

**SSB 6406 - S AMD 213**

By Senators Hargrove, Schoesler

ADOPTED AS AMENDED 03/05/2012

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) "General permit" means a hydraulic project approval issued to  
23 a person under RCW 77.55.021 for multiple hydraulic projects that: (a)  
24 involve repair or maintenance activities; and (b) occur over a defined  
25 geographic area, but for which specific project sites have not been  
26 designated.

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

31 (25) "Pamphlet hydraulic project" means a hydraulic project for the  
32 removal or control of aquatic noxious weeds conducted under the aquatic  
33 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral  
34 prospecting and mining conducted under the gold and fish pamphlet  
35 authorized by RCW 77.55.091.

36 (26) "Permit modification" means a hydraulic project approval  
37 issued to a person under RCW 77.55.021 that extends, renews, or changes  
38 the conditions of a previously issued hydraulic project approval.

1       (27) "Repair or maintenance" means the care and upkeep of existing  
2 structures.

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

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

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

13       (a) General plans for the overall project;

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

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

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

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

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

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

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

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

4        (7)(a) Protection of fish life is the only ground upon which  
5 approval of a permit may be denied or conditioned. Approval of a  
6 permit may not be unreasonably withheld or unreasonably conditioned.

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

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

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

16        (iii) The applicant requests a delay; or

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

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

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

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

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

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

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

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

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

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

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

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

1 stabilization to protect farm and agricultural land as defined in RCW  
2 84.34.020, the burden is on the permittee to show that changed  
3 conditions warrant the requested modification and that such a  
4 modification will not impair fish life.

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

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

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

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

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

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

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

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

22 (b) Any projects proposed to address a chronic danger identified  
23 under (a) of this subsection that satisfies the project description  
24 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions  
25 of the state environmental policy act, chapter 43.21C RCW. However,  
26 the project is subject to the review process established in RCW  
27 77.55.181(3) as if it were a fish habitat improvement project.

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



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

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

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

11        (a) Hydraulic projects approved under applicant-funded contracts  
12   with the department that pay for the costs of processing those  
13   projects;

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

16        (c) Pamphlet hydraulic projects; and

17        (d) Mineral prospecting and mining activities.

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

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

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

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

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

34        (c) Analyze the manner and degree to which the activities  
35   identified in (b) of this subsection are regulated under the programs  
36   identified in (a) of this subsection;

1 (d) Using the analysis under (c) of this subsection, identify any  
2 regulatory gaps that may exist in providing for the protection of fish  
3 life for activities identified in (b) of this subsection that use,  
4 divert, or change the natural flow or bed of any of the salt or  
5 freshwaters of the state; and

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

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

18 (3) The University of Washington shall submit a report detailing  
19 the review to the appropriate standing committees of the senate and  
20 house of representatives consistent with RCW 43.01.036 by September 1,  
21 2014.

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

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

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

29 (2) Except for unanticipated receipts under RCW 43.79.260 through  
30 43.79.282, moneys in the hydraulic project approval account may be  
31 spent only after appropriation.

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

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

1           ~~(1) ((For a marina or marine terminal in existence on June 6, 1996,~~  
2 ~~or a marina or marine terminal that has received a permit for its~~  
3 ~~initial construction, a renewable, five-year permit shall be issued,~~  
4 ~~upon request, for regular maintenance activities of the marina or~~  
5 ~~marine terminal.~~

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

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

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

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

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

23           (b) Maintenance or repair of an existing overwater structure within  
24 the existing footprint;

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

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

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

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

29           (g) Maintenance or repair of wetland, riparian, or estuarine  
30 habitat; and

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

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

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



1 **Approval and Forest Practices Integration**

2 NEW SECTION. **Sec. 201.** A new section is added to chapter 77.55  
3 RCW to read as follows:

4 (1) The requirements of this chapter do not apply to any forest  
5 practices hydraulic project, or to any activities that are associated  
6 with such a project, upon incorporation of fish protection standards  
7 adopted under this chapter into the forest practices rules and approval  
8 of technical guidance as required under RCW 76.09.040, at which time  
9 these projects are regulated under chapter 76.09 RCW.

10 (2) The department must continue to conduct regulatory and  
11 enforcement activities under this chapter for forest practices  
12 hydraulic projects until the forest practices board incorporates fish  
13 protection standards adopted under this chapter into the forest  
14 practices rules and approves technical guidance as required under RCW  
15 76.09.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37        (i) Establish minimum standards for forest practices;

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

6 (iii) Set forth necessary administrative provisions;

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (3) The application for a forest practice or the notification of a  
37 forest practice is subject to the reforestation requirement of RCW  
38 76.09.070.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25       (ii) If the board has not incorporated fish protection standards  
26 adopted under chapter 77.55 RCW into the forest practices rules and  
27 approved technical guidance as required under RCW 76.09.040 by December  
28 31, 2013, the fee for applications and notifications submitted to the  
29 department shall be as provided under (a) of this subsection until the  
30 rules are adopted and technical guidance approved.

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

37       ((+3)) (4) For applications submitted to ((the)) a local  
38 governmental entity as provided in this chapter, the fee shall be

1 (~~(five hundred dollars for class IV forest practices on lands being~~  
2 ~~converted to other uses or lands that are contained within "urban~~  
3 ~~growth areas," designated pursuant to chapter 36.70A RCW, except as~~  
4 ~~otherwise provided in this section, unless a different fee is otherwise~~  
5 ~~provided)) determined, collected, and retained by the local  
6 governmental entity.~~

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

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

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

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

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

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

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

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

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



1 (b) Complete the following activities:

2 (i) Require that the landowner be in full compliance with chapter  
3 43.21C RCW, if applicable;

4 (ii) Receive notification from the department that the landowner  
5 has resolved any outstanding final orders or decisions issued by the  
6 department; and

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

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

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

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

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

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

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

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

35 (f) An elected member of a county legislative authority appointed  
36 by the governor(~~(+ PROVIDED, That such)~~). However, the county

1 member's service on the board shall be conditioned on the member's  
2 continued service as an elected county official;

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

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

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

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

1       (~~(4)~~) (3) The board shall meet at such times and places as shall  
2 be designated by the chair or upon the written request of the majority  
3 of the board. The principal office of the board shall be at the state  
4 capital.

5       (~~(5)~~) (4) Members of the board, except public employees and  
6 elected officials, shall be compensated in accordance with RCW  
7 43.03.250. Each member shall be entitled to reimbursement for travel  
8 expenses incurred in the performance of their duties as provided in RCW  
9 43.03.050 and 43.03.060.

10       (~~(6)~~) (5) The board may employ such clerical help and staff  
11 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

14       The definitions in this section apply throughout this chapter  
15 unless the context clearly requires otherwise.

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

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

21       (3) "Application" means the application required pursuant to RCW  
22 76.09.050.

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

31       (5) "Board" means the forest practices board created in RCW  
32 76.09.030.

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

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

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

4 (9) "Date of receipt" has the same meaning as defined in RCW  
5 43.21B.001.

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

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

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

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

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

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

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

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

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

4 (a) Road and trail construction, including forest practices  
5 hydraulic projects that include water crossing structures, and  
6 associated activities and maintenance;

7 (b) Harvesting, final and intermediate;

8 (c) Precommercial thinning;

9 (d) Reforestation;

10 (e) Fertilization;

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

12 (g) Salvage of trees; and

13 (h) Brush control.

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

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

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

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

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

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

1 (22) "Person" means any individual, partnership, private, public,  
2 or municipal corporation, county, the department or other state or  
3 local governmental entity, or association of individuals of whatever  
4 nature.

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

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

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

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

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

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

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

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

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

36 The incorporation of fish protection standards adopted under

1 chapter 77.55 RCW into the forest practices rules as required under RCW  
2 76.09.040(3) is exempt from compliance with this chapter.

3 NEW SECTION. **Sec. 214.** (1) The departments of natural resources  
4 and fish and wildlife must jointly provide a report to the appropriate  
5 committees of the legislature containing findings and any  
6 recommendations relating to the regulatory integration of hydraulic  
7 projects and forest practices as provided in this act, including:

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 216.** Nothing in this act affects any rules,  
33 processes, or procedures of the department of fish and wildlife and the  
34 department of natural resources existing on the effective date of this

1 section that provide for regulatory integration of hydraulic projects  
2 and forest practices for projects in nonfish-bearing waters.

3 NEW SECTION. **Sec. 217.** Nothing in this act authorizes the  
4 department of fish and wildlife to assume authority over approval,  
5 disapproval, conditioning, or enforcement of applications or  
6 notifications submitted under chapter 76.09 RCW.

7 NEW SECTION. **Sec. 218.** Nothing in this act affects the  
8 jurisdiction or other authority of a federally recognized Indian tribe  
9 within the boundary of its reservation or on other tribally owned  
10 lands.

11 NEW SECTION. **Sec. 219.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 **PART THREE**  
16 **State Environmental Policy Act and Local Development Regulations**

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

25 (2) By December 31, 2012, the department of ecology shall increase  
26 the rule-based categorical exemptions to chapter 43.21C RCW found in  
27 WAC 197-11-800 and update the environmental checklist found in WAC 197-  
28 11-960. In updating the categorical exemptions, the department of  
29 ecology must:

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

32 (i) The construction or location of single-family residential  
33 developments;



- 1       (ii) The construction or location of multifamily residential
- 2 developments;
- 3       (iii) The construction of an agricultural structure, other than a
- 4 feed lot, that is similar to the following: A barn, a loafing shed, a
- 5 farm equipment storage building, or a produce storing or packing
- 6 structure;
- 7       (iv) The construction of the following, including any associated
- 8 parking areas or facilities: An office, a school, a commercial
- 9 building, a recreational building, a service building, or a storage
- 10 building;
- 11       (v) Landfilling or excavation activities; and
- 12       (vi) The installation of an electric facility, lines, equipment, or
- 13 appurtenances, other than substations.
- 14       (b) Establish maximum exemption levels for action types that differ
- 15 based on whether the project is proposed to occur in:
- 16       (i) An incorporated city;
- 17       (ii) An unincorporated area within an urban growth area;
- 18       (iii) An unincorporated area outside of an urban growth area but
- 19 within a county planning under chapter 36.70A RCW; or
- 20       (iv) An unincorporated area within a county not planning under
- 21 chapter 36.70A RCW.
- 22       (c) In updating the environmental checklist found in WAC 197-11-
- 23 960, the department of ecology shall:
- 24       (i) Improve efficiency of the environmental checklist; and
- 25       (ii) Not include any new subjects into the scope of the checklist,
- 26 including climate change and greenhouse gases.
- 27       (d) Until the completion of the rule making required under this
- 28 section, a city or county may apply the highest categorical exemption
- 29 levels authorized under WAC 197-11-800 to any action, regardless if the
- 30 city or county with jurisdiction has exercised its authority to raise
- 31 the exemption levels above the established minimums, unless the city or
- 32 county with jurisdiction passes an ordinance or resolution that lowers
- 33 the exemption levels to a level below the allowed maximum but not less
- 34 than the default minimum levels detailed in WAC 197-11-800.
- 35       (3)(a) By December 31, 2013, the department of ecology shall:
- 36       (i) Update, but not decrease, the thresholds for all other project
- 37 actions not specified in subsection (2) of this section;

1 (ii) Propose methods for integrating the state environmental policy  
2 act process with provisions of the growth management act, chapter  
3 36.70A RCW, including consideration of ways to revise WAC 197-11-210  
4 through 197-11-232 to further the goals of RCW 43.21C.240; and

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

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

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

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

19 (ii) Ensure that state agencies, tribes, and other interested  
20 parties can receive notice about projects of interest through notice  
21 under chapter 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

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

1 ~~provided for in subsection (2) of this section, does not require a~~  
2 ~~threshold determination or the preparation of an environmental impact~~  
3 ~~statement under this chapter, but is subject to environmental review~~  
4 ~~and mitigation as provided in this chapter.))~~

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

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

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

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

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

29 ~~(iv) Are located within an urban growth area, as defined in RCW~~  
30 ~~36.70A.030;~~

31 ~~(v) Are not essential public facilities, as defined in RCW~~  
32 ~~36.70A.200; and~~

33 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~  
34 ~~36.70A RCW.~~

35 ~~(b) A county, city, or town shall limit planned actions to certain~~  
36 ~~types of development or to specific geographical areas that are less~~  
37 ~~extensive than the jurisdictional boundaries of the county, city, or~~

1 ~~town and may limit a planned action to a time period identified in the~~  
2 ~~environmental impact statement or the ordinance or resolution adopted~~  
3 ~~under this subsection.))~~

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

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

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

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

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

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

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

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

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

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

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

36 (b) A time period identified in the ordinance or resolution adopted  
37 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 year any  
37 national pollutant discharge elimination system municipal storm water  
38 general permit first issued on January 17, 2007; and~~)

1 ~~(b) Issue an updated national pollutant discharge elimination~~  
2 ~~system municipal storm water general permit for any permit first issued~~  
3 ~~on January 17, 2007. An updated permit issued under this subsection~~  
4 ~~shall become effective beginning August 1, 2013.)~~ By July 31, 2012,  
5 the department shall reissue without modification and for a term of one  
6 year any national pollutant discharge elimination system municipal  
7 storm water general permit first issued January 17, 2007, for western  
8 Washington municipalities.

9 (b) The department shall issue updated national pollutant discharge  
10 elimination system municipal storm water general permits for western  
11 Washington municipalities whose permits were first issued or reissued  
12 January 17, 2007, as follows:

13 (i) By July 1, 2012, the department shall publish final proposed  
14 permits following consideration of comments from the public and  
15 appropriate stakeholders, and provide the final proposed permits to the  
16 appropriate committees of the senate and house of representatives for  
17 legislative review;

18 (ii) The legislature may modify the final proposed permits through  
19 legislative enactment by the end of the 2013 regular legislative  
20 session. Except as directed by the legislature, the department may not  
21 modify the final proposed permits following its being published under  
22 (b)(i) of this subsection;

23 (iii) On July 1, 2013, the department shall issue final permits  
24 consisting of the provisions of the final proposed permits and any  
25 modifications directed by the legislature; and

26 (iv) The final permit becomes effective August 1, 2013.

27 (3) By July 31, 2012, the department shall:

28 (a) Reissue without modification and for a term of two years any  
29 national pollutant discharge elimination system municipal storm water  
30 general permit first issued January 17, 2007, for eastern Washington  
31 municipalities; and

32 (b) Issue an updated national pollutant discharge elimination  
33 system municipal storm water general permit for any permit first issued  
34 on January 17, 2007, for eastern Washington municipalities. An updated  
35 permit issued under this subsection becomes effective August 1, 2014."

**ADOPTED AS AMENDED 03/05/2012**

1           On page 1, beginning on line 2 of the title, after "resources;"  
2 strike the remainder of the title and insert "amending RCW 77.55.021,  
3 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065,  
4 76.09.470, 76.09.030, 43.21C.031, 43.21C.229, 82.02.020, 36.70A.490,  
5 36.70A.500, 43.21C.110, 43.21C.095, and 90.48.260; reenacting and  
6 amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections  
7 to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding  
8 a new section to chapter 43.30 RCW; adding new sections to chapter  
9 43.21C RCW; creating new sections; prescribing penalties; providing a  
10 contingent effective date; and providing expiration dates."

EFFECT: Removes language specifying circumstances in which a hydraulic project approval (HPA) is required;

Removes provisions authorizing a memorandum of understanding process with local governments regarding HPA permitting;

Generally reduces and makes uniform HPA fees and limits their applicability to projects located at or below the ordinary high water line;

Requires a study of certain regulatory programs regarding regulation of work outside of the ordinary high water line and the protection of fish life;

Removes language modifying civil and criminal enforcement authority regarding HPAs, as well as enforcement-related provisions;

Removes language establishing an HPA related reporting requirement for the department of fish and wildlife;

Removes language generally expiring HPA related changes in 2016, making most provisions permanent;

Moves the deadline for integrating HPAs for forestry activities into the associated forest practices application (FPA) from July 1, 2013, to December 31, 2013;

Makes changes to provide internal consistency within Part II of the bill, which relates to the integration of HPAs for forestry activities into the associated FPA;

Modifies the state environmental policy act (SEPA) related rule making in 2012 and 2013 including expanding its scope to include proposing methods for integrating SEPA and growth management act processes, proposing a categorical exemption for certain minor code amendments, and modifying provisions relating to the advisory body;

Modifies provisions relating to planned actions including specifically requiring that project level impacts be analyzed and establishing certain notice requirements for a planned action ordinance;

Authorizes certain commercial development within the scope of the categorical exemption for infill development;

Removes new language creating statutory categorical exemptions for projects including wildlife and fish habitat projects;

Modifies provisions relating to local government cost recovery for expenses relating to certain development related nonproject action environmental review;

Removes language amending a provision relating to standing for petitions to the growth management hearings board;

Extends for an additional year the current eastern Washington national pollutant discharge elimination system municipal storm water permit, and provides for legislative review of proposed updates to western Washington national pollutant discharge elimination system municipal storm water permits set to take effect August 1, 2013; and

Reorganizes language and makes technical changes.

--- END ---