

**ESSB 6406 - H AMD 1397**

By Representative Hudgins

1           Strike everything after the enacting clause and insert the  
2 following:

3           "NEW SECTION.   **Sec. 1.** The legislature finds that significant  
4 opportunities exist to modify programs that provide for management and  
5 protection of the state's natural resources, including the state's  
6 forests, fish, and wildlife, in order to streamline regulatory  
7 processes and achieve program efficiencies while at the same time  
8 increasing the sustainability of program funding and maintaining  
9 current levels of natural resource protection. The legislature intends  
10 to update provisions relating to natural resource management and  
11 regulatory programs including the hydraulic project approval program,  
12 forest practices act, and state environmental policy act, in order to  
13 achieve these opportunities.

14

**PART ONE**

15

**Hydraulic Project Approvals**

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

18           The definitions in this section apply throughout this chapter  
19 unless the context clearly requires otherwise.

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

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

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

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

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

4 (6) "Director" means the director of the department of fish and  
5 wildlife.

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

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

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

14 (10) "Marina" means a public or private facility providing boat  
15 moorage space, fuel, or commercial services. Commercial services  
16 include but are not limited to overnight or live-aboard boating  
17 accommodations.

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

22 (12) "Ordinary high water line" means the mark on the shores of all  
23 water that will be found by examining the bed and banks and  
24 ascertaining where the presence and action of waters are so common and  
25 usual, and so long continued in ordinary years as to mark upon the soil  
26 or vegetation a character distinct from the abutting upland. Provided,  
27 that in any area where the ordinary high water line cannot be found,  
28 the ordinary high water line adjoining saltwater is the line of mean  
29 higher high water and the ordinary high water line adjoining freshwater  
30 is the elevation of the mean annual flood.

31 (13) "Permit" means a hydraulic project approval permit issued  
32 under this chapter.

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

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

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

3 (17) "Streambank stabilization" means those projects that prevent  
4 or limit erosion, slippage, and mass wasting. These projects include,  
5 but are not limited to, bank resloping, log and debris relocation or  
6 removal, planting of woody vegetation, bank protection using rock or  
7 woody material or placement of jetties or groins, gravel removal, or  
8 erosion control.

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

11 (19) "Waters of the state" and "state waters" means all salt and  
12 freshwaters waterward of the ordinary high water line and within the  
13 territorial boundary of the state.

14 (20) "Emergency permit" means a verbal hydraulic project approval  
15 or the written follow-up to the verbal approval issued to a person  
16 under RCW 77.55.021(12).

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

19 (22) "Forest practices hydraulic project" means a hydraulic project  
20 that requires a forest practices application or notification under  
21 chapter 76.09 RCW.

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

26 (24) "Pamphlet hydraulic project" means a hydraulic project for the  
27 removal or control of aquatic noxious weeds conducted under the aquatic  
28 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral  
29 prospecting and mining conducted under the gold and fish pamphlet  
30 authorized by RCW 77.55.091.

31 (25) "Permit modification" means a hydraulic project approval  
32 issued to a person under RCW 77.55.021 that extends, renews, or changes  
33 the conditions of a previously issued hydraulic project approval.

34 (26) "Repair or maintenance" means the care and upkeep of existing  
35 structures.

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

1 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~  
2 77.55.041, and section 201 of this act, in the event that any person or  
3 government agency desires to undertake a hydraulic project, the person  
4 or government agency shall, before commencing work thereon, secure the  
5 approval of the department in the form of a permit as to the adequacy  
6 of the means proposed for the protection of fish life.

7 (2) A complete written application for a permit may be submitted in  
8 person or by registered mail and must contain the following:

9 (a) General plans for the overall project;

10 (b) Complete plans and specifications of the proposed construction  
11 or work within the mean higher high water line in saltwater or within  
12 the ordinary high water line in freshwater;

13 (c) Complete plans and specifications for the proper protection of  
14 fish life; ~~((and))~~

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

18 (e) Payment of all applicable application fees charged by the  
19 department under section 103 of this act.

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

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

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

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

37 (7)(a) Protection of fish life is the only ground upon which

1 approval of a permit may be denied or conditioned. Approval of a  
2 permit may not be unreasonably withheld or unreasonably conditioned.

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

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

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

12 (iii) The applicant requests a delay; or

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

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

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

22 ~~((+4))~~ (8) If the department denies approval of a permit, the  
23 department shall provide the applicant a written statement of the  
24 specific reasons why and how the proposed project would adversely  
25 affect fish life.

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

30 (b) Issuance, denial, conditioning, or modification of a permit may  
31 be informally appealed to the department within thirty days from the  
32 date of receipt of the decision. Requests for informal appeals must be  
33 filed in the form and manner prescribed by the department by rule. A  
34 permit decision that has been informally appealed to the department is  
35 appealable to the board within thirty days from the date of receipt of  
36 the department's decision on the informal appeal.

37 ~~((+5))~~ (9)(a) The permittee must demonstrate substantial progress

1 on construction of that portion of the project relating to the permit  
2 within two years of the date of issuance.

3 (b) Approval of a permit is valid for (~~a period of~~) up to five  
4 years from the date of issuance, except as provided in (c) of this  
5 subsection and in RCW 77.55.151.

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

16 (~~(6)~~) (10) The department may, after consultation with the  
17 permittee, modify a permit due to changed conditions. A modification  
18 under this subsection is not subject to the fees provided under section  
19 103 of this act. The modification is appealable as provided in  
20 subsection (~~(4)~~) (8) of this section. For a hydraulic project(~~(s)~~)  
21 that diverts water for agricultural irrigation or stock watering  
22 purposes, (~~(e)~~) when the hydraulic project or other work is associated  
23 with streambank stabilization to protect farm and agricultural land as  
24 defined in RCW 84.34.020, the burden is on the department to show that  
25 changed conditions warrant the modification in order to protect fish  
26 life.

27 (~~(7)~~) (11) A permittee may request modification of a permit due  
28 to changed conditions. The request must be processed within forty-five  
29 calendar days of receipt of the written request and payment of  
30 applicable fees under section 103 of this act. A decision by the  
31 department is appealable as provided in subsection (~~(4)~~) (8) of this  
32 section. For a hydraulic project(~~(s)~~) that diverts water for  
33 agricultural irrigation or stock watering purposes, (~~(e)~~) when the  
34 hydraulic project or other work is associated with streambank  
35 stabilization to protect farm and agricultural land as defined in RCW  
36 84.34.020, the burden is on the permittee to show that changed  
37 conditions warrant the requested modification and that such a  
38 modification will not impair fish life.

1        ~~((+8))~~ (12)(a) The department, the county legislative authority,  
2 or the governor may declare and continue an emergency. If the county  
3 legislative authority declares an emergency under this subsection, it  
4 shall immediately notify the department. A declared state of emergency  
5 by the governor under RCW 43.06.010 shall constitute a declaration  
6 under this subsection.

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

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

19        ~~((+9))~~ (d) The department may not charge a person requesting an  
20 emergency permit any of the fees authorized by section 103 of this act  
21 until after the emergency permit is issued and reduced to writing.

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

29        ~~((+10))~~ (14) The department or the county legislative authority  
30 may determine an imminent danger exists. The county legislative  
31 authority shall notify the department, in writing, if it determines  
32 that an imminent danger exists. In cases of imminent danger, the  
33 department shall issue an expedited written permit, upon request, for  
34 work to remove any obstructions, repair existing structures, restore  
35 banks, protect fish resources, or protect property. Expedited permit  
36 requests require a complete written application as provided in  
37 subsection (2) of this section and must be issued within fifteen  
38 calendar days of the receipt of a complete written application.

1 Approval of an expedited permit is valid for up to sixty days from the  
2 date of issuance. The department may not require the provisions of the  
3 state environmental policy act, chapter 43.21C RCW, to be met as a  
4 condition of issuing a permit under this subsection.

5 ~~((+11+))~~ (15)(a) For any property, except for property located on  
6 a marine shoreline, that has experienced at least two consecutive years  
7 of flooding or erosion that has damaged or has threatened to damage a  
8 major structure, water supply system, septic system, or access to any  
9 road or highway, the county legislative authority may determine that a  
10 chronic danger exists. The county legislative authority shall notify  
11 the department, in writing, when it determines that a chronic danger  
12 exists. In cases of chronic danger, the department shall issue a  
13 permit, upon request, for work necessary to abate the chronic danger by  
14 removing any obstructions, repairing existing structures, restoring  
15 banks, restoring road or highway access, protecting fish resources, or  
16 protecting property. Permit requests must be made and processed in  
17 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

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

24 ~~((+12+))~~ (16) The department may issue an expedited written permit  
25 in those instances where normal permit processing would result in  
26 significant hardship for the applicant or unacceptable damage to the  
27 environment. Expedited permit requests require a complete written  
28 application as provided in subsection (2) of this section and must be  
29 issued within fifteen calendar days of the receipt of a complete  
30 written application. Approval of an expedited permit is valid for up  
31 to sixty days from the date of issuance. The department may not  
32 require the provisions of the state environmental policy act, chapter  
33 43.21C RCW, to be met as a condition of issuing a permit under this  
34 subsection.

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

37 (1) The department shall charge an application fee of one hundred



1 fifty dollars for a hydraulic project permit or permit modification  
2 issued under RCW 77.55.021 where the project is located at or below the  
3 ordinary high water line. The application fee established under this  
4 subsection may only be charged after June 30, 2012, if section 104 of  
5 this act has been enacted into law by that date.

6 (2) The following hydraulic projects are exempt from all fees  
7 listed under this section:

8 (a) Hydraulic projects approved under applicant-funded contracts  
9 with the department that pay for the costs of processing those  
10 projects;

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

13 (c) Pamphlet hydraulic projects; and

14 (d) Mineral prospecting and mining activities.

15 (3) All fees collected under this section must be deposited in the  
16 hydraulic project approval account created in section 105 of this act.

17 (4) The fee provisions contained in this section are prospective  
18 only. The department of fish and wildlife may not charge fees for  
19 hydraulic project permits issued under this title prior to the  
20 effective date of this section.

21 NEW SECTION. **Sec. 104.** (1) The University of Washington, through  
22 colleges and schools with relevant subject matter expertise, shall  
23 conduct a review of state, federal, and local natural resources,  
24 environmental, and other regulatory programs to:

25 (a) Identify programs that regulate construction or the performance  
26 of work conducted above the ordinary high water line;

27 (b) Identify construction activities or the performance of work  
28 conducted above the ordinary high water line that potentially use,  
29 divert, or change the natural flow or bed of any of the salt or  
30 freshwaters of the state;

31 (c) Analyze the manner and degree to which the activities  
32 identified in (b) of this subsection are regulated under the programs  
33 identified in (a) of this subsection, including a qualitative review of  
34 each program, including how well the requirements of the program are  
35 implemented and a comparison of the programs;

36 (d) Using the analysis under (c) of this subsection, identify any  
37 regulatory gaps that may exist in providing for the protection of fish

1 life for activities identified in (b) of this subsection that use,  
2 divert, or change the natural flow or bed of any of the salt or  
3 freshwaters of the state; and

4 (e) Identify the scale of the potential risk to fish life from any  
5 regulatory gaps identified in (d) of this subsection.

6 (2) The University of Washington shall conduct the review in  
7 consultation with appropriate federal and state agencies, local  
8 governments, tribal governments, and business and environmental  
9 interests. The University of Washington shall consult with and solicit  
10 input from these entities both: (a) Through a forum gathering the  
11 stakeholders together at the onset of the review to discuss matters  
12 including the scope and timeline of the study; and (b) throughout the  
13 review process. The University of Washington shall include a summary  
14 of their comments on the outcomes of the review process in the report  
15 required under subsection (3) of this section.

16 (3) The University of Washington shall submit a report detailing  
17 the review to the appropriate standing committees of the senate and  
18 house of representatives consistent with RCW 43.01.036 by September 1,  
19 2014.

20 (4) This section expires January 1, 2015.

21 NEW SECTION. **Sec. 105.** A new section is added to chapter 77.55  
22 RCW to read as follows:

23 (1) The hydraulic project approval account is created in the state  
24 treasury. All receipts from application fees for hydraulic project  
25 approval applications collected under section 103 of this act must be  
26 deposited into the account.

27 (2) Except for unanticipated receipts under RCW 43.79.260 through  
28 43.79.282, moneys in the hydraulic project approval account may be  
29 spent only after appropriation.

30 (3) Expenditures from the hydraulic project approval account may be  
31 used only to fund department activities relating to implementing and  
32 operating the hydraulic project approval program.

33 **Sec. 106.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to  
34 read as follows:

35 (1) (~~For a marina or marine terminal in existence on June 6, 1996,~~  
36 ~~or a marina or marine terminal that has received a permit for its~~

1 ~~initial construction, a renewable, five-year permit shall be issued,~~  
2 ~~upon request, for regular maintenance activities of the marina or~~  
3 ~~marine terminal.~~

4 ~~(2) Upon construction of a new marina or marine terminal that has~~  
5 ~~received a permit, a renewable, five-year permit shall be issued, upon~~  
6 ~~request, for regular maintenance activities of the marina or marine~~  
7 ~~terminal.~~

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

13 (4)) Upon application under RCW 77.55.021, the department shall  
14 issue a renewable, five-year general permit to a marina or marine  
15 terminal for its regular maintenance activities identified in the  
16 application.

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

19 (a) Maintenance or repair of a boat ramp, launch, or float within  
20 the existing footprint;

21 (b) Maintenance or repair of an existing overwater structure within  
22 the existing footprint;

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

24 (d) Maintenance or removal of pilings;

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

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

27 (g) Maintenance or repair of wetland, riparian, or estuarine  
28 habitat; and

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

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

33 (4) A permit under this section is subject to the application fee  
34 provided in section 103 of this act.

35 **Sec. 107.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to  
36 read as follows:

37 (1) Conditions imposed upon a permit must be reasonably related to

1 the project. The permit conditions must ensure that the project  
2 provides proper protection for fish life, but the department may not  
3 impose conditions that attempt to optimize conditions for fish life  
4 that are out of proportion to the impact of the proposed project.

5 (2) The permit must contain provisions allowing for minor  
6 modifications to the plans and specifications without requiring  
7 reissuance of the permit.

8 (3) The permit must contain provisions that allow for minor  
9 modifications to the required work timing without requiring the  
10 reissuance of the permit. "Minor modifications to the required work  
11 timing" means a minor deviation from the timing window set forth in the  
12 permit when there are no spawning or incubating fish present within the  
13 vicinity of the project.

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

16 ~~(1) ((The department may levy civil penalties of up to one hundred~~  
17 ~~dollars per day for violation of any provisions of RCW 77.55.021. The~~  
18 ~~penalty provided shall be imposed by notice in writing, either by~~  
19 ~~certified mail or personal service to the person incurring the penalty,~~  
20 ~~from the director or the director's designee describing the violation.~~

21 ~~(2)(a) Except as provided in (b) of this subsection, any person~~  
22 ~~incurring any penalty under this chapter may appeal the same under~~  
23 ~~chapter 34.05 RCW to the board. Appeals shall be filed within thirty~~  
24 ~~days from the date of receipt of the penalty in accordance with RCW~~  
25 ~~43.21B.230.~~

26 ~~(b) Issuance of a civil penalty may be informally appealed to the~~  
27 ~~department within thirty days from the date of receipt of the penalty.~~  
28 ~~Requests for informal appeal must be filed in the form and manner~~  
29 ~~prescribed by the department by rule. A civil penalty that has been~~  
30 ~~informally appealed to the department is appealable to the board within~~  
31 ~~thirty days from the date of receipt of the department's decision on~~  
32 ~~the informal appeal.~~

33 ~~(3) The penalty imposed shall become due and payable thirty days~~  
34 ~~after receipt of a notice imposing the penalty unless an appeal is~~  
35 ~~filed. Whenever an appeal of any penalty incurred under this chapter~~  
36 ~~is filed, the penalty shall become due and payable only upon completion~~

1 of all review proceedings and the issuance of a final order confirming  
2 the penalty in whole or in part.

3 (4) If the amount of any penalty is not paid within thirty days  
4 after it becomes due and payable, the attorney general, upon the  
5 request of the director, shall bring an action in the name of the state  
6 of Washington in the superior court of Thurston county or of any county  
7 in which such violator may do business, to recover such penalty. In  
8 all such actions the procedure and rules of evidence shall be the same  
9 as an ordinary civil action. All penalties recovered under this  
10 section shall be paid into the state's general fund.) (a) The director  
11 may issue a compliance notice or order to a person who does any of the  
12 following below ordinary high water mark only:

13 (i) Constructs any form of hydraulic project or performs other work  
14 on a hydraulic project that requires a hydraulic project approval under  
15 this chapter and fails to have a hydraulic project approval for the  
16 construction or work;

17 (ii) Violates any requirements or conditions of the hydraulic  
18 project approval for the construction or other activities; or

19 (iii) Violates any department rule that identifies the conditions  
20 under which a hydraulic project is approved.

21 (b) A compliance notice may be issued under this section to inform  
22 a person of a potential violation and recommend actions to prevent,  
23 correct, or mitigate for adverse impacts to fish life. A notice to  
24 comply must:

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

26 (ii) Specify the nature, extent, date, and time of the potential  
27 violation; and

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

30 (c) A compliance order issued under this section must specify  
31 measures or actions necessary to prevent, correct, or mitigate for  
32 adverse impacts to fish life. A compliance order is effective  
33 immediately and remains in effect until withdrawn by the director or  
34 until the board orders otherwise. A compliance order must:

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

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

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

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

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

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

6 (e) A compliance order may be informally appealed to the department  
7 within thirty days from the date of receipt of the decision. Requests  
8 for informal appeals must be filed in the form and manner prescribed by  
9 the department by rule. A compliance order that has been informally  
10 appealed to the department is appealable to the board within thirty  
11 days from the date of receipt of the department's decision on the  
12 informal appeal.

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

15 (i) Two thousand five hundred dollars for a violation of this  
16 chapter or rules adopted under this chapter relating to a hydraulic  
17 project categorized or that is categorized by the department as a low  
18 complexity hydraulic project;

19 (ii) Five thousand dollars for a violation of this chapter or rules  
20 adopted under this chapter relating to a hydraulic project categorized  
21 or that is categorized by the department as a medium complexity  
22 hydraulic project; and

23 (iii) Ten thousand dollars for a violation of this chapter or rules  
24 adopted under this chapter for a hydraulic project categorized by the  
25 department as a high complexity hydraulic project.

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

28 (c) The penalty provided must be imposed by notice in writing by  
29 the director describing the violation. The civil penalty notice must  
30 specify the:

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

32 (ii) Right of the person to an appeal of the underlying violation  
33 and the amount charged.

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

37 (e) Issuance of a civil penalty may be informally appealed to the  
38 department within thirty days from the date of receipt of the penalty.

1 Requests for informal appeal must be filed in the form and manner  
2 prescribed by the department by rule. A civil penalty that has been  
3 informally appealed to the department is appealable to the board within  
4 thirty days from the date of receipt of the department's decision on  
5 the informal appeal.

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

14 (g) If the amount of any penalty is not paid within thirty days  
15 after it becomes due and payable, the attorney general, upon the  
16 request of the director, shall bring an action in the name of the state  
17 of Washington in the superior court of Thurston county or of any county  
18 in which the violator may do business, to recover the penalty. In all  
19 such actions, the procedure and rules of evidence are the same as an  
20 ordinary civil action. The department is also entitled to recover  
21 reasonable attorneys' fees and costs incurred in connection with the  
22 penalty.

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

25 (i) Previous violation history;

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

27 (iii) Whether the violation of this chapter or its rules was  
28 intentional;

29 (iv) Cooperation with the department;

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

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

35 (3) When receiving or recovering a penalty under this section, the  
36 department may deposit an amount not to exceed its costs incurred in  
37 connection with processing and recovering the penalty into the

1 hydraulic project approval account created in section 105 of this act.  
2 The department shall deposit the remainder of the penalty recovered  
3 into the general fund.

4 (4) The director may apply for an administrative inspection warrant  
5 in either Thurston county superior court or the superior court in the  
6 county where the project is located. The court may issue an  
7 administrative inspection warrant where:

8 (a) Department personnel need to inspect the project site to ensure  
9 that a person:

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

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

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

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

19 (b) Department personnel have reasonable cause to believe that a  
20 person:

21 (i) Is constructing or has constructed any form of hydraulic  
22 project or performs other work on a hydraulic project and fails to have  
23 a hydraulic project approval required under this chapter for the  
24 construction or work;

25 (ii) Is violating or has violated any requirements or conditions of  
26 the hydraulic project approval for the construction or other  
27 activities;

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

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

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

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





1 (2) The department must continue to conduct regulatory and  
2 enforcement activities under this chapter for forest practices  
3 hydraulic projects until the forest practices board incorporates fish  
4 protection standards adopted under this chapter into the forest  
5 practices rules and approves technical guidance as required under RCW  
6 76.09.040.

7 (3) By December 31, 2013, the department shall adopt rules  
8 establishing the form and procedures for the concurrence review process  
9 consistent with section 202 of this act. The concurrence review  
10 process must allow the department up to thirty days to review forest  
11 practices hydraulic projects meeting the criteria under section 202(2)  
12 (a) and (b) of this act for consistency with fish protection standards.

13 (4) The department shall notify the department of natural resources  
14 prior to beginning a rule-making process that may affect activities  
15 regulated under chapter 76.09 RCW.

16 (5) The department shall act consistent with appendix M of the  
17 forest and fish report, as the term "forests and fish report" is  
18 defined in RCW 76.09.020, when modifying fish protection rules that may  
19 affect activities regulated under chapter 76.09 RCW.

20 (6) The department may review and provide comments on any forest  
21 practices application. Prior to commenting and whenever reasonably  
22 practicable, the department shall communicate with the applicant  
23 regarding the substance of the project.

24 (7) The department shall participate in effectiveness monitoring  
25 for forest practices hydraulic projects through its role in the review  
26 processes provided under WAC 222-08-160 as it existed on the effective  
27 date of this section.

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

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

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

35 (a) Prior to submitting an application to the department under RCW  
36 76.09.050 that includes a forest practices hydraulic project involving  
37 one or more water crossing structures meeting the criteria of (b) of

1 this subsection, the applicant shall submit water crossing structure  
2 plans and specifications to the department of fish and wildlife for  
3 concurrence review consistent with section 201(3) of this act.

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

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

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

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

14 (c) When submitting an application to the department under RCW  
15 76.09.050, the applicant shall attach the following to the application:

16 (i) The concurrence review form issued by the department of fish  
17 and wildlife under section 201 of this act; and

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

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

22 (1)(a) Where necessary to accomplish the purposes and policies  
23 stated in RCW 76.09.010, and to implement the provisions of this  
24 chapter, the board shall adopt forest practices rules pursuant to  
25 chapter 34.05 RCW and in accordance with the procedures enumerated in  
26 this section that:

27 (i) Establish minimum standards for forest practices;

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

33 (iii) Set forth necessary administrative provisions;

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

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

1 (b) Forest practices rules pertaining to water quality protection  
2 shall be adopted by the board after reaching agreement with the  
3 director of the department of ecology or the director's designee on the  
4 board with respect ~~((thereto))~~ to these rules. All other forest  
5 practices rules shall be adopted by the board.

6 (c) Forest practices rules shall be administered and enforced by  
7 either the department or the local governmental entity as provided in  
8 this chapter. Such rules shall be adopted and administered so as to  
9 give consideration to all purposes and policies set forth in RCW  
10 76.09.010.

11 (2)(a) The board shall prepare proposed forest practices rules  
12 consistent with this section and chapter 34.05 RCW. In addition to any  
13 forest practices rules relating to water quality protection proposed by  
14 the board, the department of ecology may submit to the board proposed  
15 forest practices rules relating to water quality protection.

16 ~~(b)(i) ((Prior to initiating the rule-making process, the proposed  
17 rules shall be submitted for review and comments to the department of  
18 fish and wildlife and to the counties of the state. After receipt of  
19 the proposed forest practices rules, the department of fish and  
20 wildlife and the counties of the state shall have thirty days in which  
21 to review and submit comments to the board, and to the department of  
22 ecology with respect to its proposed rules relating to water quality  
23 protection.~~

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

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

32 (3)(a) The board shall incorporate into the forest practices rules  
33 those fish protection standards in the rules adopted under chapter  
34 77.55 RCW, as the rules existed on the effective date of this section,  
35 that are applicable to activities regulated under the forest practices  
36 rules. If fish protection standards are incorporated by reference, the  
37 board shall minimize administrative processes by utilizing the

1 exception from the administrative procedures controlling significant  
2 legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation  
3 of rules adopted by other state agencies.

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

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

20 (d) The board must complete the requirements of (a) of this  
21 subsection and establish initial technical guidance under (c) of this  
22 subsection by December 31, 2013.

23 (4)(a) The board shall establish by rule a program for the  
24 acquisition of riparian open space and critical habitat for threatened  
25 or endangered species as designated by the board. Acquisition must be  
26 a conservation easement. Lands eligible for acquisition are forest  
27 lands within unconfined channel migration zones or forest lands  
28 containing critical habitat for threatened or endangered species as  
29 designated by the board. Once acquired, these lands may be held and  
30 managed by the department, transferred to another state agency,  
31 transferred to an appropriate local government agency, or transferred  
32 to a private nonprofit nature conservancy corporation, as defined in  
33 RCW 64.04.130, in fee or transfer of management obligation. The board  
34 shall adopt rules governing the acquisition by the state or donation to  
35 the state of such interest in lands including the right of refusal if  
36 the lands are subject to unacceptable liabilities. The rules shall  
37 include definitions of qualifying lands, priorities for acquisition,  
38 and provide for the opportunity to transfer such lands with limited

1 warranties and with a description of boundaries that does not require  
2 full surveys where the cost of securing the surveys would be  
3 unreasonable in relation to the value of the lands conveyed. The rules  
4 shall provide for the management of the lands for ecological protection  
5 or fisheries enhancement. For the purposes of conservation easements  
6 entered into under this section, the following apply:

7 (i) For conveyances of a conservation easement in which the  
8 landowner conveys an interest in the trees only, the compensation must  
9 include the timber value component, as determined by the cruised volume  
10 of any timber located within the channel migration zone or critical  
11 habitat for threatened or endangered species as designated by the  
12 board, multiplied by the appropriate quality code stumpage value for  
13 timber of the same species shown on the appropriate table used for  
14 timber harvest excise tax purposes under RCW 84.33.091;

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

28 (b) Subject to appropriations sufficient to cover the cost of such  
29 an acquisition program and the related costs of administering the  
30 program, the department must establish a conservation easement in land  
31 that an owner tenders for purchase; provided that such lands have been  
32 taxed as forest lands and are located within an unconfined channel  
33 migration zone or contain critical habitat for threatened or endangered  
34 species as designated by the board. Lands acquired under this section  
35 shall become riparian or habitat open space. These acquisitions shall  
36 not be deemed to trigger the compensating tax of chapters 84.33 and  
37 84.34 RCW.

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

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

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

8 (1) The department and the department of natural resources shall  
9 enter into and maintain a memorandum of agreement between the two  
10 agencies that describes how to implement integration of hydraulic  
11 project approvals into forest practices applications consistent with  
12 this act.

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

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

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

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

28 Class II: Forest practices which have a less than ordinary  
29 potential for damaging a public resource that may be conducted without  
30 submitting an application and may begin five calendar days, or such  
31 lesser time as the department may determine, after written notification  
32 by the operator, in the manner, content, and form as prescribed by the  
33 department, is received by the department. However, the work may not  
34 begin until all forest practice fees required under RCW 76.09.065 have  
35 been received by the department. Class II shall not include forest  
36 practices:

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

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

4 ~~(e))~~ Within "shorelines of the state" as defined in RCW 90.58.030;

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

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

9 Class III: Forest practices other than those contained in Class I,  
10 II, or IV. A Class III application must be approved or disapproved by  
11 the department within thirty calendar days from the date the department  
12 receives the application. However, the applicant may not begin work on  
13 that forest practice until all forest practice fees required under RCW  
14 76.09.065 have been received by the department;

15 Class IV: Forest practices other than those contained in Class I  
16 or II:

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

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

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

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

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

33 (d) Which have a potential for a substantial impact on the  
34 environment and therefore require an evaluation by the department as to  
35 whether or not a detailed statement must be prepared pursuant to the  
36 state environmental policy act, chapter 43.21C RCW. Such evaluation  
37 shall be made within ten days from the date the department receives the  
38 application: PROVIDED, That nothing herein shall be construed to



1 prevent any local or regional governmental entity from determining that  
2 a detailed statement must be prepared for an action pursuant to a Class  
3 IV forest practice taken by that governmental entity concerning the  
4 land on which forest practices will be conducted. A Class IV  
5 application must be approved or disapproved by the department within  
6 thirty calendar days from the date the department receives the  
7 application, (~~unless the department determines that a detailed~~  
8 ~~statement must be made, in which case the application must be approved~~  
9 ~~or disapproved by the department within sixty calendar days from the~~  
10 ~~date the department receives the application, unless the commissioner~~  
11 ~~of public lands, through the promulgation of a formal order, determines~~  
12 ~~that the process cannot be completed within such period~~) except that  
13 the department must: Approve or disapprove an application within sixty  
14 calendar days from the date the department receives the application if  
15 the department determines that a detailed statement must be made,  
16 unless the commissioner of public lands, through the promulgation of a  
17 formal order, determines that the process cannot be completed within  
18 such a period. However, the applicant may not begin work on that  
19 forest practice until all forest practice fees required under RCW  
20 76.09.065 have been received by the department.

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

24 (2) Except for those forest practices being regulated by local  
25 governmental entities as provided elsewhere in this chapter, no Class  
26 II, Class III, or Class IV forest practice shall be commenced or  
27 continued after January 1, 1975, unless the department has received a  
28 notification with regard to a Class II forest practice or approved an  
29 application with regard to a Class III or Class IV forest practice  
30 containing all information required by RCW 76.09.060 as now or  
31 hereafter amended. However, in the event forest practices regulations  
32 necessary for the scheduled implementation of this chapter and RCW  
33 90.48.420 have not been adopted in time to meet such schedules, the  
34 department shall have the authority to regulate forest practices and  
35 approve applications on such terms and conditions consistent with this  
36 chapter and RCW 90.48.420 and the purposes and policies of RCW  
37 76.09.010 until applicable forest practices regulations are in effect.

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

7 (4) Except for those forest practices being regulated by local  
8 governmental entities as provided elsewhere in this chapter, forest  
9 practices shall be conducted in accordance with the forest practices  
10 regulations, orders and directives as authorized by this chapter or the  
11 forest practices regulations, and the terms and conditions of any  
12 approved applications.

13 (5) Except for those forest practices being regulated by local  
14 governmental entities as provided elsewhere in this chapter, the  
15 department of natural resources shall notify the applicant in writing  
16 of either its approval of the application or its disapproval of the  
17 application and the specific manner in which the application fails to  
18 comply with the provisions of this section or with the forest practices  
19 regulations. Except as provided otherwise in this section, if the  
20 department fails to either approve or disapprove an application or any  
21 portion thereof within the applicable time limit, the application shall  
22 be deemed approved and the operation may be commenced: PROVIDED, That  
23 this provision shall not apply to applications which are neither  
24 approved nor disapproved pursuant to the provisions of subsection (7)  
25 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
26 prevent the department from being able to properly evaluate the  
27 application, the department may issue an approval conditional upon  
28 further review within sixty days(~~(:—PROVIDED, FURTHER, That the~~  
29 ~~department shall have until April 1, 1975, to approve or disapprove an~~  
30 ~~application involving forest practices allowed to continue to April 1,~~  
31 ~~1975, under the provisions of subsection (2) of this section)). Upon~~  
32 receipt of any notification or any satisfactorily completed application  
33 the department shall in any event no later than two business days after  
34 such receipt transmit a copy to the departments of ecology and fish and  
35 wildlife, and to the county, city, or town in whose jurisdiction the  
36 forest practice is to be commenced. Any comments by such agencies  
37 shall be directed to the department of natural resources.

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

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

10 (a) The department receives written notice from the county, city,  
11 or town of such objections within fourteen business days from the time  
12 of transmittal of the application to the county, city, or town, or one  
13 day before the department acts on the application, whichever is later;  
14 and

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

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

29 (8) For those forest practices regulated by the board and the  
30 department, in addition to any rights under the above paragraph, the  
31 county, city, or town may appeal any department approval of an  
32 application with respect to any lands within its jurisdiction. The  
33 appeals board may suspend the department's approval in whole or in part  
34 pending such appeal where there exists potential for immediate and  
35 material damage to a public resource.

36 (9) For those forest practices regulated by the board and the  
37 department, appeals under this section shall be made to the appeals

1 board in the manner and time provided in RCW 76.09.205. In such  
2 appeals there shall be no presumption of correctness of either the  
3 county, city, or town or the department position.

4 (10) For those forest practices regulated by the board and the  
5 department, the department shall, within four business days notify the  
6 county, city, or town of all notifications, approvals, and disapprovals  
7 of an application affecting lands within the county, city, or town,  
8 except to the extent the county, city, or town has waived its right to  
9 such notice.

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

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

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

20 (1) The department shall prescribe the form and contents of the  
21 notification and application. The forest practices rules shall specify  
22 by whom and under what conditions the notification and application  
23 shall be signed or otherwise certified as acceptable. Activities  
24 conducted by the department or a contractor under the direction of the  
25 department under the provisions of RCW 76.04.660, shall be exempt from  
26 the landowner signature requirement on any forest practices application  
27 required to be filed. The application or notification shall be  
28 delivered in person to the department, sent by first-class mail to the  
29 department or electronically filed in a form defined by the department.  
30 The form for electronic filing shall be readily convertible to a paper  
31 copy, which shall be available to the public pursuant to chapter 42.56  
32 RCW. The information required may include, but is not limited to:

33 (a) Name and address of the forest landowner, timber owner, and  
34 operator;

35 (b) Description of the proposed forest practice or practices to be  
36 conducted;

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

3 (d) Planimetric and topographic maps showing location and size of  
4 all lakes and streams and other public waters in and immediately  
5 adjacent to the operating area and showing all existing and proposed  
6 roads and major tractor roads;

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

10 (f) For an application or notification submitted on or after the  
11 effective date of section 202 of this act that includes a forest  
12 practices hydraulic project, plans and specifications for the forest  
13 practices hydraulic project to ensure the proper protection of fish  
14 life;

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

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

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

22 ~~((i))~~ (j) Provisions for continuing maintenance of roads and  
23 other construction or other measures necessary to afford protection to  
24 public resources;

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

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

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

30 (3) The application for a forest practice or the notification of a  
31 forest practice is subject to the reforestation requirement of RCW  
32 76.09.070.

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

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

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

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

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

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

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

21 (iii) Copies of any applicable outstanding final orders or  
22 decisions issued by the department related to the forest practices  
23 application or notification.

24 (c) Failure to comply with the reforestation requirements contained  
25 in any final order or decision shall constitute a removal of  
26 designation under the provisions of RCW 84.33.140, and a change of use  
27 under the provisions of RCW 84.34.080, and, if applicable, shall  
28 subject such lands to the payments and/or penalties resulting from such  
29 removals or changes.

30 (d) Conversion to a use other than commercial forest product  
31 operations within six years after approval of the forest practices  
32 application or notification without the consent of the county, city, or  
33 town shall constitute a violation of each of the county, municipal  
34 city, town, and regional authorities to which the forest practice  
35 operations would have been subject if the application had stated an  
36 intent to convert.

37 (e) Land that is the subject of a notice of conversion to a

1 nonforestry use produced by the department and sent to the department  
2 of ecology and a local government under this subsection is subject to  
3 the development prohibition and conditions provided in RCW 76.09.460.

4 (f) Landowners who have not stated an intent to convert the land  
5 covered by an application or notification and who decide to convert the  
6 land to a nonforestry use within six years of receiving an approved  
7 application or notification must do so in a manner consistent with RCW  
8 76.09.470.

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

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

19 (5) Before the operator commences any forest practice in a manner  
20 or to an extent significantly different from that described in a  
21 previously approved application or notification, there shall be  
22 submitted to the department a new application or notification form in  
23 the manner set forth in this section.

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

30 (b) A notification or application may be renewed for an additional  
31 three-year term by the filing and approval of a notification or  
32 application, as applicable, prior to the expiration of the original  
33 application or notification. A renewal application or notification is  
34 subject to the forest practices rules in effect at the time the renewal  
35 application or notification is filed. Nothing in this section  
36 precludes the applicant from applying for a new application or  
37 notification after the renewal period has lapsed.

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

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

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

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

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

34       (b) In order to minimize adverse impacts to public resources,  
35 control measures must be based on integrated pest management, as  
36 defined in RCW 17.15.010, and must follow forest practices rules  
37 relating to road construction and maintenance, timber harvest, and



1 forest chemicals, to the extent possible without compromising control  
2 objectives.

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

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

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

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

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

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

28 (1) The department shall make inspections of forest lands, before,  
29 during, and after the conducting of forest practices as necessary for  
30 the purpose of ensuring compliance with this chapter (~~and~~), the  
31 forest practices rules, including forest practices rules incorporated  
32 under RCW 76.09.040(3), and to ensure that no material damage occurs to  
33 the natural resources of this state as a result of (~~such~~) forest  
34 practices.

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

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

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

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

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

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

26 (1) By December 31, 2013, the department must make examples of  
27 complete, high quality forest practices applications and the resulting  
28 approvals readily available to the public on its internet site, as well  
29 as the internet site of the office of regulatory assistance established  
30 in RCW 43.42.010. The department must maximize assistance to the  
31 public and interested parties by seeking to make readily available  
32 examples from forest practices that generate significant permitting  
33 activity or frequent questions.

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

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

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

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

12 (2) (~~For applications and notifications submitted to the~~  
13 ~~department, the application fee~~) (a) If sections 201 through 203 and  
14 206 of this act are not enacted into law by June 30, 2012, then the fee  
15 for applications and notifications submitted to the department shall be  
16 fifty dollars for class II, III, and IV forest practices applications  
17 or notifications relating to the commercial harvest of timber.  
18 However, the fee shall be five hundred dollars for class IV forest  
19 practices applications on lands being converted to other uses or on  
20 lands which are not to be reforested because of the likelihood of  
21 future conversion to urban development or on lands that are contained  
22 within "urban growth areas," designated pursuant to chapter 36.70A RCW,  
23 except the fee shall be fifty dollars on those lands where the forest  
24 landowner provides:

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

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

33 (b)(i) If sections 201 through 203 and 206 of this act are enacted  
34 into law by June 30, 2012, then the fee for applications and  
35 notifications relating to the commercial harvest of timber submitted to  
36 the department shall be one hundred fifty dollars for class II  
37 applications and notifications, class III applications, and class IV

1 forest practices that have a potential for a substantial impact on the  
2 environment and therefore require an evaluation by the department as to  
3 whether or not a detailed statement must be prepared pursuant to the  
4 state environmental policy act, chapter 43.21C RCW. The fee shall be  
5 one thousand five hundred dollars for class IV forest practices  
6 applications on lands being converted to other uses or on lands that  
7 are not to be reforested because of the likelihood of future conversion  
8 to urban development or on lands that are contained within urban growth  
9 areas, designated pursuant to chapter 36.70A RCW, except the fee shall  
10 be the same as for a class III forest practices application where the  
11 forest landowner provides:

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

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

20 (ii) If the board has not incorporated fish protection standards  
21 adopted under chapter 77.55 RCW into the forest practices rules and  
22 approved technical guidance as required under RCW 76.09.040 by December  
23 31, 2013, the fee for applications and notifications submitted to the  
24 department shall be as provided under (a) of this subsection until the  
25 rules are adopted and technical guidance approved.

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

32 ((+3)) (4) For applications submitted to ((the)) a local  
33 governmental entity as provided in this chapter, the fee shall be  
34 ((five hundred dollars for class IV forest practices on lands being  
35 converted to other uses or lands that are contained within "urban  
36 growth areas," designated pursuant to chapter 36.70A RCW, except as  
37 otherwise provided in this section, unless a different fee is otherwise

1 provided)) determined, collected, and retained by the local  
2 governmental entity.

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

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

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

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

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

18 (b) Contact the department of ecology and the applicable county,  
19 city, town, or regional governmental entity to begin the permitting  
20 process; and

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

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

31 (a) Notify the department and request from the department the  
32 status of any applicable forest practices applications, notifications,  
33 or final orders or decisions; and

34 (b) Complete the following activities:

35 (i) Require that the landowner be in full compliance with chapter  
36 43.21C RCW, if applicable;

1 (ii) Receive notification from the department that the landowner  
2 has resolved any outstanding final orders or decisions issued by the  
3 department; and

4 (iii) Make a determination as to whether or not the condition of  
5 the land in question is in full compliance with local ordinances and  
6 regulations. If full compliance is not found, a mitigation plan to  
7 address violations of local ordinances or regulations must be required  
8 for the parcel in question by the county, city, town, or regional  
9 governmental entity. Required mitigation plans must be prepared by the  
10 landowner and approved by the county, city, town, or regional  
11 governmental entity. Once approved, the mitigation plan must be  
12 implemented by the landowner. Mitigation measures that may be required  
13 include, but are not limited to, revegetation requirements to plant and  
14 maintain trees of sufficient maturity and appropriate species  
15 composition to restore critical area and buffer function or to be in  
16 compliance with applicable local government regulations.

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

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

22 (a) The commissioner of public lands or the commissioner's  
23 designee;

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

26 (c) The director of the department of agriculture or the director's  
27 designee;

28 (d) The director of the department of ecology or the director's  
29 designee;

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

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

36 (g) One member representing a timber products union, appointed by

1 the governor from a list of three names submitted by a timber labor  
2 coalition affiliated with a statewide labor organization that  
3 represents a majority of the timber product unions in the state; and

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

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

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

35 ~~((4))~~ (3) The board shall meet at such times and places as shall  
36 be designated by the chair or upon the written request of the majority  
37 of the board. The principal office of the board shall be at the state  
38 capital.

1       (~~(+5)~~) (4) Members of the board, except public employees and  
2 elected officials, shall be compensated in accordance with RCW  
3 43.03.250. Each member shall be entitled to reimbursement for travel  
4 expenses incurred in the performance of their duties as provided in RCW  
5 43.03.050 and 43.03.060.

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

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

10       The definitions in this section apply throughout this chapter  
11 unless the context clearly requires otherwise.

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

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

17       (3) "Application" means the application required pursuant to RCW  
18 76.09.050.

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

27       (5) "Board" means the forest practices board created in RCW  
28 76.09.030.

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

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

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

36       (9) "Date of receipt" has the same meaning as defined in RCW  
37 43.21B.001.



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

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

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

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

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

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

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

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

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

37 (a) Road and trail construction, including forest practices

1 hydraulic projects that include water crossing structures, and  
2 associated activities and maintenance;

- 3 (b) Harvesting, final and intermediate;
- 4 (c) Precommercial thinning;
- 5 (d) Reforestation;
- 6 (e) Fertilization;
- 7 (f) Prevention and suppression of diseases and insects;
- 8 (g) Salvage of trees; and
- 9 (h) Brush control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 NEW SECTION. **Sec. 218.** Nothing in this act affects the  
4 jurisdiction or other authority of a federally recognized Indian tribe  
5 within the boundary of its reservation or on other tribally owned  
6 lands.

7 NEW SECTION. **Sec. 219.** If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

11 **PART THREE**  
12 **State Environmental Policy Act and Local Development Regulations**

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

21 (2) By December 31, 2012, the department of ecology shall increase  
22 the rule-based categorical exemptions to chapter 43.21C RCW found in  
23 WAC 197-11-800 and update the environmental checklist found in WAC 197-  
24 11-960. In updating the categorical exemptions, the department of  
25 ecology must:

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

28 (i) The construction or location of single-family residential  
29 developments;

30 (ii) The construction or location of multifamily residential  
31 developments;

32 (iii) The construction of an agricultural structure, other than a  
33 feed lot, that is similar to the following: A barn, a loafing shed, a

1 farm equipment storage building, or a produce storing or packing  
2 structure;

3 (iv) The construction of the following, including any associated  
4 parking areas or facilities: An office, a school, a commercial  
5 building, a recreational building, a service building, or a storage  
6 building;

7 (v) Landfilling or excavation activities; and

8 (vi) The installation of an electric facility, lines, equipment, or  
9 appurtenances, other than substations.

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

12 (i) An incorporated city;

13 (ii) An unincorporated area within an urban growth area;

14 (iii) An unincorporated area outside of an urban growth area but  
15 within a county planning under chapter 36.70A RCW; or

16 (iv) An unincorporated area within a county not planning under  
17 chapter 36.70A RCW.

18 (c) In updating the environmental checklist found in WAC 197-11-  
19 960, the department of ecology shall:

20 (i) Improve efficiency of the environmental checklist; and

21 (ii) Not include any new subjects into the scope of the checklist,  
22 including climate change and greenhouse gases.

23 (d) Until the completion of the rule making required under this  
24 section, a city or county may apply the highest categorical exemption  
25 levels authorized under WAC 197-11-800 to any action, regardless if the  
26 city or county with jurisdiction has exercised its authority to raise  
27 the exemption levels above the established minimums, unless the city or  
28 county with jurisdiction passes an ordinance or resolution that lowers  
29 the exemption levels to a level below the allowed maximum but not less  
30 than the default minimum levels detailed in WAC 197-11-800.

31 (3)(a) By December 31, 2013, the department of ecology shall:

32 (i) Update, but not decrease, the thresholds for all other project  
33 actions not specified in subsection (2) of this section;

34 (ii) Propose methods for integrating the state environmental policy  
35 act process with provisions of the growth management act, chapter  
36 36.70A RCW, including consideration of ways to revise WAC 197-11-210  
37 through 197-11-232 to further the goals of RCW 43.21C.240; and

1 (iii) Create categorical exemptions for minor code amendments for  
2 which review under chapter 43.21C RCW would not be required because  
3 they do not lessen environmental protection.

4 (b) During this process, the department of ecology may also review  
5 and update the thresholds resulting from the 2012 rule-making process  
6 outlined in subsection (2) of this section.

7 (4)(a) The department of ecology shall convene an advisory  
8 committee consisting of members representing, at minimum, cities,  
9 counties, business interests, environmental interests, agricultural  
10 interests, cultural resources interests, state agencies, and tribal  
11 governments to:

12 (i) Assist in updating the environmental checklist and updating the  
13 thresholds for other project actions for both rule-making processes  
14 under subsections (2) and (3) of this section;

15 (ii) Ensure that state agencies and other interested parties can  
16 receive notice about projects of interest through notice under chapter  
17 43.21C RCW and means other than chapter 43.21C RCW; and

18 (iii) Ensure that federally recognized tribes receive notice about  
19 projects that impact tribal interests through notice under chapter  
20 43.21C RCW and means other than chapter 43.21C RCW.

21 (b) Advisory committee members must have direct experience with the  
22 implementation or application of the state environmental policy act.

23 (5) This section expires July 31, 2014.

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

26 (1) An environmental impact statement (the detailed statement  
27 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for  
28 legislation and other major actions having a probable significant,  
29 adverse environmental impact. The environmental impact statement may  
30 be combined with the recommendation or report on the proposal or issued  
31 as a separate document. The substantive decisions or recommendations  
32 shall be clearly identifiable in the combined document. Actions  
33 categorically exempt under RCW 43.21C.110(1)(a) and section 307 of this  
34 act do not require environmental review or the preparation of an  
35 environmental impact statement under this chapter. (~~In a county,~~  
36 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~  
37 ~~provided for in subsection (2) of this section, does not require a~~

1 ~~threshold determination or the preparation of an environmental impact~~  
2 ~~statement under this chapter, but is subject to environmental review~~  
3 ~~and mitigation as provided in this chapter.))~~

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

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

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

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

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

28 ~~(iv) Are located within an urban growth area, as defined in RCW~~  
29 ~~36.70A.030;~~

30 ~~(v) Are not essential public facilities, as defined in RCW~~  
31 ~~36.70A.200; and~~

32 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~  
33 ~~36.70A RCW.~~

34 ~~(b) A county, city, or town shall limit planned actions to certain~~  
35 ~~types of development or to specific geographical areas that are less~~  
36 ~~extensive than the jurisdictional boundaries of the county, city, or~~  
37 ~~town and may limit a planned action to a time period identified in the~~



1 ~~environmental impact statement or the ordinance or resolution adopted~~  
2 ~~under this subsection.))~~

3 NEW SECTION. **Sec. 303.** A new section is added to chapter 43.21C  
4 RCW to read as follows:

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

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

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

16 (c) Have had project level significant impacts adequately addressed  
17 in an environmental impact statement unless the impacts are  
18 specifically deferred for consideration at the project level pursuant  
19 to subsection (3)(b) of this section;

20 (d) Are subsequent or implementing projects for the proposals  
21 listed in (b) of this subsection;

22 (e) Are located within an urban growth area designated pursuant to  
23 RCW 36.70A.110;

24 (f) Are not essential public facilities, as defined in RCW  
25 36.70A.200, unless an essential public facility is accessory to or part  
26 of a residential, office, school, commercial, recreational, service, or  
27 industrial development that is designated a planned action under this  
28 subsection; and

29 (g) Are consistent with a comprehensive plan or subarea plan  
30 adopted under chapter 36.70A RCW.

31 (2) A county, city, or town shall define the types of development  
32 included in the planned action and may limit a planned action to:

33 (a) A specific geographic area that is less extensive than the  
34 jurisdictional boundaries of the county, city, or town; or

35 (b) A time period identified in the ordinance or resolution adopted  
36 under this subsection.

1 (3)(a) A county, city, or town shall determine during permit review  
2 whether a proposed project is consistent with a planned action  
3 ordinance adopted by the jurisdiction. To determine project  
4 consistency with a planned action ordinance, a county, city, or town  
5 may utilize a modified checklist pursuant to the rules adopted to  
6 implement RCW 43.21C.110, a form that is designated within the planned  
7 action ordinance, or a form contained in agency rules adopted pursuant  
8 to RCW 43.21C.120.

9 (b) A county, city, or town is not required to make a threshold  
10 determination and may not require additional environmental review, for  
11 a proposal that is determined to be consistent with the development or  
12 redevelopment described in the planned action ordinance, except for  
13 impacts that are specifically deferred to the project level at the time  
14 of the planned action ordinance's adoption. At least one community  
15 meeting must be held before the notice is issued for the planned action  
16 ordinance. Notice for the planned action and notice of the community  
17 meeting required by this subsection (3)(b) must be mailed or otherwise  
18 verifiably provided to: (i) All affected federally recognized tribal  
19 governments; and (ii) agencies with jurisdiction over the future  
20 development anticipated for the planned action. The determination of  
21 consistency, and the adequacy of any environmental review that was  
22 specifically deferred, are subject to the type of administrative appeal  
23 that the county, city, or town provides for the proposal itself  
24 consistent with RCW 36.70B.060.

25 (4) For a planned action ordinance that encompasses the entire  
26 jurisdictional boundary of a county, city, or town, at least one  
27 community meeting must be held before the notice is issued for the  
28 planned action ordinance. Notice for the planned action ordinance and  
29 notice of the community meeting required by this subsection must be  
30 mailed or otherwise verifiably provided to:

- 31 (a) All property owners of record within the county, city, or town;
- 32 (b) All affected federally recognized tribal governments; and
- 33 (c) All agencies with jurisdiction over the future development  
34 anticipated for the planned action.

35 **Sec. 304.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to  
36 read as follows:

- 37 (1) In order to accommodate infill development and thereby realize

1 the goals and policies of comprehensive plans adopted according to  
2 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is  
3 authorized by this section to establish categorical exemptions from the  
4 requirements of this chapter. An exemption adopted under this section  
5 applies even if it differs from the categorical exemptions adopted by  
6 rule of the department under RCW 43.21C.110(1)(a). An exemption may be  
7 adopted by a city or county under this section if it meets the  
8 following criteria:

9 (a) It categorically exempts government action related to  
10 development (~~((that is new residential or mixed use development))~~)  
11 proposed to fill in an urban growth area, designated according to RCW  
12 36.70A.110, where current density and intensity of use in the area is  
13 lower than called for in the goals and policies of the applicable  
14 comprehensive plan and the development is either:

15 (i) Residential development;

16 (ii) Mixed-use development; or

17 (iii) Commercial development up to sixty-five thousand square feet,  
18 excluding retail development;

19 (b) It does not exempt government action related to development  
20 that is inconsistent with the applicable comprehensive plan or would  
21 exceed the density or intensity of use called for in the goals and  
22 policies of the applicable comprehensive plan; ~~((and))~~

23 (c) The local government considers the specific probable adverse  
24 environmental impacts of the proposed action and determines that these  
25 specific impacts are adequately addressed by the development  
26 regulations or other applicable requirements of the comprehensive plan,  
27 subarea plan element of the comprehensive plan, planned action  
28 ordinance, or other local, state, or federal rules or laws; and

29 (d)(i) The city or county's applicable comprehensive plan was  
30 previously subjected to environmental analysis through an environmental  
31 impact statement under the requirements of this chapter prior to  
32 adoption; or

33 (ii) The city or county has prepared an environmental impact  
34 statement that considers the proposed use or density and intensity of  
35 use in the area proposed for an exemption under this section.

36 (2) Any categorical exemption adopted by a city or county under  
37 this section shall be subject to the rules of the department adopted

1 according to RCW 43.21C.110(1)(a) that provide exceptions to the use of  
2 categorical exemptions adopted by the department.

3 NEW SECTION. **Sec. 305.** A new section is added to chapter 43.21C  
4 RCW to read as follows:

5 (1) A county, city, or town may recover its reasonable expenses of  
6 preparation of a nonproject environmental impact statement prepared  
7 under RCW 43.21C.229 and section 303 of this act:

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

9 (b) With funding from private sources; and

10 (c) By the assessment of fees consistent with the requirements and  
11 limitations of this section.

12 (2)(a) A county, city, or town is authorized to assess a fee upon  
13 subsequent development that will make use of and benefit from: (i) The  
14 analysis in an environmental impact statement prepared for the purpose  
15 of compliance with section 303 of this act regarding planned actions;  
16 or (ii) the reduction in environmental analysis requirements resulting  
17 from the exercise of authority under RCW 43.21C.229 regarding infill  
18 development.

19 (b) The amount of the fee must be reasonable and proportionate to  
20 the total expenses incurred by the county, city, or town in the  
21 preparation of the environmental impact statement.

22 (3) A county, city, or town assessing fees under subsection (2)(a)  
23 of this section must provide for a mechanism by which project  
24 proponents may either elect to utilize the environmental review  
25 completed by the lead agency and pay the fees under subsection (1) of  
26 this section or certify that they do not want the local jurisdiction to  
27 utilize the environmental review completed as a part of a planned  
28 action and therefore not be assessed any associated fees. Project  
29 proponents who choose this option may not make use of or benefit from  
30 the up-front environmental review prepared by the local jurisdiction.

31 (4) Prior to the collection of fees, the county, city, or town must  
32 enact an ordinance that establishes the total amount of expenses to be  
33 recovered through fees and provides objective standards for determining  
34 the fee amount to be imposed upon each development proposal  
35 proportionate to the impacts of each development and to the benefits  
36 accruing to each development from the nonproject environmental review.  
37 The ordinance must provide (a) a procedure by which an applicant who

1 disagrees with whether the amount of the fee is correct, reasonable, or  
2 proportionate may pay the fee with the written stipulation "paid under  
3 protest"; and (b) if the county, city, or town provides for an  
4 administrative appeal of its decision on the project for which the fees  
5 are imposed, any dispute about the amount of the fees must be resolved  
6 in the same administrative appeals process. Any disagreement about the  
7 reasonableness, proportionality, or amount of the fees imposed upon a  
8 development may not be the basis for delay in issuance of a project  
9 permit for that development.

10 (5) The ordinance adopted under subsection (4) of this section must  
11 make information available about the amount of the expenses designated  
12 for recovery. When such expenses have been fully recovered, the  
13 county, city, or town may no longer assess a fee under this section.

14 (6) Any fees collected under this section from subsequent  
15 development may be used to reimburse funding received from private  
16 sources to conduct the environmental review.

17 (7) The city, county, or town shall refund fees collected where a  
18 court of competent jurisdiction determines that the environmental  
19 review conducted under section 303 of this act, regarding planned  
20 actions, or under RCW 43.21C.229, regarding infill development, was not  
21 sufficient to comply with the requirements of this chapter regarding  
22 the proposed development activity for which the fees were collected.  
23 The applicant and the city, county, or town may mutually agree to a  
24 partial refund or to waive the refund in the interest of resolving any  
25 dispute regarding compliance with this chapter.

26 **Sec. 306.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to  
27 read as follows:

28 Except only as expressly provided in chapters 67.28, 81.104, and  
29 82.14 RCW, the state preempts the field of imposing retail sales and  
30 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW  
31 67.16.060, conveyances, and cigarettes, and no county, town, or other  
32 municipal subdivision shall have the right to impose taxes of that  
33 nature. Except as provided in RCW 64.34.440 and 82.02.050 through  
34 82.02.090, no county, city, town, or other municipal corporation shall  
35 impose any tax, fee, or charge, either direct or indirect, on the  
36 construction or reconstruction of residential buildings, commercial  
37 buildings, industrial buildings, or on any other building or building

1 space or appurtenance thereto, or on the development, subdivision,  
2 classification, or reclassification of land. However, this section  
3 does not preclude dedications of land or easements within the proposed  
4 development or plat which the county, city, town, or other municipal  
5 corporation can demonstrate are reasonably necessary as a direct result  
6 of the proposed development or plat to which the dedication of land or  
7 easement is to apply.

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

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

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

22 (3) Any payment not so expended shall be refunded with interest to  
23 be calculated from the original date the deposit was received by the  
24 county and at the same rate applied to tax refunds pursuant to RCW  
25 84.69.100; however, if the payment is not expended within five years  
26 due to delay attributable to the developer, the payment shall be  
27 refunded without interest.

28 No county, city, town, or other municipal corporation shall require  
29 any payment as part of such a voluntary agreement which the county,  
30 city, town, or other municipal corporation cannot establish is  
31 reasonably necessary as a direct result of the proposed development or  
32 plat.

33 Nothing in this section prohibits cities, towns, counties, or other  
34 municipal corporations from collecting reasonable fees from an  
35 applicant for a permit or other governmental approval to cover the cost  
36 to the city, town, county, or other municipal corporation of processing  
37 applications, inspecting and reviewing plans, or preparing detailed

1 statements required by chapter 43.21C RCW, including reasonable fees  
2 that are consistent with RCW 43.21C.420(6) and section 305 of this act.

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

7 Nothing in this section prohibits counties, cities, or towns from  
8 imposing or permits counties, cities, or towns to impose water, sewer,  
9 natural gas, drainage utility, and drainage system charges. However,  
10 no such charge shall exceed the proportionate share of such utility or  
11 system's capital costs which the county, city, or town can demonstrate  
12 are attributable to the property being charged. Furthermore, these  
13 provisions may not be interpreted to expand or contract any existing  
14 authority of counties, cities, or towns to impose such charges.

15 Nothing in this section prohibits a transportation benefit district  
16 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
17 the legislative authority of a county, city, or town from approving the  
18 imposition of such fees within a transportation benefit district.

19 Nothing in this section prohibits counties, cities, or towns from  
20 imposing transportation impact fees authorized pursuant to chapter  
21 39.92 RCW.

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

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

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

31 NEW SECTION. **Sec. 307.** A new section is added to chapter 43.21C  
32 RCW to read as follows:

33 The following nonproject actions are categorically exempt from the  
34 requirements of this chapter:

35 (1) Amendments to development regulations that are required to  
36 ensure consistency with an adopted comprehensive plan pursuant to RCW  
37 36.70A.040, where the comprehensive plan was previously subjected to

1 environmental review pursuant to this chapter and the impacts  
2 associated with the proposed regulation were specifically addressed in  
3 the prior environmental review;

4 (2) Amendments to development regulations that are required to  
5 ensure consistency with a shoreline master program approved pursuant to  
6 RCW 90.58.090, where the shoreline master program was previously  
7 subjected to environmental review pursuant to this chapter and the  
8 impacts associated with the proposed regulation were specifically  
9 addressed in the prior environmental review;

10 (3) Amendments to development regulations that, upon implementation  
11 of a project action, will provide increased environmental protection,  
12 limited to the following:

13 (a) Increased protections for critical areas, such as enhanced  
14 buffers or setbacks;

15 (b) Increased vegetation retention or decreased impervious surface  
16 areas in shoreline jurisdiction; and

17 (c) Increased vegetation retention or decreased impervious surface  
18 areas in critical areas;

19 (4) Amendments to technical codes adopted by a county, city, or  
20 town to ensure consistency with minimum standards contained in state  
21 law, including the following:

22 (a) Building codes required by chapter 19.27 RCW;

23 (b) Energy codes required by chapter 19.27A RCW; and

24 (c) Electrical codes required by chapter 19.28 RCW.

25 NEW SECTION. **Sec. 308.** A new section is added to chapter 43.21C  
26 RCW to read as follows:

27 (1) The lead agency for an environmental review under this chapter  
28 utilizing an environmental checklist developed by the department of  
29 ecology pursuant to RCW 43.21C.110 may identify within the checklist  
30 provided to applicants instances where questions on the checklist are  
31 adequately covered by a locally adopted ordinance, development  
32 regulation, land use plan, or other legal authority.

33 (2) If a lead agency identifies an instance as described in  
34 subsection (1) of this section, it still must consider whether the  
35 action has an impact on the particular element or elements of the  
36 environment in question.



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

6 (4) If the lead agency identifies instances where questions on the  
7 checklist are adequately covered by a locally adopted ordinance,  
8 development regulation, land use plan, or other legal authority, an  
9 applicant may still provide answers to any questions on the checklist.

10 (5) Nothing in this section authorizes a lead agency to ignore or  
11 delete a question on the checklist.

12 (6) Nothing in this section changes the standard for whether an  
13 environmental impact statement is required for an action that may have  
14 a probable significant, adverse environmental impact pursuant to RCW  
15 43.21C.030.

16 (7) Nothing in this section affects the appeal provisions provided  
17 in this chapter.

18 (8) Nothing in this section modifies existing rules for determining  
19 the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor  
20 does it modify agency procedures for complying with the state  
21 environmental policy act when an agency other than a local government  
22 is serving as the lead agency.

23 **Sec. 309.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to  
24 read as follows:

25 The growth management planning and environmental review fund is  
26 hereby established in the state treasury. Moneys may be placed in the  
27 fund from the proceeds of bond sales, tax revenues, budget transfers,  
28 federal appropriations, gifts, or any other lawful source. Moneys in  
29 the fund may be spent only after appropriation. Moneys in the fund  
30 shall be used to make grants or loans to local governments for the  
31 purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any  
32 payment of either principal or interest, or both, derived from loans  
33 made from this fund must be deposited into the fund.

34 **Sec. 310.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to  
35 read as follows:

36 (1) The department of (~~community, trade, and economic~~

1 development)) commerce shall provide management services for the growth  
2 management planning and environmental review fund created by RCW  
3 36.70A.490. The department shall establish procedures for fund  
4 management. The department shall encourage participation in the grant  
5 or loan program by other public agencies. The department shall develop  
6 the grant or loan criteria, monitor the grant or loan program, and  
7 select grant or loan recipients in consultation with state agencies  
8 participating in the grant or loan program through the provision of  
9 grant or loan funds or technical assistance.

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

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

20 (b) Encourages use of plans and information developed for purposes  
21 of complying with this chapter to satisfy requirements of other state  
22 programs.

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

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

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

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

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

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

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

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

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

16 (b) Identification and monitoring of system capacities for elements  
17 of the built environment, and to the extent appropriate, of the natural  
18 environment;

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

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

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

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

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

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

37 (5) If the local funding includes funding provided by other state

1 functional planning programs, including open space planning and  
2 watershed or basin planning, the functional plan shall be integrated  
3 into and be consistent with the comprehensive plan.

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

7 **Sec. 311.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to  
8 read as follows:

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

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

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

36 (b) Rules for criteria and procedures applicable to the  
37 determination of when an act of a branch of government is a major

1 action significantly affecting the quality of the environment for which  
2 a detailed statement is required to be prepared pursuant to RCW  
3 43.21C.030.

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

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

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

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

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

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

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

37 (j) Rules for utilization of a detailed statement for more than one

1 action and rules improving environmental analysis of nonproject  
2 proposals and encouraging better interagency coordination and  
3 integration between this chapter and other environmental laws.

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

6 (l) Rules relating to the use of environmental documents in  
7 planning and decision making and the implementation of the substantive  
8 policies and requirements of this chapter, including procedures for  
9 appeals under this chapter.

10 (m) Rules and procedures that provide for the integration of  
11 environmental review with project review as provided in RCW 43.21C.240.  
12 The rules and procedures shall be jointly developed with the department  
13 of (~~community, trade, and economic development~~) commerce and shall be  
14 applicable to the preparation of environmental documents for actions in  
15 counties, cities, and towns planning under RCW 36.70A.040. The rules  
16 and procedures shall also include procedures and criteria to analyze  
17 planned actions under (~~RCW 43.21C.031(2)~~) section 303 of this act and  
18 revisions to the rules adopted under this section to ensure that they  
19 are compatible with the requirements and authorizations of chapter 347,  
20 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or  
21 procedures adopted by a county, city, or town to implement the  
22 provisions of chapter 347, Laws of 1995 prior to the effective date of  
23 rules adopted under this subsection (1)(m) shall continue to be  
24 effective until the adoption of any new or revised ordinances or  
25 procedures that may be required. If any revisions are required as a  
26 result of rules adopted under this subsection (1)(m), those revisions  
27 shall be made within the time limits specified in RCW 43.21C.120.

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

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

34 (b) Utilize, to the fullest extent possible, the services,  
35 facilities, and information (including statistical information) of  
36 public and private agencies, organizations, and individuals, in order  
37 to avoid duplication of effort and expense, overlap, or conflict with

1 similar activities authorized by law and performed by established  
2 agencies.

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

5 **Sec. 312.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to  
6 read as follows:

7 The rules (~~promulgated~~) adopted under RCW 43.21C.110 shall be  
8 accorded substantial deference in the interpretation of this chapter.

9 **Sec. 313.** RCW 90.48.260 and 2011 c 353 s 12 are each amended to  
10 read as follows:

11 (1) The department of ecology is hereby designated as the state  
12 water pollution control agency for all purposes of the federal clean  
13 water act as it exists on February 4, 1987, and is hereby authorized to  
14 participate fully in the programs of the act as well as to take all  
15 action necessary to secure to the state the benefits and to meet the  
16 requirements of that act. With regard to the national estuary program  
17 established by section 320 of that act, the department shall exercise  
18 its responsibility jointly with the Puget Sound partnership, created in  
19 RCW 90.71.210. The department of ecology may delegate its authority  
20 under this chapter, including its national pollutant discharge  
21 elimination permit system authority and duties regarding animal feeding  
22 operations and concentrated animal feeding operations, to the  
23 department of agriculture through a memorandum of understanding. Until  
24 any such delegation receives federal approval, the department of  
25 agriculture's adoption or issuance of animal feeding operation and  
26 concentrated animal feeding operation rules, permits, programs, and  
27 directives pertaining to water quality shall be accomplished after  
28 reaching agreement with the director of the department of ecology.  
29 Adoption or issuance and implementation shall be accomplished so that  
30 compliance with such animal feeding operation and concentrated animal  
31 feeding operation rules, permits, programs, and directives will achieve  
32 compliance with all federal and state water pollution control laws.  
33 The powers granted herein include, among others, and notwithstanding  
34 any other provisions of this chapter (~~(90.48-RCW)~~) or otherwise, the  
35 following:

1 (a) Complete authority to establish and administer a comprehensive  
2 state point source waste discharge or pollution discharge elimination  
3 permit program which will enable the department to qualify for full  
4 participation in any national waste discharge or pollution discharge  
5 elimination permit system and will allow the department to be the sole  
6 agency issuing permits required by such national system operating in  
7 the state of Washington subject to the provisions of RCW 90.48.262(2).  
8 Program elements authorized herein may include, but are not limited to:  
9 (i) Effluent treatment and limitation requirements together with timing  
10 requirements related thereto; (ii) applicable receiving water quality  
11 standards requirements; (iii) requirements of standards of performance  
12 for new sources; (iv) pretreatment requirements; (v) termination and  
13 modification of permits for cause; (vi) requirements for public notices  
14 and opportunities for public hearings; (vii) appropriate relationships  
15 with the secretary of the army in the administration of his or her  
16 responsibilities which relate to anchorage and navigation, with the  
17 administrator of the environmental protection agency in the performance  
18 of his or her duties, and with other governmental officials under the  
19 federal clean water act; (viii) requirements for inspection,  
20 monitoring, entry, and reporting; (ix) enforcement of the program  
21 through penalties, emergency powers, and criminal sanctions; (x) a  
22 continuing planning process; and (xi) user charges.

23 (b) The power to establish and administer state programs in a  
24 manner which will (~~insure~~) ensure the procurement of moneys, whether  
25 in the form of grants, loans, or otherwise; to assist in the  
26 construction, operation, and maintenance of various water pollution  
27 control facilities and works; and the administering of various state  
28 water pollution control management, regulatory, and enforcement  
29 programs.

30 (c) The power to develop and implement appropriate programs  
31 pertaining to continuing planning processes, area-wide waste treatment  
32 management plans, and basin planning.

33 The governor shall have authority to perform those actions required  
34 of him or her by the federal clean water act.

35 (2) By July 31, 2012, the department shall:

36 (a) Reissue without modification and for a term of (~~one~~) two  
37 years any national pollutant discharge elimination system municipal



1 storm water general permit first issued on January 17, 2007, for  
2 eastern Washington municipalities; and

3 (b) Issue an updated national pollutant discharge elimination  
4 system municipal storm water general permit for any permit first issued  
5 on January 17, 2007, for eastern Washington municipalities. An updated  
6 permit issued under this subsection shall become effective beginning  
7 August 1, ((2013)) 2014."

8 Correct the title.

EFFECT: Creates civil HPA enforcement authority for projects occurring below the ordinary high water line, removes the 2016 expiration on HPA fees, removes references to general permits and reduces the scope of the marine general permit to repair and not installation activities, and limits storm water changes to eastern Washington only.

--- END ---