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HOUSE BILL 1013

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By Representatives Shea, Taylor, Short, McCaslin, Buys, Haler, Young, and Pike

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1 AN ACT Relating to reducing overlap between the state  
2 environmental policy act and other laws; and amending RCW 43.21C.060,  
3 43.21C.240, 43.21C.460, 36.70C.140, 36.70A.295, and 43.21C.075.

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

5 **Sec. 1.** RCW 43.21C.060 and 1983 c 117 s 3 are each amended to  
6 read as follows:

7 (1) The policies and goals set forth in this chapter are  
8 supplementary to those set forth in existing authorizations of all  
9 branches of government of this state, including state agencies,  
10 municipal and public corporations, and counties. Any governmental  
11 action may be conditioned or denied pursuant to this chapter(~~(+~~  
12 ~~PROVIDED, That such~~)).

13 (2) Conditions or denials under subsection (1) of this section  
14 shall be based upon policies identified by the appropriate  
15 governmental authority and incorporated into regulations, plans, or  
16 codes which are formally designated by the agency (~~(+)~~) or appropriate  
17 local government legislative body(~~(, in the case of local~~  
18 ~~government~~)) as possible bases for the exercise of authority  
19 pursuant to this chapter. (~~Such designation shall occur at the time~~  
20 ~~specified by RCW 43.21C.120. Such~~) The designation by the

1 legislative body of a local government or an agency of a regulation,  
2 plan, or code must occur at the time specified under RCW 43.21C.120.

3 (3) A governmental action may be conditioned only to mitigate  
4 specific adverse environmental impacts which are identified in the  
5 environmental documents prepared under this chapter. These conditions  
6 shall be stated in writing by the decision maker. Mitigation measures  
7 shall be reasonable and capable of being accomplished.

8 (4) In order to deny a proposal under this chapter, an agency  
9 must find that: ((+1)) (a) The proposal would result in significant  
10 adverse impacts identified in a final or supplemental environmental  
11 impact statement prepared under this chapter; and ((+2)) (b)  
12 reasonable mitigation measures are insufficient to mitigate the  
13 identified impact.

14 (5) A governmental action may not be conditioned or denied on the  
15 basis of an impact to an element of the environment if the lead  
16 agency has identified that the impacts of the governmental action to  
17 that element of the environment are adequately covered by a locally  
18 adopted ordinance, development regulation, land use plan, or other  
19 legal authority.

20 (6) Except for permits and variances issued pursuant to chapter  
21 90.58 RCW, when ((such)) a governmental action((, not requiring a  
22 legislative decision,)) that does not require a legislative decision  
23 is conditioned or denied by a nonelected official of a local  
24 governmental agency, the decision shall be appealable to the  
25 legislative authority of the acting local governmental agency unless  
26 that legislative authority formally eliminates such appeals. ((Such))  
27 Appeals under this subsection shall be in accordance with procedures  
28 established for such appeals by the legislative authority of the  
29 acting local governmental agency.

30 **Sec. 2.** RCW 43.21C.240 and 2003 c 298 s 2 are each amended to  
31 read as follows:

32 (1) If the requirements of subsection (2) of this section are  
33 satisfied, a county, city, or town reviewing a project action shall  
34 determine that the requirements for environmental analysis,  
35 protection, and mitigation measures in the county, city, or town's  
36 development regulations and comprehensive plans adopted under chapter  
37 36.70A RCW, and in other applicable local, state, or federal laws and  
38 rules provide adequate analysis of and mitigation for the specific  
39 adverse environmental impacts of the project action to which the

1 requirements apply. Rules adopted by the department according to RCW  
2 43.21C.110 regarding project specific impacts that may not have been  
3 adequately addressed apply to any determination made under this  
4 section. In these situations, in which all adverse environmental  
5 impacts will be mitigated below the level of significance as a result  
6 of mitigation measures included by changing, clarifying, or  
7 conditioning of the proposed action and/or regulatory requirements of  
8 development regulations adopted under chapter 36.70A RCW or other  
9 local, state, or federal laws, a determination of nonsignificance or  
10 a mitigated determination of nonsignificance is the proper threshold  
11 determination.

12 (2) A county, city, or town shall make the determination provided  
13 for in subsection (1) of this section if:

14 (a) In the course of project review, including any required  
15 environmental analysis, the local government considers the specific  
16 probable adverse environmental impacts of the proposed action and  
17 determines that these specific impacts are adequately addressed by  
18 the development regulations or other applicable requirements of the  
19 comprehensive plan, subarea plan element of the comprehensive plan,  
20 or other local, state, or federal rules or laws; and

21 (b) The local government bases or conditions its approval on  
22 compliance with these requirements or mitigation measures.

23 (3) If a county, city, or town's comprehensive plans, subarea  
24 plans, and development regulations adequately address a project's  
25 probable specific adverse environmental impacts, as determined under  
26 subsections (1) and (2) of this section, the county, city, or town  
27 shall not impose additional mitigation under this chapter during  
28 project review. Project review shall be integrated with environmental  
29 analysis under this chapter.

30 ~~(4) ((A comprehensive plan, subarea plan, or development  
31 regulation shall be considered to adequately address an impact if the  
32 county, city, or town, through the planning and environmental review  
33 process under chapter 36.70A RCW and this chapter, has identified the  
34 specific adverse environmental impacts and:~~

35 ~~(a) The impacts have been avoided or otherwise mitigated; or~~

36 ~~(b) The legislative body of the county, city, or town has  
37 designated as acceptable certain levels of service, land use  
38 designations, development standards, or other land use planning  
39 required or allowed by chapter 36.70A RCW))~~ (a) A county, city, or  
40 town must determine that a development regulation, comprehensive

1 plan, or subarea plan element of the comprehensive plan that directly  
2 addresses, avoids, or mitigates a specific probable adverse  
3 environmental impact of a project action provides adequate analysis  
4 of and mitigation for the project action, unless the development  
5 regulation, comprehensive plan, or subarea plan element expressly  
6 provides that it is not intended to provide adequate analysis of and  
7 mitigation for adverse environmental impacts of project actions on a  
8 specific element of the environment under the requirements of this  
9 chapter.

10 (b) A project that is consistent with a subarea element of a  
11 comprehensive plan adopted by a county, city, or town under chapter  
12 36.70A RCW is not subject to the requirements of this chapter, as  
13 long as the following conditions are met:

14 (i) The subarea element of the comprehensive plan was the subject  
15 of analysis under this chapter;

16 (ii) The county, city, or town has adopted an ordinance or  
17 ordinances establishing development regulations to address or  
18 mitigate potential adverse environmental impacts of projects  
19 performed consistent with the subarea element of the comprehensive  
20 plan; and

21 (iii) The project meets the requirements of the development  
22 regulations described in (b)(ii) of this subsection.

23 (5) In deciding whether a specific adverse environmental impact  
24 has been addressed by an existing rule or law of another agency with  
25 jurisdiction with environmental expertise with regard to a specific  
26 environmental impact, the county, city, or town shall consult orally  
27 or in writing with that agency and may expressly defer to that  
28 agency. In making this deferral, the county, city, or town shall base  
29 or condition its project approval on compliance with these other  
30 existing rules or laws.

31 (6) Nothing in this section limits the authority of an agency in  
32 its review or mitigation of a project to adopt or otherwise rely on  
33 environmental analyses and requirements under other laws, as provided  
34 by this chapter.

35 (7) This section shall apply only to a county, city, or town  
36 planning under RCW 36.70A.040.

37 **Sec. 3.** RCW 43.21C.460 and 2012 1st sp.s. c 1 s 308 are each  
38 amended to read as follows:

1 (1) The lead agency for an environmental review under this  
2 chapter utilizing an environmental checklist developed by the  
3 department of ecology pursuant to RCW 43.21C.110 (~~(may))~~) shall  
4 identify within the checklist provided to applicants instances where  
5 questions on the checklist are adequately covered by a locally  
6 adopted ordinance, development regulation, land use plan, or other  
7 legal authority that directly addresses, avoids, or mitigates  
8 probable adverse environmental impacts to a particular element or  
9 elements of the environment.

10 (2) If a lead agency identifies an instance as described in  
11 subsection (1) of this section, it (~~(still-must))~~) is not required to  
12 consider whether the action has an impact on the particular element  
13 or elements of the environment in question.

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

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

24 (~~(Nothing in this section authorizes a lead agency to ignore~~  
25 ~~or delete a question on the checklist))~~) A lead agency may delete a  
26 question on the checklist if the agency has identified that the  
27 question is adequately covered by a locally adopted ordinance,  
28 development regulation, land use plan, or other legal authority.

29 (~~(Nothing in this section changes the standard for whether an~~  
30 ~~environmental impact statement is required for an action that may~~  
31 ~~have a probable significant, adverse environmental impact pursuant to~~  
32 ~~RCW 43.21C.030.~~

33 (~~(7) Nothing in this section affects the appeal provisions~~  
34 ~~provided in this chapter))~~) A governmental action may not be appealed  
35 under this chapter on the basis of inadequate analysis of or  
36 mitigation for an impact to a particular element or elements of the  
37 environment addressed by a checklist question that a lead agency has  
38 identified as being adequately covered by a locally adopted  
39 ordinance, development regulation, land use plan, or other legal  
40 authority.

1        ~~((8))~~ (7) Nothing in this section modifies existing rules for  
2 determining the lead agency, as defined in WAC 197-11-922 through  
3 197-11-948, nor does it modify agency procedures for complying with  
4 the state environmental policy act when an agency other than a local  
5 government is serving as the lead agency.

6        **Sec. 4.** RCW 36.70C.140 and 1995 c 347 s 715 are each amended to  
7 read as follows:

8        (1) The court may affirm or reverse the land use decision under  
9 review or remand it for modification or further proceedings. If the  
10 decision is remanded for modification or further proceedings, the  
11 court may make such an order as it finds necessary to preserve the  
12 interests of the parties and the public, pending further proceedings  
13 or action by the local jurisdiction.

14        (2)(a) An appeals court must provide expedited review of an  
15 appeal of a decision by a superior court under this section. All  
16 briefs on the matter on appeal must be filed within ninety days of  
17 the filing of the notice of appeal with the court. If the appellate  
18 court decides to allow oral argument on the merits, the matter on  
19 appeal must be set for oral argument within one hundred twenty days  
20 of the filing of the notice of appeal with the court.

21        (b) To the extent that this subsection conflicts with the  
22 requirements of rule 5.2, rule 10.2, or rule 11.3 of the rules of  
23 appellate procedure, this section supersedes the conflicting rule.

24        **Sec. 5.** RCW 36.70A.295 and 2010 c 211 s 9 are each amended to  
25 read as follows:

26        (1) The superior court may directly review a petition for review  
27 filed under RCW 36.70A.290 if all parties to the proceeding before  
28 the board have agreed to direct review in the superior court. The  
29 agreement of the parties shall be in writing and signed by all of the  
30 parties to the proceeding or their designated representatives. The  
31 agreement shall include the parties' agreement to proper venue as  
32 provided in RCW 36.70A.300(5). The parties shall file their agreement  
33 with the board within ten days after the date the petition is filed,  
34 or if multiple petitions have been filed and the board has  
35 consolidated the petitions pursuant to RCW 36.70A.300, within ten  
36 days after the board serves its order of consolidation.

37        (2) Within ten days of receiving the timely and complete  
38 agreement of the parties, the board shall file a certificate of

1 agreement with the designated superior court and shall serve the  
2 parties with copies of the certificate. The superior court shall  
3 obtain exclusive jurisdiction over a petition when it receives the  
4 certificate of agreement. With the certificate of agreement the board  
5 shall also file the petition for review, any orders entered by the  
6 board, all other documents in the board's files regarding the action,  
7 and the written agreement of the parties.

8 (3) For purposes of a petition that is subject to direct review,  
9 the superior court's subject matter jurisdiction shall be equivalent  
10 to that of the board. Consistent with the requirements of the  
11 superior court civil rules, the superior court may consolidate a  
12 petition subject to direct review under this section with a separate  
13 action filed in the superior court.

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

18 (b) The superior court:

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

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

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

26 (c) An aggrieved party may secure appellate review of a final  
27 judgment of the superior court under this section by the supreme  
28 court or the court of appeals. The review shall be secured in the  
29 manner provided by law for review of superior court decisions (~~in~~  
30 ~~other civil cases~~), except that an appeals court must provide  
31 expedited review of an appeal of a decision by a superior court under  
32 this section. All briefs on the matter on appeal must be filed within  
33 ninety days of the filing of the notice of appeal with the court. If  
34 the appellate court decides to allow oral argument on the merits, the  
35 matter on appeal must be set for oral argument within one hundred  
36 twenty days of the filing of the notice of appeal with the court.

37 (d) To the extent that (c) of this subsection conflicts with the  
38 requirements of rule 5.2, rule 10.2, or rule 11.3 of the rules of  
39 appellate procedure, this section supersedes the conflicting rule.

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

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

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

16 **Sec. 6.** RCW 43.21C.075 and 1997 c 429 s 49 are each amended to  
17 read as follows:

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

26 (2) Unless otherwise provided by this section:

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

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

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

35 (a) Shall allow no more than one agency appeal proceeding on each  
36 procedural determination (the adequacy of a determination of  
37 significance/nonsignificance or of a final environmental impact  
38 statement);



1 (b) Shall consolidate an appeal of procedural issues and of  
2 substantive determinations made under this chapter (such as a  
3 decision to require particular mitigation measures or to deny a  
4 proposal) with a hearing or appeal on the underlying governmental  
5 action by providing for a single simultaneous hearing before one  
6 hearing officer or body to consider the agency decision or  
7 recommendation on a proposal and any environmental determinations  
8 made under this chapter, with the exception of:

9 (i) An appeal of a determination of significance;

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

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

17 (iv) An appeal to the local legislative authority under RCW  
18 43.21C.060 or other applicable state statutes;

19 (c) Shall provide for the preparation of a record for use in any  
20 subsequent appeal proceedings, and shall provide for any subsequent  
21 appeal proceedings to be conducted on the record, consistent with  
22 other applicable law. An adequate record consists of findings and  
23 conclusions, testimony under oath, and taped or written transcript.  
24 An electronically recorded transcript will suffice for purposes of  
25 review under this subsection; and

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

28 (4) If a person aggrieved by an agency action has the right to  
29 judicial appeal and if an agency has an administrative appeal  
30 procedure, such person shall, prior to seeking any judicial review,  
31 use such agency procedure if any such procedure is available, unless  
32 expressly provided otherwise by state statute.

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

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

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

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

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

25 (c) Judicial review under this chapter shall without exception be  
26 of the governmental action together with its accompanying  
27 environmental determinations.

28 (7) Jurisdiction over the review of determinations under this  
29 chapter in an appeal before an agency or superior court shall upon  
30 consent of the parties be transferred in whole or part to the  
31 shorelines hearings board. The shorelines hearings board shall hear  
32 the matter and sign the final order expeditiously. The superior court  
33 shall certify the final order of the shorelines hearings board and  
34 the certified final order may only be appealed to an appellate court.  
35 In the case of an appeal under this chapter regarding a project or  
36 other matter that is also the subject of an appeal to the shorelines  
37 hearings board under chapter 90.58 RCW, the shorelines hearings board  
38 shall have sole jurisdiction over both the appeal under this section  
39 and the appeal under chapter 90.58 RCW, shall consider them together,

1 and shall issue a final order within one hundred eighty days as  
2 provided in RCW 90.58.180.

3 (8)(a) An appeals court must provide expedited review of an  
4 appeal of a decision by a superior court on environmental  
5 determinations made under this chapter together with appeals under  
6 chapters 36.70A and 36.70C RCW, consistent with RCW 36.70C.140 and  
7 36.70A.295(4). All briefs on the matter on appeal must be filed  
8 within ninety days of the filing of the notice of appeal with the  
9 court. If the appellate court decides to allow oral argument on the  
10 merits, the matter on appeal must be set for oral argument within one  
11 hundred twenty days of the filing of the notice of appeal with the  
12 court.

13 (b) To the extent that this subsection conflicts with the  
14 requirements of rule 5.2, rule 10.2, or rule 11.3 of the rules of  
15 appellate procedure, this section supersedes the conflicting rule.

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

27 ~~((+9))~~ (10) The court in its discretion may award reasonable  
28 attorneys' fees of up to one thousand dollars in the aggregate to the  
29 prevailing party, including a governmental agency, on issues arising  
30 out of this chapter if the court makes specific findings that the  
31 legal position of a party is frivolous and without reasonable basis.

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