shall not change the order
39 of the priorities recommended for funding by the board.

1 (6) Subsection (5) of this section does not apply to loans made
2 under RCW 43.155.065, 43.155.068, and subsection (7) of this section.

3 (7)(a) Loans made for the purpose of capital facilities plans shall
4 be exempted from subsection (5) of this section. In no case shall the
5 total amount of funds utilized for capital facilities plans and
6 emergency loans exceed the limitation in RCW 43.155.065.

7 (b) For the purposes of this section "capital facilities plans"
8 means those plans required by the growth management act, chapter 36.70A
9 RCW, and plans required by the public works board for local governments
10 not subject to the growth management act.

11 (8) To qualify for loans or pledges for solid waste or recycling
12 facilities under this chapter, a city or county must demonstrate that
13 the solid waste or recycling facility is consistent with and necessary
14 to implement the comprehensive solid waste management plan adopted by
15 the city or county under chapter 70.95 RCW.

16 **Sec. 30.** RCW 70.146.070 and 1991 sp.s. c 32 s 24 are each amended
17 to read as follows:

18 When making grants or loans for water pollution control facilities,
19 the department shall consider the following:

20 (1) The protection of water quality and public health;

21 (2) The cost to residential ratepayers if they had to finance water
22 pollution control facilities without state assistance;

23 (3) Actions required under federal and state permits and compliance
24 orders;

25 (4) The level of local fiscal effort by residential ratepayers
26 since 1972 in financing water pollution control facilities;

27 (5) The extent to which the applicant county or city, or if the
28 applicant is another public body, the extent to which the county or
29 city in which the applicant public body is located, has established
30 programs to mitigate nonpoint pollution of the surface or subterranean
31 water sought to be protected by the water pollution control facility
32 named in the application for state assistance; and

33 (6) The recommendations of the Puget Sound (~~water quality~~
34 ~~authority~~) action team and any other board, council, commission, or
35 group established by the legislature or a state agency to study water
36 pollution control issues in the state.

37 Except where necessary to address a public health need or
38 substantial environmental degradation, a county, city, or town that is

1 required or chooses to plan under RCW 36.70A.040 may not receive a
2 grant or loan for water pollution control facilities unless it has
3 adopted a comprehensive plan in conformance with the requirements of
4 chapter 36.70A RCW, after it is required that the comprehensive plan be
5 adopted, or unless it has adopted development regulations in
6 conformance with the requirements of chapter 36.70A RCW, after it is
7 required that development regulations be adopted.

8 **Sec. 31.** RCW 84.34.020 and 1992 c 69 s 4 are each amended to read
9 as follows:

10 As used in this chapter, unless a different meaning is required by
11 the context:

12 (1) "Open space land" means (a) any land area so designated by an
13 official comprehensive land use plan adopted by any city or county and
14 zoned accordingly(~~(+)~~), or (b) any land area, the preservation of
15 which in its present use would (i) conserve and enhance natural or
16 scenic resources, or (ii) protect streams or water supply, or (iii)
17 promote conservation of soils, wetlands, beaches or tidal marshes, or
18 (iv) enhance the value to the public of abutting or neighboring parks,
19 forests, wildlife preserves, nature reservations or sanctuaries or
20 other open space, or (v) enhance recreation opportunities, or (vi)
21 preserve historic sites, or (vii) preserve visual quality along
22 highway, road, and street corridors or scenic vistas, or (viii) retain
23 in its natural state tracts of land not less than one acre situated in
24 an urban area and open to public use on such conditions as may be
25 reasonably required by the legislative body granting the open space
26 classification, or (c) any land meeting the definition of farm and
27 agricultural conservation land under subsection (8) of this section.
28 As a condition of granting open space classification, the legislative
29 body may not require public access on land classified under (b)(iii) of
30 this subsection for the purpose of promoting conservation of wetlands.

31 (2) "Farm and agricultural land" means (~~either~~):

32 (a) Any parcel of land that is twenty or more acres or multiple
33 parcels of land that are contiguous and total twenty or more acres:

34 (i) Devoted primarily to the production of livestock or
35 agricultural commodities for commercial purposes(~~(-)~~);

36 (ii) Enrolled in the federal conservation reserve program or its
37 successor administered by the United States department of
38 agriculture(~~(-)~~); or

1 (iii) Other similar commercial activities as may be established by
2 rule ((following consultation with the advisory committee established
3 in section 19 of this act));

4 (b) Any parcel of land that is five acres or more but less than
5 twenty acres devoted primarily to agricultural uses, which has produced
6 a gross income from agricultural uses equivalent to, as of January 1,
7 1993((7));

8 (i) One hundred dollars or more per acre per year for three of the
9 five calendar years preceding the date of application for
10 classification under this chapter for all parcels of land that are
11 classified under this subsection or all parcels of land for which an
12 application for classification under this subsection is made with the
13 granting authority prior to January 1, 1993((7));

14 (ii) On or after January 1, 1993, two hundred dollars or more per
15 acre per year for three of the five calendar years preceding the date
16 of application for classification under this chapter;

17 (c) Any parcel of land of less than five acres devoted primarily to
18 agricultural uses which has produced a gross income as of January 1,
19 1993, of;

20 (i) One thousand dollars or more per year for three of the five
21 calendar years preceding the date of application for classification
22 under this chapter for all parcels of land that are classified under
23 this subsection or all parcels of land for which an application for
24 classification under this subsection is made with the granting
25 authority prior to January 1, 1993((7));

26 (ii) On or after January 1, 1993, fifteen hundred dollars or more
27 per year for three of the five calendar years preceding the date of
28 application for classification under this chapter.

29 Parcels of land described in (b)(i) and (c)(i) of this subsection
30 shall, upon any transfer of the property excluding a transfer to a
31 surviving spouse, be subject to the limits of (b)(ii) and (c)(ii) of
32 this subsection.

33 Agricultural lands shall also include such incidental uses as are
34 compatible with agricultural purposes, including wetlands preservation,
35 provided such incidental use does not exceed twenty percent of the
36 classified land and the land on which appurtenances necessary to the
37 production, preparation, or sale of the agricultural products exist in
38 conjunction with the lands producing such products. Agricultural lands
39 shall also include any parcel of land of one to five acres, which is

1 not contiguous, but which otherwise constitutes an integral part of
2 farming operations being conducted on land qualifying under this
3 section as "farm and agricultural lands"; (~~or~~)

4 (d) The land on which housing for employees and the principal place
5 of residence of the farm operator or owner of land classified pursuant
6 to (a) of this subsection is sited if: The housing or residence is on
7 or contiguous to the classified parcel; and the use of the housing or
8 the residence is integral to the use of the classified land for
9 agricultural purposes;

10 (e) Any parcel of land designated as agricultural land under RCW
11 36.70A.170; or

12 (f) Any parcel of land not within an urban growth area zoned as
13 agricultural land under a comprehensive plan adopted under chapter
14 36.70A RCW.

15 (3) "Timber land" means any parcel of land that is five or more
16 acres or multiple parcels of land that are contiguous and total five or
17 more acres which is or are devoted primarily to the growth and harvest
18 of forest crops for commercial purposes. A timber management plan
19 shall be filed with the county legislative authority at the time (a) an
20 application is made for classification as timber land pursuant to this
21 chapter or (b) when a sale or transfer of timber land occurs and a
22 notice of classification continuance is signed. Timber land means the
23 land only.

24 (4) "Current" or "currently" means as of the date on which property
25 is to be listed and valued by the assessor.

26 (5) "Owner" means the party or parties having the fee interest in
27 land, except that where land is subject to real estate contract "owner"
28 shall mean the contract vendee.

29 (6) "Contiguous" means land adjoining and touching other property
30 held by the same ownership. Land divided by a public road, but
31 otherwise an integral part of a farming operation, shall be considered
32 contiguous.

33 (7) "Granting authority" means the appropriate agency or official
34 who acts on an application for classification of land pursuant to this
35 chapter.

36 (8) "Farm and agricultural conservation land" means either:

37 (a) Land that was previously classified under subsection (2) of
38 this section, that no longer meets the criteria of subsection (2) of

1 this section, and that is reclassified under subsection (1) of this
2 section; or

3 (b) Land that is traditional farmland that is not classified under
4 chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a
5 use inconsistent with agricultural uses, and that has a high potential
6 for returning to commercial agriculture.

7 **Sec. 32.** RCW 84.34.060 and 1992 c 69 s 8 are each amended to read
8 as follows:

9 In determining the true and fair value of open space land and
10 timber land, which has been classified as such under the provisions of
11 this chapter, the assessor shall consider only the use to which such
12 property and improvements is currently applied and shall not consider
13 potential uses of such property. The assessed valuation of open space
14 land shall not be less than the minimum value per acre of classified
15 farm and agricultural land except that the assessed valuation of open
16 space land may be valued based on the public benefit rating system
17 adopted under RCW 84.34.055: PROVIDED FURTHER, That timber land shall
18 be valued according to chapter 84.33 RCW. In valuing any tract or
19 parcel of real property designated and zoned under a comprehensive plan
20 adopted under chapter 36.70A RCW as agricultural, forest, or open space
21 land, the appraisal shall not be based on similar sales of parcels that
22 have been converted to nonagricultural, nonforest, or nonopen-space
23 uses within five years after the sale.

24 **Sec. 33.** RCW 84.34.065 and 1992 c 69 s 9 are each amended to read
25 as follows:

26 The true and fair value of farm and agricultural land shall be
27 determined by consideration of the earning or productive capacity of
28 comparable lands from crops grown most typically in the area averaged
29 over not less than five years, capitalized at indicative rates. The
30 earning or productive capacity of farm and agricultural lands shall be
31 the "net cash rental", capitalized at a "rate of interest" charged on
32 long term loans secured by a mortgage on farm or agricultural land plus
33 a component for property taxes. The current use value of land under
34 RCW 84.34.020(2)(d) shall be established as: The prior year's average
35 value of open space farm and agricultural land used in the county plus
36 the value of land improvements such as septic, water, and power used to

1 serve the residence. This shall not be interpreted to require the
2 assessor to list improvements to the land with the value of the land.

3 In valuing any tract or parcel of real property designated and
4 zoned under a comprehensive plan adopted under chapter 36.70A RCW as
5 agricultural, forest, or open space land, the appraisal shall not be
6 based on similar sales of parcels that have been converted to
7 nonagricultural, nonforest, or nonopen-space uses within five years
8 after the sale.

9 For the purposes of the above computation:

10 (1) The term "net cash rental" shall mean the average rental paid
11 on an annual basis, in cash, for the land being appraised and other
12 farm and agricultural land of similar quality and similarly situated
13 that is available for lease for a period of at least three years to any
14 reliable person without unreasonable restrictions on its use for
15 production of agricultural crops. There shall be allowed as a
16 deduction from the rental received or computed any costs of crop
17 production charged against the landlord if the costs are such as are
18 customarily paid by a landlord. If "net cash rental" data is not
19 available, the earning or productive capacity of farm and agricultural
20 lands shall be determined by the cash value of typical or usual crops
21 grown on land of similar quality and similarly situated averaged over
22 not less than five years. Standard costs of production shall be
23 allowed as a deduction from the cash value of the crops.

24 The current "net cash rental" or "earning capacity" shall be
25 determined by the assessor with the advice of the advisory committee as
26 provided in RCW 84.34.145, and through a continuing internal study,
27 assisted by studies of the department of revenue. This net cash rental
28 figure as it applies to any farm and agricultural land may be
29 challenged before the same boards or authorities as would be the case
30 with regard to assessed values on general property.

31 (2) The term "rate of interest" shall mean the rate of interest
32 charged by the farm credit administration and other large financial
33 institutions regularly making loans secured by farm and agricultural
34 lands through mortgages or similar legal instruments, averaged over the
35 immediate past five years.

36 The "rate of interest" shall be determined annually by a rule
37 adopted by the department of revenue and such rule shall be published
38 in the state register not later than January 1 of each year for use in
39 that assessment year. The department of revenue determination may be

1 appealed to the state board of tax appeals within thirty days after the
2 date of publication by any owner of farm or agricultural land or the
3 assessor of any county containing farm and agricultural land.

4 (3) The "component for property taxes" shall be a figure obtained
5 by dividing the assessed value of all property in the county into the
6 property taxes levied within the county in the year preceding the
7 assessment and multiplying the quotient obtained by one hundred.

8 **Sec. 34.** RCW 84.40.030 and 1994 c 124 s 20 are each amended to
9 read as follows:

10 All property shall be valued at one hundred percent of its true and
11 fair value in money and assessed on the same basis unless specifically
12 provided otherwise by law.

13 Taxable leasehold estates shall be valued at such price as they
14 would bring at a fair, voluntary sale for cash without any deductions
15 for any indebtedness owed including rentals to be paid.

16 The true and fair value of real property for taxation purposes
17 (including property upon which there is a coal or other mine, or stone
18 or other quarry) shall be based upon the following criteria:

19 (1) Any sales of the property being appraised or similar properties
20 with respect to sales made within the past five years. The appraisal
21 shall be consistent with the comprehensive land use plan, development
22 regulations under chapter 36.70A RCW, zoning, and any other
23 governmental policies or practices in effect at the time of appraisal
24 that affect the use of property, as well as physical and environmental
25 influences. The appraisal shall also take into account: (a) In the
26 use of sales by real estate contract as similar sales, the extent, if
27 any, to which the stated selling price has been increased by reason of
28 the down payment, interest rate, or other financing terms; and (b) the
29 extent to which the sale of a similar property actually represents the
30 general effective market demand for property of such type, in the
31 geographical area in which such property is located. Sales involving
32 deed releases or similar seller-developer financing arrangements shall
33 not be used as sales of similar property.

34 (2) In addition to sales as defined in subsection (1),
35 consideration may be given to cost, cost less depreciation,
36 reconstruction cost less depreciation, or capitalization of income that
37 would be derived from prudent use of the property. In the case of
38 property of a complex nature, or being used under terms of a franchise

1 from a public agency, or operating as a public utility, or property not
2 having a record of sale within five years and not having a significant
3 number of sales of similar property in the general area, the provisions
4 of this subsection (2) shall be the dominant factors in valuation.
5 When provisions of this subsection (2) are relied upon for establishing
6 values the property owner shall be advised upon request of the factors
7 used in arriving at such value.

8 (3) In valuing any tract or parcel of real property, the value of
9 the land, exclusive of structures thereon shall be determined; also the
10 value of structures thereon, but the valuation shall not exceed the
11 value of the total property as it exists. In valuing agricultural
12 land, growing crops shall be excluded.

13 (4) In valuing any tract or parcel of real property designated and
14 zoned under a comprehensive plan adopted under chapter 36.70A RCW as
15 agricultural, forest, or open space land, the appraisal shall not be
16 based on similar sales of parcels that have been converted to
17 nonagricultural, nonforest, or nonopen-space uses within five years
18 after the sale.

19 **Sec. 35.** RCW 90.60.030 and 1995 c 347 s 603 are each amended to
20 read as follows:

21 The permit assistance center is established within the department.
22 The center shall:

23 (1) Publish and keep current one or more handbooks containing lists
24 and explanations of all permit laws. ~~((The center shall coordinate~~
25 ~~with the business assistance center in providing and maintaining this~~
26 ~~information to applicants and others.))~~ To the extent possible, the
27 handbook shall include relevant federal and tribal laws. A state
28 agency or local government shall provide a reasonable number of copies
29 of application forms, statutes, ordinances, rules, handbooks, and other
30 informational material requested by the center and shall otherwise
31 fully cooperate with the center. The center shall seek the cooperation
32 of relevant federal agencies and tribal governments;

33 (2) Establish, and make known, a point of contact for distribution
34 of the handbook and advice to the public as to its interpretation in
35 any given case;

36 (3) Work closely and cooperatively with the business license center
37 ~~((and the business assistance center))~~ in providing efficient and
38 nonduplicative service to the public;

1 (4) Seek the assignment of employees from the permit agencies
2 listed under RCW 90.60.020(6)(a) to serve on a rotating basis in
3 staffing the center; ((and))

4 (5) Collect and disseminate information to public and private
5 entities on federal, state, local, and tribal government programs that
6 rely on private professional expertise to assist governmental agencies
7 in project permit review; and

8 (6) Provide an annual report to the legislature on potential
9 conflicts and perceived inconsistencies among existing statutes. The
10 first report shall be submitted to the appropriate standing committees
11 of the house of representatives and senate by December 1, 1996.

12 **Sec. 36.** RCW 35A.14.295 and 1967 ex.s. c 119 s 35A.14.295 are each
13 amended to read as follows:

14 ((When there is, within)) (1) The legislative body of a code city
15 may resolve to annex territory containing residential property owners
16 to the city if there is within the city, unincorporated territory:

17 (a) Containing less than one hundred acres and having at least
18 eighty percent of the boundaries of such area contiguous to the code
19 city((, the legislative body may resolve to annex such territory to the
20 code city)); or

21 (b) Of any size and having at least eighty percent of the
22 boundaries of such area contiguous to the city if such area existed
23 before June 30, 1994, and is within the same county and within the same
24 urban growth area designated under RCW 36.70A.110, and the city was
25 planning under chapter 36.70A RCW as of June 30, 1994.

26 (2) The resolution shall describe the boundaries of the area to be
27 annexed, state the number of voters residing therein as nearly as may
28 be, and set a date for a public hearing on such resolution for
29 annexation. Notice of the hearing shall be given by publication of the
30 resolution at least once a week for two weeks prior to the date of the
31 hearing, in one or more newspapers of general circulation within the
32 code city and one or more newspapers of general circulation within the
33 area to be annexed.

34 (3) For purposes of subsection (1)(b) of this section, territory
35 bounded by a river, lake, or other body of water is considered
36 contiguous to a city that is also bounded by the same river, lake, or
37 other body of water.

1 NEW SECTION. **Sec. 37.** A new section is added to chapter 35.13 RCW
2 to read as follows:

3 (1) The legislative body of a city or town planning under chapter
4 36.70A RCW as of June 30, 1994, may resolve to annex territory to the
5 city or town if there is, within the city or town, unincorporated
6 territory containing residential property owners within the same county
7 and within the same urban growth area designated under RCW 36.70A.110
8 as the city or town:

9 (a) Containing less than one hundred acres and having at least
10 eighty percent of the boundaries of such area contiguous to the city or
11 town if such area existed before June 30, 1994; or

12 (b) Of any size and having at least eighty percent of the
13 boundaries of the area contiguous to the city if the area existed
14 before June 30, 1994.

15 (2) The resolution shall describe the boundaries of the area to be
16 annexed, state the number of voters residing in the area as nearly as
17 may be, and set a date for a public hearing on the resolution for
18 annexation. Notice of the hearing shall be given by publication of the
19 resolution at least once a week for two weeks before the date of the
20 hearing in one or more newspapers of general circulation within the
21 city or town and one or more newspapers of general circulation within
22 the area to be annexed.

23 (3) For purposes of subsection (1)(b) of this section, territory
24 bounded by a river, lake, or other body of water is considered
25 contiguous to a city that is also bounded by the same river, lake, or
26 other body of water.

27 **Sec. 38.** RCW 35.13.174 and 1973 1st ex.s. c 164 s 17 are each
28 amended to read as follows:

29 Upon receipt by the board of county commissioners of a
30 determination by a majority of the review board favoring annexation of
31 the proposed area that has been initiated by resolution pursuant to RCW
32 35.13.015 by the city or town legislative body, the board of county
33 commissioners, or the city or town legislative body for any city or
34 town within an urban growth area designated under RCW 36.70A.110, shall
35 fix a date on which an annexation election shall be held, which date
36 will be not less than thirty days nor more than sixty days thereafter.

1 **Sec. 39.** RCW 36.93.170 and 1989 c 84 s 5 are each amended to read
2 as follows:

3 In reaching a decision on a proposal or an alternative, the board
4 shall consider the factors affecting such proposal, which shall
5 include, but not be limited to the following:

6 (1) Population and territory; population density; land area and
7 land uses; comprehensive plans and zoning, as adopted under chapter
8 35.63, 35A.63, or 36.70 RCW; comprehensive plans and development
9 regulations adopted under chapter 36.70A RCW; applicable service
10 agreements entered into under chapter 36.115 or 39.34 RCW; applicable
11 interlocal annexation agreements between a county and its cities; per
12 capita assessed valuation; topography, natural boundaries and drainage
13 basins, proximity to other populated areas; the existence and
14 preservation of prime agricultural soils and productive agricultural
15 uses; the likelihood of significant growth in the area and in adjacent
16 incorporated and unincorporated areas during the next ten years;
17 location and most desirable future location of community facilities;

18 (2) Municipal services; need for municipal services; effect of
19 ordinances, governmental codes, regulations and resolutions on existing
20 uses; present cost and adequacy of governmental services and controls
21 in area; prospects of governmental services from other sources;
22 probable future needs for such services and controls; probable effect
23 of proposal or alternative on cost and adequacy of services and
24 controls in area and adjacent area; the effect on the finances, debt
25 structure, and contractual obligations and rights of all affected
26 governmental units; and

27 (3) The effect of the proposal or alternative on adjacent areas, on
28 mutual economic and social interests, and on the local governmental
29 structure of the county.

30 The provisions of chapter 43.21C RCW, State Environmental Policy,
31 shall not apply to incorporation proceedings covered by chapter 35.02
32 RCW.

33 **Sec. 40.** RCW 84.14.010 and 1995 c 375 s 3 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

37 (1) "City" means either (a) a city or town with a population of at
38 least one hundred ((fifty)) thousand or (b) the largest city or town,

1 if there is no city or town with a population of at least one hundred
2 thousand, located in a county planning under the growth management act.

3 (2) "Governing authority" means the local legislative authority of
4 a city having jurisdiction over the property for which an exemption may
5 be applied for under this chapter.

6 (3) "Growth management act" means chapter 36.70A RCW.

7 (4) "Multiple-unit housing" means a building having four or more
8 dwelling units not designed or used as transient accommodations and not
9 including hotels and motels. Multifamily units may result from new
10 construction or rehabilitated or conversion of vacant, underutilized,
11 or substandard buildings to multifamily housing.

12 (5) "Owner" means the property owner of record.

13 (6) "Permanent residential occupancy" means multiunit housing that
14 provides either rental or owner occupancy on a nontransient basis.
15 This includes owner-occupied or rental accommodation that is leased for
16 a period of at least one month. This excludes hotels and motels that
17 predominately offer rental accommodation on a daily or weekly basis.

18 (7) "Rehabilitation improvements" means modifications to existing
19 structures, that are vacant for twelve months or longer, that are made
20 to achieve a condition of substantial compliance with existing building
21 codes or modification to existing occupied structures which increase
22 the number of multifamily housing units.

23 (8) "Residential targeted area" means an area within an urban
24 center that has been designated by the governing authority as a
25 residential targeted area in accordance with this chapter.

26 (9) "Substantial compliance" means compliance with local building
27 or housing code requirements that are typically required for
28 rehabilitation as opposed to new construction.

29 (10) "Urban center" means a compact identifiable district where
30 urban residents may obtain a variety of products and services. An
31 urban center must contain:

32 (a) Several existing or previous, or both, business establishments
33 that may include but are not limited to shops, offices, banks,
34 restaurants, governmental agencies;

35 (b) Adequate public facilities including streets, sidewalks,
36 lighting, transit, domestic water, and sanitary sewer systems; and

37 (c) A mixture of uses and activities that may include housing,
38 recreation, and cultural activities in association with either
39 commercial or office, or both, use.

1 NEW SECTION. **Sec. 41.** A new section is added to chapter 36.70A
2 RCW to read as follows:

3 The legislature recognizes that the preservation of urban
4 greenbelts is an integral part of comprehensive growth management in
5 Washington. The legislature further recognizes that certain greenbelts
6 are subject to adverse possession action which, if carried out,
7 threaten the comprehensive nature of this chapter. Therefore, a party
8 shall not acquire by adverse possession property that is designated as
9 a plat greenbelt or open space area or that is dedicated as open space
10 to a public agency or to a bona fide homeowner's association.

11 **Sec. 42.** RCW 84.14.030 and 1995 c 375 s 6 are each amended to read
12 as follows:

13 An owner of property making application under this chapter must
14 meet the following requirements:

15 (1) The new or rehabilitated multiple-unit housing must be located
16 in a residential targeted area as designated by the city;

17 (2) The multiple-unit housing must meet the guidelines as adopted
18 by the governing authority that may include height, density, public
19 benefit features, number and size of proposed development, parking,
20 low-income or moderate-income occupancy requirements, and other adopted
21 requirements indicated necessary by the city. The required amenities
22 should be relative to the size of the project and tax benefit to be
23 obtained;

24 (3) The new, converted, or rehabilitated multiple-unit housing must
25 provide for a minimum of fifty percent of the space for permanent
26 residential occupancy. In the case of existing occupied multifamily
27 development, the multifamily housing must also provide for a minimum of
28 four additional multifamily units. Existing multifamily vacant housing
29 that has been vacant for twelve months or more does not have to provide
30 additional multifamily units;

31 (4) New construction multifamily housing and rehabilitation
32 improvements must be completed within three years from the date of
33 approval of the application;

34 (5) Property proposed to be rehabilitated must be vacant at least
35 twelve months before submitting an application and fail to comply with
36 one or more standards of the applicable state or local building or
37 housing codes on or after July 23, 1995; and

1 (6) The applicant must enter into a contract with the city approved
2 by the governing body under which the applicant has agreed to the
3 implementation of the development on terms and conditions satisfactory
4 to the governing authority.

5 **Sec. 43.** RCW 84.14.050 and 1995 c 375 s 8 are each amended to read
6 as follows:

7 An owner of property seeking tax incentives under this chapter must
8 complete the following procedures:

9 (1) In the case of rehabilitation or where demolition or new
10 construction is required, the owner shall secure from the governing
11 authority or duly authorized agent, before commencement of
12 rehabilitation improvements or new construction, verification of
13 property noncompliance with applicable building and housing codes;

14 (2) In the case of new and rehabilitated multifamily housing, the
15 owner shall apply to the city on forms adopted by the governing
16 authority. The application must contain the following:

17 (a) Information setting forth the grounds supporting the requested
18 exemption including information indicated on the application form or in
19 the guidelines;

20 (b) A description of the project and site plan, including the floor
21 plan of units and other information requested;

22 (c) A statement that the applicant is aware of the potential tax
23 liability involved when the property ceases to be eligible for the
24 incentive provided under this chapter;

25 (3) The applicant must verify the application by oath or
26 affirmation; and

27 (4) The application must be made on or before April 1 of each year,
28 and must be accompanied by the application fee, if any, required under
29 RCW ((84.14.070)) 84.14.080. The governing authority may permit the
30 applicant to revise an application before final action by the governing
31 authority.

32 **Sec. 44.** RCW 90.61.020 and 1995 c 347 s 802 are each amended to
33 read as follows:

34 The commission shall consist of not more than ((fourteen)) twenty-
35 two members. ((Eleven)) Fifteen members of the commission shall be
36 appointed by the governor. ((Membership)) The commission members
37 appointed by the governor shall reflect the interests of business,

1 (~~agriculture~~) operators of small businesses, owners of small property
2 holdings, livestock producers, irrigated agriculture, dryland farmers
3 or major crop commodity producers, labor, the environment, neighborhood
4 groups, other citizens, the legislature, cities, counties, and
5 federally recognized Indian tribes. (~~Members~~) The commission members
6 appointed by the governor shall have substantial experience in matters
7 relating to land use and environmental planning and regulation, and
8 shall have the ability to work toward cooperative solutions among
9 diverse interests. The director of the department of community, trade,
10 and economic development, or the director s designee, shall be a member
11 and shall serve as chair of the commission. The director of the
12 department of ecology, or the director s designee, and the secretary of
13 the department of transportation, or the secretary's designee, shall
14 also be members of the commission. Two members of the commission shall
15 be members of the senate, one from each caucus appointed by the
16 president of the senate, and two members of the commission shall be
17 members of the house of representatives, one from each caucus appointed
18 by the speaker of the house of representatives. Staff for the
19 commission shall be provided by the department of community, trade, and
20 economic development, with additional staff to be provided by other
21 state agencies and the legislature, as may be required. State agencies
22 shall provide the commission with information and assistance as needed.
23 This section expires June 30, 1998.

24 **Sec. 45.** RCW 90.61.040 and 1995 c 347 s 804 are each amended to
25 read as follows:

26 The commission shall:

27 (1) Consider the effectiveness of state and local government
28 efforts to consolidate and integrate the growth management act, the
29 state environmental policy act, the shoreline management act, and other
30 land use, planning, environmental, and permitting laws.

31 (2) Identify the revisions and modifications needed in state land
32 use, planning, and environmental law and practice to adequately plan
33 for growth and achieve economically and environmentally sustainable
34 development, to adequately assess environmental impacts of
35 comprehensive plans, development regulations, and growth, and to reduce
36 the time and cost of obtaining project permits.

37 (3) Draft a consolidated land use procedure, following these
38 guidelines:

1 (a) Conduct land use planning through the comprehensive planning
2 process under chapter 36.70A RCW rather than through review of
3 individual projects;

4 (b) Involve diverse sectors of the public in the planning process.
5 Early and informal environmental analysis should be incorporated into
6 planning and decision making;

7 (c) Recognize that different questions need to be answered and
8 different levels of detail applied at each planning phase, from the
9 initial development of plan concepts or plan elements to implementation
10 programs;

11 (d) Integrate and combine to the fullest extent possible the
12 processes, analysis, and documents currently required under chapters
13 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent
14 implementation will incorporate measures to promote the environmental,
15 economic, and other goals and to mitigate undesirable or unintended
16 adverse impacts on a community's quality of life;

17 (e) Focus environmental review and the level of detail needed for
18 different stages of plan and project decisions on the environmental
19 considerations most relevant to that stage of the process;

20 (f) Avoid duplicating review that has occurred for plan decisions
21 when specific projects are proposed;

22 (g) Use environmental review on projects to: (i) Review and
23 document consistency with comprehensive plans and development
24 regulations; (ii) provide prompt and coordinated review by agencies,
25 tribes, and the public on compliance with applicable environmental laws
26 and plans, including mitigation for site specific project impacts that
27 have not been considered and addressed at the plan or development
28 regulation level; and (iii) ensure accountability by local government
29 to applicants and the public for requiring and implementing mitigation
30 measures;

31 (h) Maintain or improve the quality of environmental analysis both
32 for plan and for project decisions, while integrating these analyses
33 with improved state and local planning and permitting processes;

34 (i) Examine existing land use and environmental permits for
35 necessity and utility. To the extent possible, existing permits should
36 be combined into fewer permits, assuring that the values and principles
37 intended to be protected by those permits remain protected; and

1 (j) Consolidate local government appeal processes to allow a single
2 appeal of permits at local government levels, a single state level
3 administrative appeal, and a final judicial appeal.

4 (4) Monitor instances state-wide of the vesting of project permit
5 applications during the period that an appeal is pending before a
6 growth management hearings board, as authorized under RCW 36.70A.300.
7 The commission shall also review the extent to which such vesting
8 results in the approval of projects that are inconsistent with a
9 comprehensive plan or development regulation provision ultimately found
10 to be in compliance with a board's order or remand. The commission
11 shall analyze the impact of such approvals on ensuring the attainment
12 of the goals and policies of chapter 36.70A RCW, and make
13 recommendations to the governor and the legislature on statutory
14 changes to address any adverse impacts from the provisions of RCW
15 36.70A.300. The commission shall provide an initial report on its
16 findings and recommendations by November 1, 1995, and submit its
17 further findings and recommendations subsequently in the reports
18 required under RCW 90.61.030.

19 (5) Monitor local government consolidated permit procedures and the
20 effectiveness of the timelines established by RCW 36.70B.090. The
21 commission shall include in its report submitted to the governor and
22 the legislature on November 1, 1997, its recommendation about what
23 timelines, if any, should be imposed on the local government
24 consolidated permit process required by chapter 36.70B RCW.

25 (6) Evaluate funding mechanisms that will enable local governments
26 to pay for and recover the costs of conducting integrated planning and
27 environmental analysis. The commission shall include its conclusions
28 in its first report to the legislature on November 1, 1995, and include
29 any recommended statutory changes.

30 (7) Study, in cooperation with the state board for registration of
31 professional engineers and the state building code council, ways in
32 which state agencies and local governments could authorize
33 professionals with appropriate qualifications to certify a project's
34 compliance with certain state and local land use and environmental
35 requirements. The commission shall report to the legislature on
36 measures necessary to implement such a system of professional
37 certification.

38 (8) Review long-term approaches for resolving disputes that arise
39 under the growth management act, chapter 36.70A RCW; the shoreline

1 management act, chapter 90.58 RCW; and other environmental laws. In
2 particular, in the commission's recommendations on a consolidated land
3 use procedure and integration and consolidation of Washington's land
4 use and environmental laws, identify needed changes to the structure of
5 the boards that hear environmental appeals as well as the extent to
6 which quasi-judicial bodies are needed to provide continued oversight
7 of matters currently brought before the growth management hearings
8 board and other boards that hear such appeals.

9 (9) If the commission finds that there is no longer a need for the
10 growth management hearings boards and recommends sunset of the boards,
11 include in its recommendations a plan for implementing the sunset
12 process. Alternatively, if the boards are to become advisory bodies
13 with the primary duty of mediating disputes and making advisory
14 decisions, the commission shall make recommendations as to how such a
15 change in the board's authority should be implemented. If the
16 commission makes other recommendations with respect to the boards, it
17 shall make recommendations to implement any needed changes.

18 (10) Evaluate the effect of the 1997 amendments to this chapter
19 that raise the standard of review of agency, county, and city actions
20 by the growth management hearings boards and make changes with respect
21 to board determinations of invalidity, and make recommendations as to
22 whether the latitude of the boards should be further curtailed and
23 greater deference given to local decisions by raising the standard of
24 review, limiting the authority of the board to make determinations of
25 invalidity, or making other changes.

26 These guidelines are intended to guide the work of the commission,
27 without limiting its charge to integrate and consolidate Washington's
28 land use and environmental laws into a single, manageable statutory
29 framework.

30 This section expires June 30, 1998.

31 **Sec. 46.** RCW 36.70B.040 and 1995 c 347 s 405 are each amended to
32 read as follows:

33 (1) A proposed project's consistency with a local government's
34 development regulations adopted under chapter 36.70A RCW, or, in the
35 absence of applicable development regulations, the appropriate elements
36 of the comprehensive plan ((or subarea plan)) adopted under chapter
37 36.70A RCW shall be ((determined)) decided by the local government
38 during project review by consideration of:

- 1 (a) The type of land use;
- 2 (b) The level of development, such as units per acre or other
3 measures of density;
- 4 (c) Infrastructure, including public facilities and services needed
5 to serve the development; and
- 6 (d) The ~~((character))~~ characteristics of the development, such as
7 development standards.

8 (2) In ~~((determining consistency))~~ deciding whether a project is
9 consistent, the determinations made pursuant to RCW 36.70B.030(2) shall
10 be controlling.

11 (3) For purposes of this section, the term "consistency" shall
12 include all terms used in this chapter and chapter 36.70A RCW to refer
13 to performance in accordance with this chapter and chapter 36.70A RCW,
14 including but not limited to compliance, conformity, and consistency.

15 (4) Nothing in this section requires documentation, dictates an
16 agency's procedures for considering consistency, or limits a ~~((unit of~~
17 ~~government))~~ city or county from asking more specific or related
18 questions with respect to any of the four main categories listed in
19 subsection (1)(a) through (d) of this section.

20 (5) The department of community, trade, and economic development is
21 authorized to develop and adopt by rule criteria to assist local
22 governments planning under RCW 36.70A.040 to analyze the consistency of
23 project actions. These criteria shall be jointly developed with the
24 department of ecology.

25 **Sec. 47.** RCW 43.21C.110 and 1995 c 347 s 206 are each amended to
26 read as follows:

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

28 (1) To adopt and amend thereafter rules of interpretation and
29 implementation of this chapter, subject to the requirements of chapter
30 34.05 RCW, for the purpose of providing uniform rules and guidelines to
31 all branches of government including state agencies, political
32 subdivisions, public and municipal corporations, and counties. The
33 proposed rules shall be subject to full public hearings requirements
34 associated with rule promulgation. Suggestions for modifications of
35 the proposed rules shall be considered on their merits, and the
36 department shall have the authority and responsibility for full and
37 appropriate independent promulgation and adoption of rules, assuring
38 consistency with this chapter as amended and with the preservation of

1 protections afforded by this chapter. The rule-making powers
2 authorized in this section shall include, but shall not be limited to,
3 the following phases of interpretation and implementation of this
4 chapter:

5 (a) Categories of governmental actions which are not to be
6 considered as potential major actions significantly affecting the
7 quality of the environment, including categories pertaining to
8 applications for water right permits pursuant to chapters 90.03 and
9 90.44 RCW. The types of actions included as categorical exemptions in
10 the rules shall be limited to those types which are not major actions
11 significantly affecting the quality of the environment. The rules
12 shall provide for certain circumstances where actions which potentially
13 are categorically exempt require environmental review. An action that
14 is categorically exempt under the rules adopted by the department may
15 not be conditioned or denied under this chapter.

16 (b) Rules for criteria and procedures applicable to the
17 determination of when an act of a branch of government is a major
18 action significantly affecting the quality of the environment for which
19 a detailed statement is required to be prepared pursuant to RCW
20 43.21C.030.

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

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

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

34 (f) Definition of terms relevant to the implementation of this
35 chapter including the establishment of a list of elements of the
36 environment. Analysis of environmental considerations under RCW
37 43.21C.030(2) may be required only for those subjects listed as
38 elements of the environment (or portions thereof). The list of
39 elements of the environment shall consist of the "natural" and "built"

1 environment. The elements of the built environment shall consist of
2 public services and utilities (such as water, sewer, schools, fire and
3 police protection), transportation, environmental health (such as
4 explosive materials and toxic waste), and land and shoreline use
5 (including housing, and a description of the relationships with land
6 use and shoreline plans and designations, including population).

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

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

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

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

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

21 (l) Rules relating to the use of environmental documents in
22 planning and decision making and the implementation of the substantive
23 policies and requirements of this chapter, including procedures for
24 appeals under this chapter.

25 (m) Rules and procedures that provide for the integration of
26 environmental review with project review as provided in RCW 43.21C.240.
27 The rules and procedures shall be jointly developed with the department
28 of community, trade, and economic development and shall be applicable
29 to the preparation of environmental documents for actions in counties,
30 cities, and towns planning under RCW 36.70A.040. The rules and
31 procedures shall also include procedures and criteria to analyze (~~the~~
32 ~~consistency of project actions, including~~) planned actions under RCW
33 43.21C.031(2) (~~, with development regulations adopted under chapter~~
34 ~~36.70A RCW, or in the absence of applicable development regulations,~~
35 ~~the appropriate elements of a comprehensive plan or subarea plan~~
36 ~~adopted under chapter 36.70A RCW~~) and revisions to the rules adopted
37 under this section to ensure that they are compatible with the
38 requirements and authorizations of chapter 347, Laws of 1995, as
39 amended by chapter . . . , Laws of 1997 (this act). Ordinances or

1 procedures adopted by a county, city, or town to implement the
2 provisions of (~~RCW 43.21C.240~~) chapter 347, Laws of 1995 prior to the
3 effective date of rules adopted under this subsection (1)(m) shall
4 continue to be effective until the adoption of any new or revised
5 ordinances or procedures that may be required. If any revisions are
6 required as a result of rules adopted under this subsection (1)(m),
7 those revisions shall be made within the time limits specified in RCW
8 43.21C.120.

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

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

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

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

23 **Sec. 48.** RCW 36.70B.110 and 1995 c 347 s 415 are each amended to
24 read as follows:

25 (1) Not later than April 1, 1996, a local government planning under
26 RCW 36.70A.040 shall provide a notice of application to the public and
27 the departments and agencies with jurisdiction as provided in this
28 section. If a local government has made a determination of
29 significance under chapter 43.21C RCW concurrently with the notice of
30 application, the notice of application shall be combined with the
31 determination of significance and scoping notice. Nothing in this
32 section prevents a determination of significance and scoping notice
33 from being issued prior to the notice of application. Nothing in this
34 section or this chapter prevents a lead agency, when it is a project
35 proponent or is funding a project, from conducting its review under
36 chapter 43.21C RCW or from allowing appeals of procedural
37 determinations prior to submitting a project permit application.

1 (2) The notice of application shall be provided within fourteen
2 days after the determination of completeness as provided in RCW
3 36.70B.070 and, except as limited by the provisions of subsection
4 (4)(b) of this section, shall include the following in whatever
5 sequence or format the local government deems appropriate:

6 (a) The date of application, the date of the notice of completion
7 for the application, and the date of the notice of application;

8 (b) A description of the proposed project action and a list of the
9 project permits included in the application and, if applicable, a list
10 of any studies requested under RCW 36.70B.070 or 36.70B.090;

11 (c) The identification of other permits not included in the
12 application to the extent known by the local government;

13 (d) The identification of existing environmental documents that
14 evaluate the proposed project, and, if not otherwise stated on the
15 document providing the notice of application, such as a city land use
16 bulletin, the location where the application and any studies can be
17 reviewed;

18 (e) A statement of the public comment period, which shall be not
19 less than fourteen nor more than thirty days following the date of
20 notice of application, and statements of the right of any person to
21 comment on the application, receive notice of and participate in any
22 hearings, request a copy of the decision once made, and any appeal
23 rights. A local government may accept public comments at any time
24 prior to the closing of the record of an open record predecision
25 hearing, if any, or, if no open record predecision hearing is provided,
26 prior to the decision on the project permit;

27 (f) The date, time, place, and type of hearing, if applicable and
28 scheduled at the date of notice of the application;

29 (g) A statement of the preliminary determination, if one has been
30 made at the time of notice, of those development regulations that will
31 be used for project mitigation and of consistency as provided in RCW
32 ~~((36.70B.040))~~ 36.70B.030(2); and

33 (h) Any other information determined appropriate by the local
34 government.

35 (3) If an open record predecision hearing is required for the
36 requested project permits, the notice of application shall be provided
37 at least fifteen days prior to the open record hearing.

38 (4) A local government shall use reasonable methods to give the
39 notice of application to the public and agencies with jurisdiction and

1 may use its existing notice procedures. A local government may use
2 different types of notice for different categories of project permits
3 or types of project actions. If a local government by resolution or
4 ordinance does not specify its method of public notice, the local
5 government shall use the methods provided for in (a) and (b) of this
6 subsection. Examples of reasonable methods to inform the public are:

7 (a) Posting the property for site-specific proposals;

8 (b) Publishing notice, including at least the project location,
9 description, type of permit(s) required, comment period dates, and
10 location where the notice of application required by subsection (2) of
11 this section and the complete application may be reviewed, in the
12 newspaper of general circulation in the general area where the proposal
13 is located or in a local land use newsletter published by the local
14 government;

15 (c) Notifying public or private groups with known interest in a
16 certain proposal or in the type of proposal being considered;

17 (d) Notifying the news media;

18 (e) Placing notices in appropriate regional or neighborhood
19 newspapers or trade journals;

20 (f) Publishing notice in agency newsletters or sending notice to
21 agency mailing lists, either general lists or lists for specific
22 proposals or subject areas; and

23 (g) Mailing to neighboring property owners.

24 (5) A notice of application shall not be required for project
25 permits that are categorically exempt under chapter 43.21C RCW, unless
26 ~~((a public comment period or))~~ an open record predecision hearing is
27 required or an open record appeal hearing is allowed on the project
28 permit decision.

29 (6) A local government shall integrate the permit procedures in
30 this section with its environmental review under chapter 43.21C RCW as
31 follows:

32 (a) Except for a determination of significance and except as
33 otherwise expressly allowed in this section, the local government may
34 not issue its threshold determination(~~(, or issue a decision or a~~
35 ~~recommendation on a project permit)) until the expiration of the public
36 comment period on the notice of application.~~

37 (b) If an open record predecision hearing is required ~~((and the~~
38 ~~local government's threshold determination requires public notice under~~
39 ~~chapter 43.21C RCW))~~, the local government shall issue its threshold

1 determination at least fifteen days prior to the open record
2 predecision hearing.

3 (c) Comments shall be as specific as possible.

4 (d) A local government is not required to provide for
5 administrative appeals of its threshold determination. If provided, an
6 administrative appeal shall be filed within fourteen days after notice
7 that the determination has been made and is appealable. Except as
8 otherwise expressly provided in this section, the appeal hearing on a
9 determination of nonsignificance shall be consolidated with any open
10 record hearing on the project permit.

11 (7) At the request of the applicant, a local government may combine
12 any hearing on a project permit with any hearing that may be held by
13 another local, state, regional, federal, or other agency ((provided
14 that)), if:

15 (a) The hearing is held within the geographic boundary of the local
16 government(~~((. Hearings shall be combined if requested by an applicant,~~
17 as long as))); and

18 (b) The joint hearing can be held within the time periods specified
19 in RCW 36.70B.090 or the applicant agrees to the schedule in the event
20 that additional time is needed in order to combine the hearings. All
21 agencies of the state of Washington, including municipal corporations
22 and counties participating in a combined hearing, are hereby authorized
23 to issue joint hearing notices and develop a joint format, select a
24 mutually acceptable hearing body or officer, and take such other
25 actions as may be necessary to hold joint hearings consistent with each
26 of their respective statutory obligations.

27 (8) All state and local agencies shall cooperate to the fullest
28 extent possible with the local government in holding a joint hearing if
29 requested to do so, as long as:

30 (a) The agency is not expressly prohibited by statute from doing
31 so;

32 (b) Sufficient notice of the hearing is given to meet each of the
33 agencies' adopted notice requirements as set forth in statute,
34 ordinance, or rule; and

35 (c) The agency has received the necessary information about the
36 proposed project from the applicant to hold its hearing at the same
37 time as the local government hearing.

38 (9) A local government is not required to provide for
39 administrative appeals. If provided, an administrative appeal of the

1 project decision(~~(, combined with)~~) and of any environmental
2 determination(~~(s)~~) issued at the same time as the project decision,
3 shall be filed within fourteen days after the notice of the decision or
4 after other notice that the decision has been made and is appealable.
5 The local government shall extend the appeal period for an additional
6 seven days, if state or local rules adopted pursuant to chapter 43.21C
7 RCW allow public comment on a determination of nonsignificance issued
8 as part of the appealable project permit decision.

9 (10) The applicant for a project permit is deemed to be a
10 participant in any comment period, open record hearing, or closed
11 record appeal.

12 (11) Each local government planning under RCW 36.70A.040 shall
13 adopt procedures for administrative interpretation of its development
14 regulations.

15 **Sec. 49.** RCW 43.21C.075 and 1995 c 347 s 204 are each amended to
16 read as follows:

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

25 (2) Unless otherwise provided by this section:

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

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

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

33 (a) Shall (~~not~~) allow no more than one agency appeal proceeding
34 on (~~(a)~~) each procedural determination (the adequacy of a determination
35 of significance/nonsignificance or of a final environmental impact
36 statement)(~~(. The appeal proceeding on a determination of significance~~
37 ~~may occur before the agency's final decision on a proposed action. The~~
38 ~~appeal proceeding on a determination of nonsignificance may occur~~

1 before the agency's final decision on a proposed action only if the
2 appeal is heard at a proceeding where the hearing body or officer will
3 render a final recommendation or decision on the proposed underlying
4 governmental action. Such appeals shall also be allowed for a
5 determination of significance/nonsignificance which may be issued by
6 the agency after supplemental review));

7 (b) Shall consolidate an appeal of procedural issues and of
8 substantive determinations made under this chapter (such as a decision
9 to require particular mitigation measures or to deny a proposal) with
10 a hearing or appeal on the underlying governmental action by providing
11 for a single simultaneous hearing before one hearing officer or body to
12 consider the agency decision or recommendation on a proposal and any
13 environmental determinations made under this chapter, with the
14 exception of ((the));

15 (i) An appeal((, if any,)) of a determination of significance ((as
16 provided in (a) of this subsection));

17 (ii) An appeal of a procedural determination made by an agency when
18 the agency is a project proponent, or is funding a project, and chooses
19 to conduct its review under this chapter, including any appeals of its
20 procedural determinations, prior to submitting an application for a
21 project permit;

22 (iii) An appeal of a procedural determination made by an agency on
23 a nonproject action; or

24 (iv) An appeal to the local legislative authority under RCW
25 43.21C.060 or other applicable state statutes;

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

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

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

1 (5) Some statutes and ordinances contain time periods for
2 challenging governmental actions which are subject to review under this
3 chapter, such as various local land use approvals (the "underlying
4 governmental action"). RCW 43.21C.080 establishes an optional "notice
5 of action" procedure which, if used, imposes a time period for
6 appealing decisions under this chapter. This subsection does not
7 modify any such time periods. In this subsection, the term "appeal"
8 refers to a judicial appeal only.

9 (a) If there is a time period for appealing the underlying
10 governmental action, appeals under this chapter shall be commenced
11 within such time period. The agency shall give official notice stating
12 the date and place for commencing an appeal.

13 (b) If there is no time period for appealing the underlying
14 governmental action, and a notice of action under RCW 43.21C.080 is
15 used, appeals shall be commenced within the time period specified by
16 RCW 43.21C.080.

17 (6)(a) Judicial review under subsection (5) of this section of an
18 appeal decision made by an agency under subsection (3) of this section
19 shall be on the record, consistent with other applicable law.

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

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

36 (7) Jurisdiction over the review of determinations under this
37 chapter in an appeal before an agency or superior court shall upon
38 consent of the parties be transferred in whole or part to the
39 shorelines hearings board. The shorelines hearings board shall hear

1 the matter and sign the final order expeditiously. The superior court
2 shall certify the final order of the shorelines hearings board and
3 (~~said~~) the certified final order may only be appealed to an appellate
4 court. In the case of an appeal under this chapter regarding a project
5 or other matter that is also the subject of an appeal to the shorelines
6 hearings board under chapter 90.58 RCW, the shorelines hearings board
7 shall have sole jurisdiction over both the appeal under this section
8 and the appeal under chapter 90.58 RCW, shall consider them together,
9 and shall issue a final order within one hundred eighty days as
10 provided in RCW 90.58.180.

11 (8) For purposes of this section and RCW 43.21C.080, the words
12 "action", "decision", and "determination" mean substantive agency
13 action including any accompanying procedural determinations under this
14 chapter (except where the word "action" means "appeal" in RCW
15 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080
16 does not mean a procedural determination by itself made under this
17 chapter. The word "determination" includes any environmental document
18 required by this chapter and state or local implementing rules. The
19 word "agency" refers to any state or local unit of government. Except
20 as provided in subsection (5) of this section, the word "appeal" refers
21 to administrative, legislative, or judicial appeals.

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

27 **Sec. 50.** RCW 90.58.090 and 1995 c 347 s 306 are each amended to
28 read as follows:

29 (1) A master program, segment of a master program, or an amendment
30 to a master program shall become effective when approved by the
31 department. Within the time period provided in RCW 90.58.080, each
32 local government shall have submitted a master program, either totally
33 or by segments, for all shorelines of the state within its jurisdiction
34 to the department for review and approval.

35 (2) Upon receipt of a proposed master program or amendment, the
36 department shall:

37 (a) Provide notice to and opportunity for written comment by all
38 interested parties of record as a part of the local government review

1 process for the proposal and to all persons, groups, and agencies that
2 have requested in writing notice of proposed master programs or
3 amendments generally or for a specific area, subject matter, or issue.
4 The comment period shall be at least thirty days, unless the department
5 determines that the level of complexity or controversy involved
6 supports a shorter period;

7 (b) In the department's discretion, conduct a public hearing during
8 the thirty-day comment period in the jurisdiction proposing the master
9 program or amendment;

10 (c) Within fifteen days after the close of public comment, request
11 the local government to review the issues identified by the public,
12 interested parties, groups, and agencies and provide a written response
13 as to how the proposal addresses the identified issues;

14 (d) Within thirty days after receipt of the local government
15 response pursuant to (c) of this subsection, make written findings and
16 conclusions regarding the consistency of the proposal with the policy
17 of RCW 90.58.020 and the applicable guidelines, provide a response to
18 the issues identified in (c) of this subsection, and either approve the
19 proposal as submitted, recommend specific changes necessary to make the
20 proposal approvable, or deny approval of the proposal in those
21 instances where no alteration of the proposal appears likely to be
22 consistent with the policy of RCW 90.58.020 and the applicable
23 guidelines. The written findings and conclusions shall be provided to
24 the local government, all interested persons, parties, groups, and
25 agencies of record on the proposal;

26 (e) If the department recommends changes to the proposed master
27 program or amendment, within thirty days after the department mails the
28 written findings and conclusions to the local government, the local
29 government may:

30 (i) Agree to the proposed changes. The receipt by the department
31 of the written notice of agreement constitutes final action by the
32 department approving the amendment; or

33 (ii) Submit an alternative proposal. If, in the opinion of the
34 department, the alternative is consistent with the purpose and intent
35 of the changes originally submitted by the department and with this
36 chapter it shall approve the changes and provide written notice to all
37 recipients of the written findings and conclusions. If the department
38 determines the proposal is not consistent with the purpose and intent
39 of the changes proposed by the department, the department may resubmit

1 the proposal for public and agency review pursuant to this section or
2 reject the proposal.

3 (3) The department shall approve the segment of a master program
4 relating to shorelines unless it determines that the submitted segments
5 are not consistent with the policy of RCW 90.58.020 and the applicable
6 guidelines.

7 (4) The department shall approve those segments of the master
8 program relating to shorelines of state-wide significance only after
9 determining the program provides the optimum implementation of the
10 policy of this chapter to satisfy the state-wide interest. If the
11 department does not approve a segment of a local government master
12 program relating to a shoreline of state-wide significance, the
13 department may develop and by rule adopt an alternative to the local
14 government s proposal.

15 (5) In the event a local government has not complied with the
16 requirements of RCW 90.58.070 it may thereafter upon written notice to
17 the department elect to adopt a master program for the shorelines
18 within its jurisdiction, in which event it shall comply with the
19 provisions established by this chapter for the adoption of a master
20 program for such shorelines.

21 Upon approval of such master program by the department it shall
22 supersede such master program as may have been adopted by the
23 department for such shorelines.

24 (6) A master program or amendment to a master program takes effect
25 when and in such form as approved or adopted by the department.
26 Shoreline master programs that were adopted by the department prior to
27 July 22, 1995, in accordance with the provisions of this section then
28 in effect, shall be deemed approved by the department in accordance
29 with the provisions of this section that became effective on that date.
30 The department shall maintain a record of each master program, the
31 action taken on any proposal for adoption or amendment of the master
32 program, and any appeal of the department's action. The department's
33 approved document of record constitutes the official master program.

34 **Sec. 51.** RCW 90.58.143 and 1996 c 62 s 1 are each amended to read
35 as follows:

36 (1) The time requirements of this section shall apply to all
37 substantial development permits and to any development authorized
38 pursuant to a variance or conditional use permit authorized under this

1 chapter. Upon a finding of good cause, based on the requirements and
2 circumstances of the project proposed and consistent with the policy
3 and provisions of the master program and this chapter, local government
4 may adopt different time limits from those set forth in subsections (2)
5 and (3) of this section as a part of action on a substantial
6 development permit.

7 (2) Construction activities shall be commenced or, where no
8 construction activities are involved, the use or activity shall be
9 commenced within two years of the effective date of a substantial
10 development permit. However, local government may authorize a single
11 extension for a period not to exceed one year based on reasonable
12 factors, if a request for extension has been filed before the
13 expiration date and notice of the proposed extension is given to
14 parties of record on the substantial development permit and to the
15 department.

16 (3) Authorization to conduct construction activities shall
17 terminate five years after the effective date of a substantial
18 development permit. However, local government may authorize a single
19 extension for a period not to exceed one year based on reasonable
20 factors, if a request for extension has been filed before the
21 expiration date and notice of the proposed extension is given to
22 parties of record and to the department.

23 (4) The effective date of a substantial development permit shall be
24 the date of (~~the last action required on the substantial development~~
25 ~~permit and all~~) filing as provided in RCW 90.58.140(6). The permit
26 time periods in subsections (2) and (3) of this section do not include
27 the time during which a use or activity was not actually pursued due to
28 the pendency of administrative appeals or legal actions or due to the
29 need to obtain any other government permits and approvals for the
30 development that authorize the development to proceed, including all
31 reasonably related administrative ((and)) or legal actions on any such
32 permits or approvals.

33 **Sec. 52.** RCW 34.05.518 and 1995 c 382 s 5 are each amended to read
34 as follows:

35 (1) The final decision of an administrative agency in an
36 adjudicative proceeding under this chapter may be directly reviewed by
37 the court of appeals either (a) upon certification by the superior
38 court pursuant to this section or (b) if the final decision is from an

1 environmental board as defined in subsection (3) of this section, upon
2 acceptance by the court of appeals after a certificate of appealability
3 has been filed by the environmental board that rendered the final
4 decision.

5 (2) For direct review upon certification by the superior court, an
6 application for direct review must be filed with the superior court
7 within thirty days of the filing of the petition for review in superior
8 court. The superior court may certify a case for direct review only if
9 the judicial review is limited to the record of the agency proceeding
10 and the court finds that:

11 (a) Fundamental and urgent issues affecting the future
12 administrative process or the public interest are involved which
13 require a prompt determination;

14 (b) Delay in obtaining a final and prompt determination of such
15 issues would be detrimental to any party or the public interest;

16 (c) An appeal to the court of appeals would be likely regardless of
17 the determination in superior court; and

18 (d) The appellate court's determination in the proceeding would
19 have significant precedential value.

20 Procedures for certification shall be established by court rule.

21 (3)(a) For the purposes of direct review of final decisions of
22 environmental boards, environmental boards include those boards
23 identified in RCW 43.21B.005 (~~and growth management hearings boards as~~
24 ~~identified in RCW 36.70A.250~~)).

25 (b) An environmental board may issue a certificate of appealability
26 if it finds that delay in obtaining a final and prompt determination of
27 the issues would be detrimental to any party or the public interest and
28 either:

29 (i) Fundamental and urgent state-wide or regional issues are
30 raised; or

31 (ii) The proceeding is likely to have significant precedential
32 value.

33 (4) The environmental board shall state in the certificate of
34 appealability which criteria it applied, explain how that criteria was
35 met, and file with the certificate a copy of the final decision.

36 (5) For an appellate court to accept direct review of a final
37 decision of an environmental board, it shall consider the same criteria
38 outlined in subsection (3) of this section.

1 (6) The procedures for direct review of final decisions of
2 environmental boards include:

3 (a) Within thirty days after filing the petition for review with
4 the superior court, a party may file an application for direct review
5 with the superior court and serve the appropriate environmental board
6 and all parties of record. The application shall request the
7 environmental board to file a certificate of appealability.

8 (b) If an issue on review is the jurisdiction of the environmental
9 board, the board may file an application for direct review on that
10 issue.

11 (c) The environmental board shall have thirty days to grant or deny
12 the request for a certificate of appealability and its decision shall
13 be filed with the superior court and served on all parties of record.

14 (d) If a certificate of appealability is issued, the parties shall
15 have fifteen days from the date of service to file a notice of
16 discretionary review in the superior court, and the notice shall
17 include a copy of the certificate of appealability and a copy of the
18 final decision.

19 (e) If the appellate court accepts review, the certificate of
20 appealability shall be transmitted to the court of appeals as part of
21 the certified record.

22 (f) If a certificate of appealability is denied, review shall be by
23 the superior court. The superior court's decision may be appealed to
24 the court of appeals.

25 NEW SECTION. **Sec. 53.** Except as otherwise specifically provided
26 in section 22 of this act, sections 1 through 21, chapter . . . , Laws
27 of 1997 (sections 1 through 21 of this act) are prospective in effect
28 and shall not affect the validity of actions taken or decisions made
29 before the effective date of this section.

30 NEW SECTION. **Sec. 54.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 55.** Sections 29 and 30 of this act are
35 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public
2 institutions, and take effect immediately."

3 **ESB 6094** - H AMD
4 By Representative

5 ADOPTED AS AMENDED 4/27/97

6 On page , after line , after "management;" strike the remainder of
7 the title and insert "amending RCW 36.70A.030, 36.70A.060, 36.70A.070,
8 36.70A.130, 36.70A.270, 36.70A.290, 36.70A.300, 36.70A.305, 36.70A.320,
9 36.70A.330, 36.70A.110, 43.62.035, 36.70A.500, 43.155.070, 70.146.070,
10 84.34.020, 84.34.060, 84.34.065, 84.40.030, 90.60.030, 35A.14.295,
11 35.13.174, 36.93.170, 84.14.010, 84.14.030, 84.14.050, 90.61.020,
12 90.61.040, 36.70B.040, 43.21C.110, 36.70B.110, 43.21C.075, 90.58.090,
13 90.58.143, and 34.05.518; adding new sections to chapter 36.70A RCW;
14 adding a new section to chapter 35.13 RCW; creating new sections;
15 providing expiration dates; and declaring an emergency."

16 Correct the title.

--- END ---