
ENGROSSED SUBSTITUTE SENATE BILL 6406

State of Washington

62nd Legislature

2012 Regular Session

By Senate Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker, and Shin)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to modifying programs that provide for the
2 protection of the state's natural resources; 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.

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

12 NEW SECTION. **Sec. 1.** The legislature finds that significant
13 opportunities exist to modify programs that provide for management and
14 protection of the state's natural resources, including the state's
15 forests, fish, and wildlife, in order to streamline regulatory
16 processes and achieve program efficiencies while at the same time
17 increasing the sustainability of program funding and maintaining
18 current levels of natural resource protection. The legislature intends
19 to update provisions relating to natural resource management and

1 regulatory programs including the hydraulic project approval program,
2 forest practices act, and state environmental policy act, in order to
3 achieve these opportunities.

4 **PART ONE**

5 **Hydraulic Project Approvals**

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

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

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

18 (4) "Date of receipt" has the same meaning as defined in RCW
19 43.21B.001.

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

21 (6) "Director" means the director of the department of fish and
22 wildlife.

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

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

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

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

35 (11) "Marine terminal" means a public or private commercial wharf

1 located in the navigable water of the state and used, or intended to be
2 used, as a port or facility for the storing, handling, transferring, or
3 transporting of goods to and from vessels.

4 (12) "Ordinary high water line" means the mark on the shores of all
5 water that will be found by examining the bed and banks and
6 ascertaining where the presence and action of waters are so common and
7 usual, and so long continued in ordinary years as to mark upon the soil
8 or vegetation a character distinct from the abutting upland. Provided,
9 that in any area where the ordinary high water line cannot be found,
10 the ordinary high water line adjoining saltwater is the line of mean
11 higher high water and the ordinary high water line adjoining freshwater
12 is the elevation of the mean annual flood.

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

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

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

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

22 (17) "Streambank stabilization" means those projects that prevent
23 or limit erosion, slippage, and mass wasting. These projects include,
24 but are not limited to, bank resloping, log and debris relocation or
25 removal, planting of woody vegetation, bank protection using rock or
26 woody material or placement of jetties or groins, gravel removal, or
27 erosion control.

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

30 (19) "Waters of the state" and "state waters" means all salt and
31 freshwaters waterward of the ordinary high water line and within the
32 territorial boundary of the state.

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

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

1 (22) "Forest practices hydraulic project" means a hydraulic project
2 that requires a forest practices application or notification under
3 chapter 76.09 RCW.

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

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

13 (25) "Pamphlet hydraulic project" means a hydraulic project for the
14 removal or control of aquatic noxious weeds conducted under the aquatic
15 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
16 prospecting and mining conducted under the gold and fish pamphlet
17 authorized by RCW 77.55.091.

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

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

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

25 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
26 77.55.041, and section 201 of this act, in the event that any person or
27 government agency desires to undertake a hydraulic project, the person
28 or government agency shall, before commencing work thereon, secure the
29 approval of the department in the form of a permit as to the adequacy
30 of the means proposed for the protection of fish life.

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

33 (a) General plans for the overall project;

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

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

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

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

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

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

15 (5) With the exception of emergency permits as provided in
16 subsection (12) of this section, applications for permits must be
17 submitted to the department's headquarters office in Olympia. Requests
18 for emergency permits as provided in subsection (12) of this section
19 may be made to the permitting biologist assigned to the location in
20 which the emergency occurs, to the department's regional office in
21 which the emergency occurs, or to the department's headquarters office.

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

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

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

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

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

37 (iii) The applicant requests a delay; or

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

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

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

10 ~~((4))~~ (8) If the department denies approval of a permit, the
11 department shall provide the applicant a written statement of the
12 specific reasons why and how the proposed project would adversely
13 affect fish life.

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

18 (b) Issuance, denial, conditioning, or modification of a permit may
19 be informally appealed to the department within thirty days from the
20 date of receipt of the decision. Requests for informal appeals must be
21 filed in the form and manner prescribed by the department by rule. A
22 permit decision that has been informally appealed to the department is
23 appealable to the board within thirty days from the date of receipt of
24 the department's decision on the informal appeal.

25 ~~((5))~~ (9)(a) The permittee must demonstrate substantial progress
26 on construction of that portion of the project relating to the permit
27 within two years of the date of issuance.

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

31 (c) A permit remains in effect without need for periodic renewal
32 for hydraulic projects that divert water for agricultural irrigation or
33 stock watering purposes and that involve seasonal construction or other
34 work. A permit for streambank stabilization projects to protect farm
35 and agricultural land as defined in RCW 84.34.020 remains in effect
36 without need for periodic renewal if the problem causing the need for
37 the streambank stabilization occurs on an annual or more frequent

1 basis. The permittee must notify the appropriate agency before
2 commencing the construction or other work within the area covered by
3 the permit.

4 ~~((+6))~~ (10) The department may, after consultation with the
5 permittee, modify a permit due to changed conditions. A modification
6 under this subsection is not subject to the fees provided under section
7 103 of this act. The modification is appealable as provided in
8 subsection ~~((+4))~~ (8) of this section. For a hydraulic project~~((s))~~
9 that diverts water for agricultural irrigation or stock watering
10 purposes, ~~((e#))~~ when the hydraulic project or other work is associated
11 with streambank stabilization to protect farm and agricultural land as
12 defined in RCW 84.34.020, the burden is on the department to show that
13 changed conditions warrant the modification in order to protect fish
14 life.

15 ~~((+7))~~ (11) A permittee may request modification of a permit due
16 to changed conditions. The request must be processed within forty-five
17 calendar days of receipt of the written request and payment of
18 applicable fees under section 103 of this act. A decision by the
19 department is appealable as provided in subsection ~~((+4))~~ (8) of this
20 section. For a hydraulic project~~((s))~~ that diverts water for
21 agricultural irrigation or stock watering purposes, ~~((e#))~~ when the
22 hydraulic project or other work is associated with streambank
23 stabilization to protect farm and agricultural land as defined in RCW
24 84.34.020, the burden is on the permittee to show that changed
25 conditions warrant the requested modification and that such a
26 modification will not impair fish life.

27 ~~((+8))~~ (12)(a) The department, the county legislative authority,
28 or the governor may declare and continue an emergency. If the county
29 legislative authority declares an emergency under this subsection, it
30 shall immediately notify the department. A declared state of emergency
31 by the governor under RCW 43.06.010 shall constitute a declaration
32 under this subsection.

33 (b) The department, through its authorized representatives, shall
34 issue immediately, upon request, ~~((e#))~~ verbal approval for a stream
35 crossing, or work to remove any obstructions, repair existing
36 structures, restore streambanks, protect fish life, or protect property
37 threatened by the stream or a change in the stream flow without the
38 necessity of obtaining a written permit prior to commencing work.

1 Conditions of the emergency (~~oral~~) verbal permit must be
2 (~~established by the department and~~) reduced to writing within thirty
3 days and complied with as provided for in this chapter.

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

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

10 (13) All state and local agencies with authority under this chapter
11 to issue permits or other authorizations in connection with emergency
12 water withdrawals and facilities authorized under RCW 43.83B.410 shall
13 expedite the processing of such permits or authorizations in keeping
14 with the emergency nature of such requests and shall provide a decision
15 to the applicant within fifteen calendar days of the date of
16 application.

17 (~~(+10)~~) (14) The department or the county legislative authority
18 may determine an imminent danger exists. The county legislative
19 authority shall notify the department, in writing, if it determines
20 that an imminent danger exists. In cases of imminent danger, the
21 department shall issue an expedited written permit, upon request, for
22 work to remove any obstructions, repair existing structures, restore
23 banks, protect fish resources, or protect property. Expedited permit
24 requests require a complete written application as provided in
25 subsection (2) of this section and must be issued within fifteen
26 calendar days of the receipt of a complete written application.
27 Approval of an expedited permit is valid for up to sixty days from the
28 date of issuance. The department may not require the provisions of the
29 state environmental policy act, chapter 43.21C RCW, to be met as a
30 condition of issuing a permit under this subsection.

31 (~~(+11)~~) (15)(a) For any property, except for property located on
32 a marine shoreline, that has experienced at least two consecutive years
33 of flooding or erosion that has damaged or has threatened to damage a
34 major structure, water supply system, septic system, or access to any
35 road or highway, the county legislative authority may determine that a
36 chronic danger exists. The county legislative authority shall notify
37 the department, in writing, when it determines that a chronic danger
38 exists. In cases of chronic danger, the department shall issue a

1 permit, upon request, for work necessary to abate the chronic danger by
2 removing any obstructions, repairing existing structures, restoring
3 banks, restoring road or highway access, protecting fish resources, or
4 protecting property. Permit requests must be made and processed in
5 accordance with subsections (2) and (~~(3)~~) (7) of this section.

6 (b) Any projects proposed to address a chronic danger identified
7 under (a) of this subsection that satisfies the project description
8 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
9 of the state environmental policy act, chapter 43.21C RCW. However,
10 the project is subject to the review process established in RCW
11 77.55.181(3) as if it were a fish habitat improvement project.

12 (~~(12)~~) (16) The department may issue an expedited written permit
13 in those instances where normal permit processing would result in
14 significant hardship for the applicant or unacceptable damage to the
15 environment. Expedited permit requests require a complete written
16 application as provided in subsection (2) of this section and must be
17 issued within fifteen calendar days of the receipt of a complete
18 written application. Approval of an expedited permit is valid for up
19 to sixty days from the date of issuance. The department may not
20 require the provisions of the state environmental policy act, chapter
21 43.21C RCW, to be met as a condition of issuing a permit under this
22 subsection.

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

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

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

33 (a) Hydraulic projects approved under applicant-funded contracts
34 with the department that pay for the costs of processing those
35 projects;

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

1 (c) Pamphlet hydraulic projects; and

2 (d) Mineral prospecting and mining activities.

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

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

9 (5) This section expires June 30, 2016.

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

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

16 (b) Identify construction activities or the performance of work
17 conducted above the ordinary high water line that potentially use,
18 divert, or change the natural flow or bed of any of the salt or
19 freshwaters of the state;

20 (c) Analyze the manner and degree to which the activities
21 identified in (b) of this subsection are regulated under the programs
22 identified in (a) of this subsection;

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

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

30 (2) The University of Washington shall conduct the review in
31 consultation with appropriate federal and state agencies, local
32 governments, tribal governments, and business and environmental
33 interests. The University of Washington shall consult with and solicit
34 input from these entities both: (a) Through a forum gathering the
35 stakeholders together at the onset of the review to discuss matters
36 including the scope and timeline of the study; and (b) throughout the

1 review process. The University of Washington shall include a summary
2 of their comments on the outcomes of the review process in the report
3 required under subsection (3) of this section.

4 (3) The University of Washington shall submit a report detailing
5 the review to the appropriate standing committees of the senate and
6 house of representatives consistent with RCW 43.01.036 by September 1,
7 2014.

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

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

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

15 (2) Except for unanticipated receipts under RCW 43.79.260 through
16 43.79.282, moneys in the hydraulic project approval account may be
17 spent only after appropriation.

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

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

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

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

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

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

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

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

9 (b) Maintenance or repair of an existing overwater structure within
10 the existing footprint;

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

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

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

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

15 (g) Maintenance or repair of wetland, riparian, or estuarine
16 habitat; and

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

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

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

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

25 (1) Conditions imposed upon a permit must be reasonably related to
26 the project. The permit conditions must ensure that the project
27 provides proper protection for fish life, but the department may not
28 impose conditions that attempt to optimize conditions for fish life
29 that are out of proportion to the impact of the proposed project.

30 (2) The permit must contain provisions allowing for minor
31 modifications to the plans and specifications without requiring
32 reissuance of the permit.

33 (3) The permit must contain provisions that allow for minor
34 modifications to the required work timing without requiring the
35 reissuance of the permit. "Minor modifications to the required work
36 timing" means a minor deviation from the timing window set forth in the

1 permit when there are no spawning or incubating fish present within the
2 vicinity of the project.

3 NEW SECTION. Sec. 108. A new section is added to chapter 77.55
4 RCW to read as follows:

5 The department shall prepare and distribute technical and
6 educational information to the general public to assist the public in
7 complying with the requirements of this chapter, including the changes
8 resulting from this act.

9 NEW SECTION. Sec. 109. A new section is added to chapter 77.55
10 RCW to read as follows:

11 The department shall develop a system to provide local governments,
12 affected tribes, and other interested parties with access to hydraulic
13 project approval applications, including applications for a general
14 permit.

15 NEW SECTION. Sec. 110. The director of fish and wildlife shall
16 adopt any rules required or deemed necessary to implement RCW
17 77.55.011, 77.55.021, 77.55.151, 77.55.231, and sections 103 through
18 105, 108, and 109 of this act.

19 **PART TWO**
20 **Hydraulic Project**
21 **Approval and Forest Practices Integration**

22 NEW SECTION. Sec. 201. A new section is added to chapter 77.55
23 RCW to read as follows:

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

30 (2) The department must continue to conduct regulatory and
31 enforcement activities under this chapter for forest practices
32 hydraulic projects until the forest practices board incorporates fish

1 protection standards adopted under this chapter into the forest
2 practices rules and approves technical guidance as required under RCW
3 76.09.040.

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

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

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

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

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

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

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

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

32 (a) Prior to submitting an application to the department under RCW
33 76.09.050 that includes a forest practices hydraulic project involving
34 one or more water crossing structures meeting the criteria of (b) of
35 this subsection, the applicant shall submit water crossing structure
36 plans and specifications to the department of fish and wildlife for
37 concurrence review consistent with section 201(3) of this act.

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

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

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

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

11 (c) When submitting an application to the department under RCW
12 76.09.050, the applicant shall attach the following to the application:

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

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

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

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

24 (i) Establish minimum standards for forest practices;

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

30 (iii) Set forth necessary administrative provisions;

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

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

34 (b) Forest practices rules pertaining to water quality protection
35 shall be adopted by the board after reaching agreement with the
36 director of the department of ecology or the director's designee on the

1 board with respect ~~((thereto))~~ to these rules. All other forest
2 practices rules shall be adopted by the board.

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

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

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

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

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

29 (3)(a) The board shall incorporate into the forest practices rules
30 those fish protection standards in the rules adopted under chapter
31 77.55 RCW, as the rules existed on the effective date of this section,
32 that are applicable to activities regulated under the forest practices
33 rules. If fish protection standards are incorporated by reference, the
34 board shall minimize administrative processes by utilizing the
35 exception from the administrative procedures controlling significant
36 legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation
37 of rules adopted by other state agencies.

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

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

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

20 (4)(a) The board shall establish by rule a program for the
21 acquisition of riparian open space and critical habitat for threatened
22 or endangered species as designated by the board. Acquisition must be
23 a conservation easement. Lands eligible for acquisition are forest
24 lands within unconfined channel migration zones or forest lands
25 containing critical habitat for threatened or endangered species as
26 designated by the board. Once acquired, these lands may be held and
27 managed by the department, transferred to another state agency,
28 transferred to an appropriate local government agency, or transferred
29 to a private nonprofit nature conservancy corporation, as defined in
30 RCW 64.04.130, in fee or transfer of management obligation. The board
31 shall adopt rules governing the acquisition by the state or donation to
32 the state of such interest in lands including the right of refusal if
33 the lands are subject to unacceptable liabilities. The rules shall
34 include definitions of qualifying lands, priorities for acquisition,
35 and provide for the opportunity to transfer such lands with limited
36 warranties and with a description of boundaries that does not require
37 full surveys where the cost of securing the surveys would be
38 unreasonable in relation to the value of the lands conveyed. The rules

1 shall provide for the management of the lands for ecological protection
2 or fisheries enhancement. For the purposes of conservation easements
3 entered into under this section, the following apply:

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

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

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

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

37 (d) Any acquired interest in qualifying lands by the state under

1 this section shall be managed as riparian open space or critical
2 habitat.

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

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

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

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

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

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

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

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

35 (b) ~~((Which — require — approvals — under — the — provisions — of — the~~
36 ~~hydraulics act, RCW 77.55.021;~~

1 ~~(e))~~) Within "shorelines of the state" as defined in RCW 90.58.030;
2 ~~((d))~~ (c) Excluded from Class II by the board; or
3 ~~((e))~~ (d) Including timber harvesting or road construction within
4 "urban growth areas," designated pursuant to chapter 36.70A RCW, which
5 are Class IV;

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

12 Class IV: Forest practices other than those contained in Class I
13 or II:

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

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

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

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

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

30 (d) Which have a potential for a substantial impact on the
31 environment and therefore require an evaluation by the department as to
32 whether or not a detailed statement must be prepared pursuant to the
33 state environmental policy act, chapter 43.21C RCW. Such evaluation
34 shall be made within ten days from the date the department receives the
35 application: PROVIDED, That nothing herein shall be construed to
36 prevent any local or regional governmental entity from determining that
37 a detailed statement must be prepared for an action pursuant to a Class
38 IV forest practice taken by that governmental entity concerning the

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

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

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

35 (3) Except for those forest practices being regulated by local
36 governmental entities as provided elsewhere in this chapter, if a
37 notification or application is delivered in person to the department by

1 the operator or the operator's agent, the department shall immediately
2 provide a dated receipt thereof. In all other cases, the department
3 shall immediately mail a dated receipt to the operator.

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

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

35 (6) For those forest practices regulated by the board and the
36 department, if the county, city, or town believes that an application
37 is inconsistent with this chapter, the forest practices regulations, or

1 any local authority consistent with RCW 76.09.240 as now or hereafter
2 amended, it may so notify the department and the applicant, specifying
3 its objections.

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

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

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

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

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

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

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

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

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

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

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

30 (a) Name and address of the forest landowner, timber owner, and
31 operator;

32 (b) Description of the proposed forest practice or practices to be
33 conducted;

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

36 (d) Planimetric and topographic maps showing location and size of

1 all lakes and streams and other public waters in and immediately
2 adjacent to the operating area and showing all existing and proposed
3 roads and major tractor roads;

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

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

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

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

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

19 (~~(i)~~) (j) Provisions for continuing maintenance of roads and
20 other construction or other measures necessary to afford protection to
21 public resources;

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

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

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

27 (3) The application for a forest practice or the notification of a
28 forest practice is subject to the reforestation requirement of RCW
29 76.09.070.

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

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

36 (ii) Completion of such forest practice operations shall be deemed
37 conversion of the lands to another use for purposes of chapters 84.33

1 and 84.34 RCW unless the conversion is to a use permitted under a
2 current use tax agreement permitted under chapter 84.34 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (c) At the option of the applicant, an application or notification
36 may be submitted to cover a single forest practice or a number of
37 forest practices within reasonable geographic or political boundaries

1 as specified by the department. An application or notification that
2 covers more than one forest practice may have an effective term of more
3 than (~~two~~) three years.

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

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

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

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

31 (b) In order to minimize adverse impacts to public resources,
32 control measures must be based on integrated pest management, as
33 defined in RCW 17.15.010, and must follow forest practices rules
34 relating to road construction and maintenance, timber harvest, and
35 forest chemicals, to the extent possible without compromising control
36 objectives.

37 (c) Agencies conducting or directing control efforts must provide

1 advance notice to the appropriate regulatory staff of the department of
2 the operations that would be subject to exemption from forest practices
3 application or notification requirements.

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

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

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

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

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

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

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

35 (3) The department or the department of ecology may apply for an
36 administrative inspection warrant to either Thurston county superior

1 court, or the superior court in the county in which the property is
2 located. An administrative inspection warrant may be issued where:

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

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

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

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

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

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

35 (3) The department must obtain the written permission of an
36 applicant before making publicly available that applicant's application

1 or approval under this section and must work cooperatively with the
2 applicant to ensure that no personal or proprietary information is made
3 available.

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

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

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

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

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

31 (b)(i) If sections 201 through 203 and 206 of this act are enacted
32 into law by June 30, 2012, then the fee for applications and
33 notifications relating to the commercial harvest of timber submitted to
34 the department shall be one hundred fifty dollars for class II
35 applications and notifications, class III applications, and class IV
36 forest practices that have a potential for a substantial impact on the
37 environment and therefore require an evaluation by the department as to

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

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

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

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

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

30 ((+3)) (4) For applications submitted to ((the)) a local
31 governmental entity as provided in this chapter, the fee shall be
32 ((five hundred dollars for class IV forest practices on lands being
33 converted to other uses or lands that are contained within "urban
34 growth areas," designated pursuant to chapter 36.70A RCW, except as
35 otherwise provided in this section, unless a different fee is otherwise
36 provided)) determined, collected, and retained by the local
37 governmental entity.

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

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

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

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

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

15 (b) Contact the department of ecology and the applicable county,
16 city, town, or regional governmental entity to begin the permitting
17 process; and

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

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

28 (a) Notify the department and request from the department the
29 status of any applicable forest practices applications, notifications,
30 or final orders or decisions; and

31 (b) Complete the following activities:

32 (i) Require that the landowner be in full compliance with chapter
33 43.21C RCW, if applicable;

34 (ii) Receive notification from the department that the landowner
35 has resolved any outstanding final orders or decisions issued by the
36 department; and

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

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

16 (1) There is hereby created the forest practices board of the state
17 of Washington as an agency of state government consisting of members as
18 follows:

19 (a) The commissioner of public lands or the commissioner's
20 designee;

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

23 (c) The director of the department of agriculture or the director's
24 designee;

25 (d) The director of the department of ecology or the director's
26 designee;

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

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

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

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

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

21 ~~(3))~~ The members of the initial board appointed by the governor
22 shall be appointed so that the term of one member shall expire December
23 31, 1975, the term of one member shall expire December 31, 1976, the
24 term of one member shall expire December 31, 1977, the terms of two
25 members shall expire December 31, 1978, and the terms of two members
26 shall expire December 31, 1979. Thereafter, each member shall be
27 appointed for a term of four years. Vacancies on the board shall be
28 filled in the same manner as the original appointments. Each member of
29 the board shall continue in office until his or her successor is
30 appointed and qualified. The commissioner of public lands or the
31 commissioner's designee shall be the chair of the board.

32 ~~((4))~~ (3) The board shall meet at such times and places as shall
33 be designated by the chair or upon the written request of the majority
34 of the board. The principal office of the board shall be at the state
35 capital.

36 ~~((5))~~ (4) Members of the board, except public employees and
37 elected officials, shall be compensated in accordance with RCW

1 43.03.250. Each member shall be entitled to reimbursement for travel
2 expenses incurred in the performance of their duties as provided in RCW
3 43.03.050 and 43.03.060.

4 ~~((+6+))~~ (5) The board may employ such clerical help and staff
5 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

15 (3) "Application" means the application required pursuant to RCW
16 76.09.050.

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

25 (5) "Board" means the forest practices board created in RCW
26 76.09.030.

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

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

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

34 (9) "Date of receipt" has the same meaning as defined in RCW
35 43.21B.001.

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

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

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

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

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

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

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

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

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

36 (a) Road and trail construction, including forest practices
37 hydraulic projects that include water crossing structures, and
38 associated activities and maintenance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 The incorporation of fish protection standards adopted under
30 chapter 77.55 RCW into the forest practices rules as required under RCW
31 76.09.040(3) is exempt from compliance with this chapter.

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

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

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

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

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

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

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

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

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

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

1 parking areas or facilities: An office, a school, a commercial
2 building, a recreational building, a service building, or a storage
3 building;

4 (v) Landfilling or excavation activities; and

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

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

9 (i) An incorporated city;

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

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

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

15 (c) In updating the environmental checklist found in WAC 197-11-
16 960, the department of ecology shall:

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

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

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

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

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

31 (ii) Propose methods for integrating the state environmental policy
32 act process with provisions of the growth management act, chapter
33 36.70A RCW, including consideration of ways to revise WAC 197-11-210
34 through 197-11-232 to further the goals of RCW 43.21C.240; and

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

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

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

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

12 (ii) Ensure that state agencies and other interested parties can
13 receive notice about projects of interest through notice under chapter
14 43.21C RCW and means other than chapter 43.21C RCW; and

15 (iii) Ensure that federally recognized tribes receive notice about
16 projects that impact tribal interests through notice under chapter
17 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

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

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

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

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

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

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

25 ~~(iv) Are located within an urban growth area, as defined in RCW
26 36.70A.030;~~

27 ~~(v) Are not essential public facilities, as defined in RCW
28 36.70A.200; and~~

29 ~~(vi) Are consistent with a comprehensive plan adopted under chapter
30 36.70A RCW.~~

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

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

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

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

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

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

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

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

22 (f) Are not essential public facilities, as defined in RCW
23 36.70A.200, unless an essential public facility is accessory to or part
24 of a residential, office, school, commercial, recreational, service, or
25 industrial development that is designated a planned action under this
26 subsection; and

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

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

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

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

35 (3)(a) A county, city, or town shall determine during permit review
36 whether a proposed project is consistent with a planned action
37 ordinance adopted by the jurisdiction. To determine project
38 consistency with a planned action ordinance, a county, city, or town

1 may utilize a modified checklist pursuant to the rules adopted to
2 implement RCW 43.21C.110, a form that is designated within the planned
3 action ordinance, or a form contained in agency rules adopted pursuant
4 to RCW 43.21C.120.

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

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

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

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

33 (1) In order to accommodate infill development and thereby realize
34 the goals and policies of comprehensive plans adopted according to
35 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is
36 authorized by this section to establish categorical exemptions from the
37 requirements of this chapter. An exemption adopted under this section

1 applies even if it differs from the categorical exemptions adopted by
2 rule of the department under RCW 43.21C.110(1)(a). An exemption may be
3 adopted by a city or county under this section if it meets the
4 following criteria:

5 (a) It categorically exempts government action related to
6 development (~~(that is new residential or mixed-use development)~~)
7 proposed to fill in an urban growth area, designated according to RCW
8 36.70A.110, where current density and intensity of use in the area is
9 lower than called for in the goals and policies of the applicable
10 comprehensive plan and the development is either:

- 11 (i) Residential development;
- 12 (ii) Mixed-use development; or
- 13 (iii) Commercial development up to sixty-five thousand square feet,
14 excluding retail development;

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

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

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

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

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

36 NEW SECTION. Sec. 305. A new section is added to chapter 43.21C
37 RCW to read as follows:

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

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

5 (b) With funding from private sources; and

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

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

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

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

27 (4) Prior to the collection of fees, the county, city, or town must
28 enact an ordinance that establishes the total amount of expenses to be
29 recovered through fees and provides objective standards for determining
30 the fee amount to be imposed upon each development proposal
31 proportionate to the impacts of each development and to the benefits
32 accruing to each development from the nonproject environmental review.
33 The ordinance must provide (a) a procedure by which an applicant who
34 disagrees with whether the amount of the fee is correct, reasonable, or
35 proportionate may pay the fee with the written stipulation "paid under
36 protest"; and (b) if the county, city, or town provides for an
37 administrative appeal of its decision on the project for which the fees
38 are imposed, any dispute about the amount of the fees must be resolved

1 in the same administrative appeals process. Any disagreement about the
2 reasonableness, proportionality, or amount of the fees imposed upon a
3 development may not be the basis for delay in issuance of a project
4 permit for that development.

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

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

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

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

23 Except only as expressly provided in chapters 67.28, 81.104, and
24 82.14 RCW, the state preempts the field of imposing retail sales and
25 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
26 67.16.060, conveyances, and cigarettes, and no county, town, or other
27 municipal subdivision shall have the right to impose taxes of that
28 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
29 82.02.090, no county, city, town, or other municipal corporation shall
30 impose any tax, fee, or charge, either direct or indirect, on the
31 construction or reconstruction of residential buildings, commercial
32 buildings, industrial buildings, or on any other building or building
33 space or appurtenance thereto, or on the development, subdivision,
34 classification, or reclassification of land. However, this section
35 does not preclude dedications of land or easements within the proposed
36 development or plat which the county, city, town, or other municipal

1 corporation can demonstrate are reasonably necessary as a direct result
2 of the proposed development or plat to which the dedication of land or
3 easement is to apply.

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

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

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

18 (3) Any payment not so expended shall be refunded with interest to
19 be calculated from the original date the deposit was received by the
20 county and at the same rate applied to tax refunds pursuant to RCW
21 84.69.100; however, if the payment is not expended within five years
22 due to delay attributable to the developer, the payment shall be
23 refunded without interest.

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

29 Nothing in this section prohibits cities, towns, counties, or other
30 municipal corporations from collecting reasonable fees from an
31 applicant for a permit or other governmental approval to cover the cost
32 to the city, town, county, or other municipal corporation of processing
33 applications, inspecting and reviewing plans, or preparing detailed
34 statements required by chapter 43.21C RCW, including reasonable fees
35 that are consistent with RCW 43.21C.420(6) and section 305 of this act.

36 This section does not limit the existing authority of any county,
37 city, town, or other municipal corporation to impose special

1 assessments on property specifically benefited thereby in the manner
2 prescribed by law.

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

11 Nothing in this section prohibits a transportation benefit district
12 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
13 the legislative authority of a county, city, or town from approving the
14 imposition of such fees within a transportation benefit district.

15 Nothing in this section prohibits counties, cities, or towns from
16 imposing transportation impact fees authorized pursuant to chapter
17 39.92 RCW.

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

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

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

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

29 The following nonproject actions are categorically exempt from the
30 requirements of this chapter:

- 31 (1) Amendments to development regulations that are required to
32 ensure consistency with an adopted comprehensive plan pursuant to RCW
33 36.70A.040, where the comprehensive plan was previously subjected to
34 environmental review pursuant to this chapter and the impacts
35 associated with the proposed regulation were specifically addressed in
36 the prior environmental review;

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

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

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

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

14 (c) Increased vegetation retention or decreased impervious surface
15 areas in critical areas;

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

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

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

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

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

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

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

34 (3) In instances where the locally adopted ordinance, development
35 regulation, land use plan, or other legal authority provide the
36 necessary information to answer a specific question, the lead agency

1 must explain how the proposed project satisfies the underlying local
2 legal authority.

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

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

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

13 (7) Nothing in this section affects the appeal provisions provided
14 in this chapter.

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

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

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

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

33 (1) The department of (~~community, — trade, — and — economic~~
34 ~~development~~) commerce shall provide management services for the growth
35 management planning and environmental review fund created by RCW
36 36.70A.490. The department shall establish procedures for fund

1 management. The department shall encourage participation in the grant
2 or loan program by other public agencies. The department shall develop
3 the grant or loan criteria, monitor the grant or loan program, and
4 select grant or loan recipients in consultation with state agencies
5 participating in the grant or loan program through the provision of
6 grant or loan funds or technical assistance.

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

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

17 (b) Encourages use of plans and information developed for purposes
18 of complying with this chapter to satisfy requirements of other state
19 programs.

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

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

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

32 (c) Demonstrate that procedures for review of development permit
33 applications will be based on the integrated plans and environmental
34 analysis;

35 (d) Include mechanisms to monitor the consequences of growth as it
36 occurs in the plan area and to use the resulting data to update the
37 plan, policy, or implementing mechanisms and associated environmental
38 analysis;

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

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

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

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

12 (b) Identification and monitoring of system capacities for elements
13 of the built environment, and to the extent appropriate, of the natural
14 environment;

15 (c) Coordination with state, federal, and tribal governments in
16 project review;

17 (d) Furtherance of important state objectives related to economic
18 development, protection of areas of statewide significance, and siting
19 of essential public facilities;

20 (e) Programs to improve the efficiency and effectiveness of the
21 permitting process by greater reliance on integrated plans and
22 prospective environmental analysis;

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

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

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

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

37 (6) State agencies shall work with grant or loan recipients to

1 facilitate state and local project review processes that will implement
2 the projects receiving grants or loans under this section.

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

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

6 (1) To adopt and amend (~~((thereafter))~~) rules of interpretation and
7 implementation of this chapter, subject to the requirements of chapter
8 34.05 RCW, for the purpose of providing uniform rules and guidelines to
9 all branches of government including state agencies, political
10 subdivisions, public and municipal corporations, and counties. The
11 proposed rules shall be subject to full public hearings requirements
12 associated with rule (~~((promulgation))~~) adoption. Suggestions for
13 modifications of the proposed rules shall be considered on their
14 merits, and the department shall have the authority and responsibility
15 for full and appropriate independent (~~((promulgation and))~~) adoption of
16 rules, assuring consistency with this chapter as amended and with the
17 preservation of protections afforded by this chapter. The rule-making
18 powers authorized in this section shall include, but shall not be
19 limited to, the following phases of interpretation and implementation
20 of this chapter:

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

32 (b) Rules for criteria and procedures applicable to the
33 determination of when an act of a branch of government is a major
34 action significantly affecting the quality of the environment for which
35 a detailed statement is required to be prepared pursuant to RCW
36 43.21C.030.

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

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

12 (e) Rules and procedures for public notification of actions taken
13 and documents prepared.

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

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

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

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

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

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

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

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

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

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

31 (b) Utilize, to the fullest extent possible, the services,
32 facilities, and information (including statistical information) of
33 public and private agencies, organizations, and individuals, in order
34 to avoid duplication of effort and expense, overlap, or conflict with
35 similar activities authorized by law and performed by established
36 agencies.

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

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

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

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

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

32 (a) Complete authority to establish and administer a comprehensive
33 state point source waste discharge or pollution discharge elimination
34 permit program which will enable the department to qualify for full
35 participation in any national waste discharge or pollution discharge
36 elimination permit system and will allow the department to be the sole
37 agency issuing permits required by such national system operating in

1 the state of Washington subject to the provisions of RCW 90.48.262(2).
2 Program elements authorized herein may include, but are not limited to:
3 (i) Effluent treatment and limitation requirements together with timing
4 requirements related thereto; (ii) applicable receiving water quality
5 standards requirements; (iii) requirements of standards of performance
6 for new sources; (iv) pretreatment requirements; (v) termination and
7 modification of permits for cause; (vi) requirements for public notices
8 and opportunities for public hearings; (vii) appropriate relationships
9 with the secretary of the army in the administration of his or her
10 responsibilities which relate to anchorage and navigation, with the
11 administrator of the environmental protection agency in the performance
12 of his or her duties, and with other governmental officials under the
13 federal clean water act; (viii) requirements for inspection,
14 monitoring, entry, and reporting; (ix) enforcement of the program
15 through penalties, emergency powers, and criminal sanctions; (x) a
16 continuing planning process; and (xi) user charges.

17 (b) The power to establish and administer state programs in a
18 manner which will (~~insure~~) ensure the procurement of moneys, whether
19 in the form of grants, loans, or otherwise; to assist in the
20 construction, operation, and maintenance of various water pollution
21 control facilities and works; and the administering of various state
22 water pollution control management, regulatory, and enforcement
23 programs.

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

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

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

30 (a) (~~Reissue without modification and for a term of one year any
31 national pollutant discharge elimination system municipal storm water
32 general permit first issued on January 17, 2007; and~~

33 ~~(b) Issue an updated national pollutant discharge elimination
34 system municipal storm water general permit for any permit first issued
35 on January 17, 2007. An updated permit issued under this subsection
36 shall become effective beginning August 1, 2013.)) By July 31, 2012,
37 the department shall reissue without modification and for a term of one~~

1 year any national pollutant discharge elimination system municipal
2 storm water general permit first issued January 17, 2007, for western
3 Washington municipalities.

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

8 (i) By July 1, 2012, the department shall publish final proposed
9 permits following consideration of comments from the public and
10 appropriate stakeholders, and provide the final proposed permits to the
11 appropriate committees of the senate and house of representatives for
12 legislative review;

13 (ii) The legislature may modify the final proposed permits through
14 legislative enactment by the end of the 2013 regular legislative
15 session. Except as directed by the legislature, the department may not
16 modify the final proposed permits following its being published under
17 (b)(i) of this subsection;

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

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

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

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

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

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