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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2253

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State of Washington

62nd Legislature

2012 Regular Session

By House General Government Appropriations & Oversight (originally sponsored by Representatives Fitzgibbon, Billig, and Jinkins)

READ FIRST TIME 02/06/12.

1 AN ACT Relating to modernizing the functionality of the state  
2 environmental policy act without compromising the underlying intent of  
3 the original legislation; amending RCW 43.21C.031, 43.21C.229,  
4 43.21C.420, 36.70A.490, 36.70A.500, 43.21C.110, and 43.21C.095; adding  
5 new sections to chapter 43.21C RCW; adding a new section to chapter  
6 82.02 RCW; creating a new section; and providing an expiration date.

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

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

16 (2) By December 31, 2012, the department of ecology shall increase  
17 the rule-based categorical exemptions to chapter 43.21C RCW found in  
18 WAC 197-11-800 and update the environmental checklist found in WAC 197-

1 11-960. In updating the categorical exemptions, the department of  
2 ecology must:

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

5 (i) The construction or location of single-family residential  
6 developments;

7 (ii) The construction or location of multifamily residential  
8 developments;

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

13 (iv) The construction of the following, including any associated  
14 parking areas or facilities: An office, a school, a commercial  
15 building, a recreational building, a service building, or a storage  
16 building;

17 (v) Landfilling or excavation activities; and

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

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

22 (i) An incorporated city;

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

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

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

28 (c) In updating the environmental checklist found in WAC 197-11-  
29 960, the department of ecology shall:

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

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

33 (d) Until the completion of the rule making required under this  
34 section, a city or county may apply the highest categorical exemption  
35 levels authorized under WAC 197-11-800 to any action, regardless if the  
36 city or county with jurisdiction has exercised its authority to raise  
37 the exemption levels above the established minimums, unless the city or

1 county with jurisdiction passes an ordinance or resolution that lowers  
2 the exemption levels to a level below the allowed maximum but not less  
3 than the default minimum levels detailed in WAC 197-11-800.

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

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

7 (ii) Create a categorical exemption for projects designed to  
8 restore natural wildlife or fishery habitats or serve as environmental  
9 mitigation for other projects; and

10 (iii) Propose methods for integrating the state environmental  
11 policy act process with provisions of the growth management act,  
12 chapter 36.70A RCW, including consideration of ways to revise WAC 197-  
13 11-210 through 197-11-232 to further the goals of RCW 43.21C.240.

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

17 (4)(a) The department of ecology shall convene an advisory  
18 committee consisting of members representing, at minimum, cities,  
19 counties, business interests, environmental interests, agricultural  
20 interests, cultural resources interests, state agencies, and tribal  
21 governments to:

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

25 (ii) Consider opportunities to ensure that state agencies, tribes,  
26 and other interested parties can receive notice about projects of  
27 interest through a means other than through notice under chapter 43.21C  
28 RCW.

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

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

32 **Sec. 2.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to  
33 read as follows:

34 (1) An environmental impact statement (the detailed statement  
35 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for  
36 legislation and other major actions having a probable significant,  
37 adverse environmental impact. The environmental impact statement may

1 be combined with the recommendation or report on the proposal or issued  
2 as a separate document. The substantive decisions or recommendations  
3 shall be clearly identifiable in the combined document. Actions  
4 categorically exempt under RCW 43.21C.110(1)(a) and section 7 of this  
5 act do not require environmental review or the preparation of an  
6 environmental impact statement under this chapter. (~~In a county,~~  
7 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~  
8 ~~provided for in subsection (2) of this section, does not require a~~  
9 ~~threshold determination or the preparation of an environmental impact~~  
10 ~~statement under this chapter, but is subject to environmental review~~  
11 ~~and mitigation as provided in this chapter.))~~

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

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

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

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

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

36 ~~(iv) Are located within an urban growth area, as defined in RCW~~  
37 ~~36.70A.030;~~

1 ~~(v) Are not essential public facilities, as defined in RCW~~  
2 ~~36.70A.200; and~~

3 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~  
4 ~~36.70A RCW.~~

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

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

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

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

18 (b) Have had the significant impacts adequately addressed in an  
19 environmental impact statement under the requirements of this chapter  
20 in conjunction with, or to implement, a comprehensive plan or subarea  
21 plan adopted under chapter 36.70A RCW, or a fully contained community,  
22 a master planned resort, a master planned development, or a phased  
23 project;

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

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

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

32 (f) Are not essential public facilities, as defined in RCW  
33 36.70A.200, unless an essential public facility is accessory to or part  
34 of a residential, office, school, commercial, recreational, service, or  
35 industrial development that is designated a planned action under this  
36 subsection; and

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

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

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

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

9 (3)(a) A county, city, or town shall determine during permit review  
10 whether a proposed project is consistent with a planned action  
11 ordinance adopted by the jurisdiction. To determine project  
12 consistency with a planned action ordinance, a county, city, or town  
13 may utilize a modified checklist pursuant to the rules adopted to  
14 implement RCW 43.21C.110, a form that is designated within the planned  
15 action ordinance, or a form contained in agency rules adopted pursuant  
16 to RCW 43.21C.120.

17 (b) Except for impacts that are specifically deferred, at the time  
18 of planned action ordinance adoption, for consideration at the project  
19 level, a county, city, or town is not required to make a threshold  
20 determination and may not require additional environmental review for  
21 a proposal that is determined to be consistent with the development or  
22 redevelopment described in the planned action ordinance. The  
23 determination of consistency, and the adequacy of any environmental  
24 review that was specifically deferred, are subject to the type of  
25 administrative appeal that the county, city, or town provides for the  
26 proposal itself consistent with RCW 36.70B.060.

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

33 (a) All property owners of record within the county, city, or town;

34 (b) All affected federally recognized tribal governments whose  
35 ceded area is within one-half mile of the jurisdictional boundaries of  
36 the county, city, or town, and to agencies with jurisdiction over the  
37 future development anticipated for the planned action.

1       **Sec. 4.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to read  
2 as follows:

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

12       (a) It categorically exempts government action related to  
13 development (~~((that is new residential or mixed use development))~~)  
14 proposed to fill in an urban growth area, designated according to RCW  
15 36.70A.110, where current density and intensity of use in the area is  
16 lower than called for in the goals and policies of the applicable  
17 comprehensive plan and the development is either:

18       (i) Residential development;

19       (ii) Mixed-use development; or

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

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

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

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

33       (2) Any categorical exemption adopted by a city or county under  
34 this section shall be subject to the rules of the department adopted  
35 according to RCW 43.21C.110(1)(a) that provide exceptions to the use of  
36 categorical exemptions adopted by the department.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 43.21C RCW  
2 to read as follows:

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

7        (2) A county, city, or town may recover reasonable expenses  
8 incurred in the preparation of a nonproject environmental impact  
9 statement prepared under RCW 43.21C.030(2):

10        (a) Through access to financial assistance under RCW 36.70A.490;  
11 and

12        (b) With funding from private sources.

13        **Sec. 6.**    RCW 43.21C.420 and 2010 c 153 s 2 are each amended to read  
14 as follows:

15        (1) Cities with a population greater than five thousand, in  
16 accordance with their existing comprehensive planning and development  
17 regulation authority under chapter 36.70A RCW, and in accordance with  
18 this section, may adopt optional elements of their comprehensive plans  
19 and optional development regulations that apply within specified  
20 subareas of the cities, that are either:

21        (a) Areas designated as mixed-use or urban centers in a land use or  
22 transportation plan adopted by a regional transportation planning  
23 organization; or

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

27        (2) Cities located on the east side of the Cascade mountains and  
28 located in a county with a population of two hundred thirty thousand or  
29 less, in accordance with their existing comprehensive planning and  
30 development regulation authority under chapter 36.70A RCW, and in  
31 accordance with this section, may adopt optional elements of their  
32 comprehensive plans and optional development regulations that apply  
33 within the mixed-use or urban centers. The optional elements of their  
34 comprehensive plans and optional development regulations must enhance  
35 pedestrian, bicycle, transit, or other nonvehicular transportation  
36 methods.

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



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

3 (b) Commuter rail stops;

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

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

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

10 (4)(a) A city that elects to adopt such an optional comprehensive  
11 plan element and optional development regulations shall prepare a  
12 nonproject environmental impact statement, pursuant to RCW 43.21C.030,  
13 assessing and disclosing the probable significant adverse environmental  
14 impacts of the optional comprehensive plan element and development  
15 regulations and of future development that is consistent with the plan  
16 and regulations.

17 (b) At least one community meeting must be held on the proposed  
18 subarea plan before the scoping notice for such a nonproject  
19 environmental impact statement is issued. Notice of scoping for such  
20 a nonproject environmental impact statement and notice of the community  
21 meeting required by this section must be mailed to all property owners  
22 of record within the subarea to be studied, to all property owners  
23 within one hundred fifty feet of the boundaries of such a subarea, to  
24 all affected federally recognized tribal governments whose ceded area  
25 is within one-half mile of the boundaries of the subarea, and to  
26 agencies with jurisdiction over the future development or its impacts  
27 anticipated within the subarea.

28 (c) In cities with over five hundred thousand residents, notice of  
29 scoping for such a nonproject environmental impact statement and notice  
30 of the community meeting required by this section must be mailed to all  
31 small businesses as defined in RCW 19.85.020, and to all community  
32 preservation and development authorities established under chapter  
33 43.167 RCW, located within the subarea to be studied or within one  
34 hundred fifty feet of the boundaries of such subarea. The process for  
35 community involvement must have the goal of fair treatment and  
36 meaningful involvement of all people with respect to the development  
37 and implementation of the subarea planning process.

1 (d) The notice of the community meeting must include general  
2 illustrations and descriptions of buildings generally representative of  
3 the maximum building envelope that will be allowed under the proposed  
4 plan and indicate that future appeals of proposed developments that are  
5 consistent with the plan will be limited. Notice of the community  
6 meeting must include signs located on major travel routes in the  
7 subarea. If the building envelope increases during the process,  
8 another notice complying with the requirements of this section must be  
9 issued before the next public involvement opportunity.

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

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

23 (g) As an incentive for development authorized under this section,  
24 a city shall consider establishing a transfer of development rights  
25 program in consultation with the county where the city is located, that  
26 conserves county-designated agricultural and forest land of long-term  
27 commercial significance. If the city decides not to establish a  
28 transfer of development rights program, the city must state in the  
29 record the reasons for not adopting the program. The city's decision  
30 not to establish a transfer of development rights program is not  
31 subject to appeal. Nothing in this subsection (4)(g) may be used as a  
32 basis to challenge the optional comprehensive plan or subarea plan  
33 policies authorized under this section.

34 (5)(a) Until July 1, 2018, a proposed development that is  
35 consistent with the optional comprehensive plan or subarea plan  
36 policies and development regulations adopted under subsection (1) or  
37 (2) of this section and that is environmentally reviewed under  
38 subsection (4) of this section may not be challenged in administrative

1 or judicial appeals for noncompliance with this chapter as long as a  
2 complete application for such a development that vests the application  
3 or would later lead to vested status under city or state law is  
4 submitted to the city within a time frame established by the city, but  
5 not to exceed ten years from the date of issuance of the final  
6 environmental impact statement.

7 (b) After July 1, 2018, the immunity from appeals under this  
8 chapter of any application that vests or will vest under this  
9 subsection or the ability to vest under this subsection is still valid,  
10 provided that the final subarea environmental impact statement is  
11 issued by July 1, 2018. (~~After July 1, 2018, a city may continue to~~  
12 ~~collect reimbursement fees under subsection (6) of this section for the~~  
13 ~~proportionate share of a subarea environmental impact statement issued~~  
14 ~~prior to July 1, 2018.~~)

15 (6) (~~It is recognized that a city that prepares a nonproject~~  
16 ~~environmental impact statement under subsection (4) of this section~~  
17 ~~must endure a substantial financial burden. A city may recover its~~  
18 ~~reasonable expenses of preparation of a nonproject environmental impact~~  
19 ~~statement prepared under subsection (4) of this section through access~~  
20 ~~to financial assistance under RCW 36.70A.490 or funding from private~~  
21 ~~sources. In addition, a city is authorized to recover a portion of its~~  
22 ~~reasonable expenses of preparation of such a nonproject environmental~~  
23 ~~impact statement by the assessment of reasonable and proportionate fees~~  
24 ~~upon subsequent development that is consistent with the plan and~~  
25 ~~development regulations adopted under subsection (5) of this section,~~  
26 ~~as long as the development makes use of and benefits [from], as~~  
27 ~~described in subsection (5) of this section, from the nonproject~~  
28 ~~environmental impact statement prepared by the city. Any assessment~~  
29 ~~fees collected from subsequent development may be used to reimburse~~  
30 ~~funding received from private sources. In order to collect such fees,~~  
31 ~~the city must enact an ordinance that sets forth objective standards~~  
32 ~~for determining how the fees to be imposed upon each development will~~  
33 ~~be proportionate to the impacts of each development and to the benefits~~  
34 ~~accruing to each development from the nonproject environmental impact~~  
35 ~~statement. Any disagreement about the reasonableness or amount of the~~  
36 ~~fees imposed upon a development may not be the basis for delay in~~  
37 ~~issuance of a project permit for that development. The fee assessed by~~  
38 ~~the city may be paid with the written stipulation "paid under protest"~~

1 ~~and if the city provides for an administrative appeal of its decision~~  
2 ~~on the project for which the fees are imposed, any dispute about the~~  
3 ~~amount of the fees must be resolved in the same administrative appeal~~  
4 ~~process.~~

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

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.21C RCW  
10 to read as follows:

11 The following nonproject actions are categorically exempt from the  
12 requirements of this chapter:

13 (1) Amendments to development regulations that are required to  
14 ensure consistency with an adopted comprehensive plan pursuant to RCW  
15 36.70A.040, where the comprehensive plan was previously subjected to  
16 environmental review pursuant to this chapter;

17 (2) Amendments to development regulations that are required to  
18 ensure consistency with a shoreline master program approved pursuant to  
19 RCW 90.58.090, where the shoreline master program was previously  
20 subjected to environmental review pursuant to this chapter;

21 (3) Amendments to development regulations that do not change  
22 regulations applicable to any of the following: Allowed uses or  
23 activities, intensity, density, building height, lot coverage,  
24 impervious surface limits, vegetation retention requirements,  
25 regulations for critical areas as defined in RCW 36.70A.030, cultural  
26 resource regulations, regulations for the protection of the  
27 environment, human health, and human safety, protections for other uses  
28 and activities, regulations for billboards and freestanding signs,  
29 requirements for public facilities or services, or uses, activities,  
30 developments, or structures that would have a probable adverse impact  
31 on the human or natural environment;

32 (4) Amendments to development regulations that, upon implementation  
33 of a project action, will provide increased environmental protection,  
34 limited to the following:

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

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

3 (c) Increased vegetation retention or decreased impervious surface  
4 areas in critical areas;

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

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

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

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

11 **Sec. 8.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to  
12 read as follows:

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

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

24 (1) The department of (~~community, — trade, — and — economic~~  
25 ~~development~~) commerce shall provide management services for the growth  
26 management planning and environmental review fund created by RCW  
27 36.70A.490. The department shall establish procedures for fund  
28 management. The department shall encourage participation in the grant  
29 or loan program by other public agencies. The department shall develop  
30 the grant or loan criteria, monitor the grant or loan program, and  
31 select grant or loan recipients in consultation with state agencies  
32 participating in the grant or loan program through the provision of  
33 grant or loan funds or technical assistance.

34 (2) A grant or loan may be awarded to a county or city that is  
35 required to or has chosen to plan under RCW 36.70A.040 and that is  
36 qualified pursuant to this section. The grant or loan shall be

1 provided to assist a county or city in paying for the cost of preparing  
2 an environmental analysis under chapter 43.21C RCW, that is integrated  
3 with a comprehensive plan, subarea plan, plan element, countywide  
4 planning policy, development regulation, monitoring program, or other  
5 planning activity adopted under or implementing this chapter that:

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

8 (b) Encourages use of plans and information developed for purposes  
9 of complying with this chapter to satisfy requirements of other state  
10 programs.

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

13 (a) Demonstrate that it will prepare an environmental analysis  
14 pursuant to chapter 43.21C RCW and subsection (2) of this section that  
15 is integrated with a comprehensive plan, subarea plan, plan element,  
16 countywide planning policy, development regulations, monitoring  
17 program, or other planning activity adopted under or implementing this  
18 chapter;

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

23 (c) Demonstrate that procedures for review of development permit  
24 applications will be based on the integrated plans and environmental  
25 analysis;

26 (d) Include mechanisms to monitor the consequences of growth as it  
27 occurs in the plan area and to use the resulting data to update the  
28 plan, policy, or implementing mechanisms and associated environmental  
29 analysis;

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

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

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

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

3 (b) Identification and monitoring of system capacities for elements  
4 of the built environment, and to the extent appropriate, of the natural  
5 environment;

6 (c) Coordination with state, federal, and tribal governments in  
7 project review;

8 (d) Furtherance of important state objectives related to economic  
9 development, protection of areas of statewide significance, and siting  
10 of essential public facilities;

11 (e) Programs to improve the efficiency and effectiveness of the  
12 permitting process by greater reliance on integrated plans and  
13 prospective environmental analysis;

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

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

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

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

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

31 NEW SECTION. Sec. 10. A new section is added to chapter 82.02 RCW  
32 to read as follows:

33 The legislature finds that:

34 (1) Detailed environmental analysis integrated with comprehensive  
35 plans, subarea plans, and development regulations will facilitate  
36 planning for and managing growth, allow greater protection of the

1 environment, and benefit both the general public and private property  
2 owners;

3 (2) Development in urban growth areas, or transfer of development  
4 rights programs, will assist in the conservation of rural,  
5 agricultural, and forest land by redirecting growth from this land to  
6 areas designated for urban development or receiving areas in cities and  
7 towns where growth should occur;

8 (3) Cities and towns planning for increased growth in receiving  
9 areas under chapter 43.362 RCW must comply with chapter 43.21C RCW;

10 (4) Planning for urban or increased growth in urban growth areas,  
11 or receiving areas under chapter 43.362 RCW in compliance with chapter  
12 43.21C RCW, presents a financial burden on cities and towns;

13 (5) Planning for urban or increased growth in urban growth areas,  
14 or receiving areas under chapter 43.362 RCW in compliance with chapter  
15 43.21C RCW, should be encouraged to ensure that the quality of life in  
16 receiving neighborhoods and the protection of environmental values over  
17 time are maintained by providing financial assistance through the  
18 growth management planning and environmental review fund created in RCW  
19 36.70A.490; and

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

24 **Sec. 11.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to  
25 read as follows:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (m) Rules and procedures that provide for the integration of  
27 environmental review with project review as provided in RCW 43.21C.240.  
28 The rules and procedures shall be jointly developed with the department  
29 of (~~community, trade, and economic development~~) commerce and shall be  
30 applicable to the preparation of environmental documents for actions in  
31 counties, cities, and towns planning under RCW 36.70A.040. The rules  
32 and procedures shall also include procedures and criteria to analyze  
33 planned actions under (~~RCW 43.21C.031(2)~~) section 3 of this act and  
34 revisions to the rules adopted under this section to ensure that they  
35 are compatible with the requirements and authorizations of chapter 347,  
36 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or  
37 procedures adopted by a county, city, or town to implement the  
38 provisions of chapter 347, Laws of 1995 prior to the effective date of

1 rules adopted under this subsection (1)(m) shall continue to be  
2 effective until the adoption of any new or revised ordinances or  
3 procedures that may be required. If any revisions are required as a  
4 result of rules adopted under this subsection (1)(m), those revisions  
5 shall be made within the time limits specified in RCW 43.21C.120.

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

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

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

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

20 **Sec. 12.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to  
21 read as follows:

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

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

26 Upon receiving a completed environmental checklist, the lead agency  
27 shall provide the checklist and other submitted documents to the  
28 federally recognized tribe or tribes affected by the proposed project.  
29 The lead agency shall provide notice of the proposed project by mail  
30 and electronic mail to the applicable tribal chair and natural resource  
31 manager.

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