

**E2SHB 2253 - H AMD 1402**

By Representative Fitzgibbon

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

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

11       (2) By December 31, 2012, the department of ecology shall increase  
12 the rule-based categorical exemptions to chapter 43.21C RCW found in  
13 WAC 197-11-800 and update the environmental checklist found in WAC 197-  
14 11-960. In updating the categorical exemptions, the department of  
15 ecology must:

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

18       (i) The construction or location of single-family residential  
19 developments;

20       (ii) The construction or location of multifamily residential  
21 developments;

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

26       (iv) The construction of the following, including any associated  
27 parking areas or facilities: An office, a school, a commercial  
28 building, a recreational building, a service building, or a storage  
29 building;

30       (v) Landfilling or excavation activities; and

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

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

5 (i) An incorporated city;

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

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

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

11 (c) In updating the environmental checklist found in WAC 197-11-  
12 960, the department of ecology shall:

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

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

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

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

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

27 (ii) Propose methods for integrating the state environmental policy  
28 act process with provisions of the growth management act, chapter  
29 36.70A RCW, including consideration of ways to revise WAC 197- 11-210  
30 through 197-11-232 to further the goals of RCW 43.21C.240; and

31 (iii) Create minor code amendments for which review under chapter  
32 43.21C RCW would not be required because they do not lessen  
33 environmental protection.

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

37 (4)(a) The department of ecology shall convene an advisory  
38 committee consisting of members representing, at minimum, cities,

1 counties, business interests, environmental interests, agricultural  
2 interests, cultural resources interests, state agencies, and tribal  
3 governments to:

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

7 (ii) Ensure that state agencies and other interested parties can  
8 receive notice about projects of interest through notice under chapter  
9 43.21C RCW and means other than chapter 43.21C RCW; and

10 (iii) Ensure that federally recognized tribes receive notice about  
11 projects that impact tribal interests through notice under chapter  
12 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

18 (1) An environmental impact statement (the detailed statement  
19 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for  
20 legislation and other major actions having a probable significant,  
21 adverse environmental impact. The environmental impact statement may  
22 be combined with the recommendation or report on the proposal or issued  
23 as a separate document. The substantive decisions or recommendations  
24 shall be clearly identifiable in the combined document. Actions  
25 categorically exempt under RCW 43.21C.110(1)(a) and section 7 of this  
26 act do not require environmental review or the preparation of an  
27 environmental impact statement under this chapter. (~~In a county,~~  
28 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~  
29 ~~provided for in subsection (2) of this section, does not require a~~  
30 ~~threshold determination or the preparation of an environmental impact~~  
31 ~~statement under this chapter, but is subject to environmental review~~  
32 ~~and mitigation as provided in this chapter.))~~

33 (2) An environmental impact statement is required to analyze only  
34 those probable adverse environmental impacts which are significant.  
35 Beneficial environmental impacts may be discussed. The responsible  
36 official shall consult with agencies and the public to identify such  
37 impacts and limit the scope of an environmental impact statement. The

1 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate  
2 sections of an environmental impact statement. Discussions of  
3 significant short-term and long-term environmental impacts, significant  
4 irrevocable commitments of natural resources, significant alternatives  
5 including mitigation measures, and significant environmental impacts  
6 which cannot be mitigated should be consolidated or included, as  
7 applicable, in those sections of an environmental impact statement  
8 where the responsible official decides they logically belong.

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

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

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

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

20 ~~(iv) Are located within an urban growth area, as defined in RCW  
21 36.70A.030;~~

22 ~~(v) Are not essential public facilities, as defined in RCW  
23 36.70A.200; and~~

24 ~~(vi) Are consistent with a comprehensive plan adopted under chapter  
25 36.70A RCW.~~

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

32 NEW SECTION. Sec. 3. A new section is added to chapter 43.21C RCW  
33 to read as follows:

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

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

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

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

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

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

17 (f) Are not essential public facilities, as defined in RCW  
18 36.70A.200, unless an essential public facility is accessory to or part  
19 of a residential, office, school, commercial, recreational, service, or  
20 industrial development that is designated a planned action under this  
21 subsection; and

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

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

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

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

30 (3)(a) A county, city, or town shall determine during permit review  
31 whether a proposed project is consistent with a planned action  
32 ordinance adopted by the jurisdiction. To determine project  
33 consistency with a planned action ordinance, a county, city, or town  
34 may utilize a modified checklist pursuant to the rules adopted to  
35 implement RCW 43.21C.110, a form that is designated within the planned  
36 action ordinance, or a form contained in agency rules adopted pursuant  
37 to RCW 43.21C.120.

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

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

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

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

29 (1) In order to accommodate infill development and thereby realize  
30 the goals and policies of comprehensive plans adopted according to  
31 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is  
32 authorized by this section to establish categorical exemptions from the  
33 requirements of this chapter. An exemption adopted under this section  
34 applies even if it differs from the categorical exemptions adopted by  
35 rule of the department under RCW 43.21C.110(1)(a). An exemption may be  
36 adopted by a city or county under this section if it meets the  
37 following criteria:

1 (a) It categorically exempts government action related to  
2 development (~~(that is new residential or mixed use development)~~)  
3 proposed to fill in an urban growth area, designated according to RCW  
4 36.70A.110, where current density and intensity of use in the area is  
5 lower than called for in the goals and policies of the applicable  
6 comprehensive plan and the development is either:

7 (i) Residential development;

8 (ii) Mixed-use development; or

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

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

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

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

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

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

32 NEW SECTION. Sec. 5. A new section is added to chapter 43.21C RCW  
33 to read as follows:

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

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

1 (b) With funding from private sources; and

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

4 (2)(a) A county, city, or town is authorized to assess a fee upon  
5 subsequent development that will make use of and benefit from: (i) The  
6 analysis in an environmental impact statement prepared for the purpose  
7 of compliance with section 3 of this act regarding planned actions; or  
8 (ii) the reduction in environmental analysis requirements resulting  
9 from the exercise of authority under RCW 43.21C.229 regarding infill  
10 development.

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

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

23 (4) Prior to the collection of fees, the county, city, or town must  
24 enact an ordinance that establishes the total amount of expenses to be  
25 recovered through fees and provides objective standards for determining  
26 the fee amount to be imposed upon each development proposal  
27 proportionate to the impacts of each development and to the benefits  
28 accruing to each development from the nonproject environmental review.  
29 The ordinance must provide (a) a procedure by which an applicant who  
30 disagrees with whether the amount of the fee is correct, reasonable, or  
31 proportionate may pay the fee with the written stipulation "paid under  
32 protest"; and (b) if the county, city, or town provides for an  
33 administrative appeal of its decision on the project for which the fees  
34 are imposed, any dispute about the amount of the fees must be resolved  
35 in the same administrative appeals process. Any disagreement about the  
36 reasonableness, proportionality, or amount of the fees imposed upon a  
37 development may not be the basis for delay in issuance of a project  
38 permit for that development.

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

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

8 (7) The city, county, or town shall refund fees collected where a  
9 court of competent jurisdiction determines that the environmental  
10 review conducted under section 3 of this act, regarding planned  
11 actions, or under RCW 43.21C.229, regarding infill development, was not  
12 sufficient to comply with the requirements of this chapter regarding  
13 the proposed development activity for which the fees were collected.  
14 The applicant and the city, county, or town may mutually agree to a  
15 partial refund or to waive the refund in the interest of resolving any  
16 dispute regarding compliance with this chapter.

17 **Sec. 6.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read  
18 as follows:

19 Except only as expressly provided in chapters 67.28, 81.104, and  
20 82.14 RCW, the state preempts the field of imposing retail sales and  
21 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW  
22 67.16.060, conveyances, and cigarettes, and no county, town, or other  
23 municipal subdivision shall have the right to impose taxes of that  
24 nature. Except as provided in RCW 64.34.440 and 82.02.050 through  
25 82.02.090, no county, city, town, or other municipal corporation shall  
26 impose any tax, fee, or charge, either direct or indirect, on the  
27 construction or reconstruction of residential buildings, commercial  
28 buildings, industrial buildings, or on any other building or building  
29 space or appurtenance thereto, or on the development, subdivision,  
30 classification, or reclassification of land. However, this section  
31 does not preclude dedications of land or easements within the proposed  
32 development or plat which the county, city, town, or other municipal  
33 corporation can demonstrate are reasonably necessary as a direct result  
34 of the proposed development or plat to which the dedication of land or  
35 easement is to apply.

36 This section does not prohibit voluntary agreements with counties,  
37 cities, towns, or other municipal corporations that allow a payment in

1 lieu of a dedication of land or to mitigate a direct impact that has  
2 been identified as a consequence of a proposed development,  
3 subdivision, or plat. A local government shall not use such voluntary  
4 agreements for local off-site transportation improvements within the  
5 geographic boundaries of the area or areas covered by an adopted  
6 transportation program authorized by chapter 39.92 RCW. Any such  
7 voluntary agreement is subject to the following provisions:

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

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

13 (3) Any payment not so expended shall be refunded with interest to  
14 be calculated from the original date the deposit was received by the  
15 county and at the same rate applied to tax refunds pursuant to RCW  
16 84.69.100; however, if the payment is not expended within five years  
17 due to delay attributable to the developer, the payment shall be  
18 refunded without interest.

19 No county, city, town, or other municipal corporation shall require  
20 any payment as part of such a voluntary agreement which the county,  
21 city, town, or other municipal corporation cannot establish is  
22 reasonably necessary as a direct result of the proposed development or  
23 plat.

24 Nothing in this section prohibits cities, towns, counties, or other  
25 municipal corporations from collecting reasonable fees from an  
26 applicant for a permit or other governmental approval to cover the cost  
27 to the city, town, county, or other municipal corporation of processing  
28 applications, inspecting and reviewing plans, or preparing detailed  
29 statements required by chapter 43.21C RCW, including reasonable fees  
30 that are consistent with RCW 43.21C.420(6) and section 5 of this act.

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

35 Nothing in this section prohibits counties, cities, or towns from  
36 imposing or permits counties, cities, or towns to impose water, sewer,  
37 natural gas, drainage utility, and drainage system charges. However,  
38 no such charge shall exceed the proportionate share of such utility or

1 system's capital costs which the county, city, or town can demonstrate  
2 are attributable to the property being charged. Furthermore, these  
3 provisions may not be interpreted to expand or contract any existing  
4 authority of counties, cities, or towns to impose such charges.

5 Nothing in this section prohibits a transportation benefit district  
6 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
7 the legislative authority of a county, city, or town from approving the  
8 imposition of such fees within a transportation benefit district.

9 Nothing in this section prohibits counties, cities, or towns from  
10 imposing transportation impact fees authorized pursuant to chapter  
11 39.92 RCW.

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

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

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

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

23 The following nonproject actions are categorically exempt from the  
24 requirements of this chapter:

25 (1) Amendments to development regulations that are required to  
26 ensure consistency with an adopted comprehensive plan pursuant to RCW  
27 36.70A.040, where the comprehensive plan was previously subjected to  
28 environmental review pursuant to this chapter and the impacts  
29 associated with the proposed regulation were specifically addressed in  
30 the prior environmental review;

31 (2) Amendments to development regulations that are required to  
32 ensure consistency with a shoreline master program approved pursuant to  
33 RCW 90.58.090, where the shoreline master program was previously  
34 subjected to environmental review pursuant to this chapter and the  
35 impacts associated with the proposed regulation were specifically  
36 addressed in the prior environmental review;

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

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

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

8 (c) Increased vegetation retention or decreased impervious surface  
9 areas in critical areas;

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

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

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

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

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.21C RCW  
17 to read as follows:

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

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

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

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

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

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

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

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

14 **Sec. 9.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to  
15 read as follows:

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

25 **Sec. 10.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to  
26 read as follows:

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

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

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

11 (b) Encourages use of plans and information developed for purposes  
12 of complying with this chapter to satisfy requirements of other state  
13 programs.

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

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

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

26 (c) Demonstrate that procedures for review of development permit  
27 applications will be based on the integrated plans and environmental  
28 analysis;

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

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

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

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

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

6 (b) Identification and monitoring of system capacities for elements  
7 of the built environment, and to the extent appropriate, of the natural  
8 environment;

9 (c) Coordination with state, federal, and tribal governments in  
10 project review;

11 (d) Furtherance of important state objectives related to economic  
12 development, protection of areas of statewide significance, and siting  
13 of essential public facilities;

14 (e) Programs to improve the efficiency and effectiveness of the  
15 permitting process by greater reliance on integrated plans and  
16 prospective environmental analysis;

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

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

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

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

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

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

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

1           (1) To adopt and amend (~~thereafter~~) rules of interpretation and  
2 implementation of this chapter, subject to the requirements of chapter  
3 34.05 RCW, for the purpose of providing uniform rules and guidelines to  
4 all branches of government including state agencies, political  
5 subdivisions, public and municipal corporations, and counties. The  
6 proposed rules shall be subject to full public hearings requirements  
7 associated with rule (~~promulgation~~) adoption. Suggestions for  
8 modifications of the proposed rules shall be considered on their  
9 merits, and the department shall have the authority and responsibility  
10 for full and appropriate independent (~~promulgation and~~) adoption of  
11 rules, assuring consistency with this chapter as amended and with the  
12 preservation of protections afforded by this chapter. The rule-making  
13 powers authorized in this section shall include, but shall not be  
14 limited to, the following phases of interpretation and implementation  
15 of this chapter:

16           (a) Categories of governmental actions which are not to be  
17 considered as potential major actions significantly affecting the  
18 quality of the environment, including categories pertaining to  
19 applications for water right permits pursuant to chapters 90.03 and  
20 90.44 RCW. The types of actions included as categorical exemptions in  
21 the rules shall be limited to those types which are not major actions  
22 significantly affecting the quality of the environment. The rules  
23 shall provide for certain circumstances where actions which potentially  
24 are categorically exempt require environmental review. An action that  
25 is categorically exempt under the rules adopted by the department may  
26 not be conditioned or denied under this chapter.

27           (b) Rules for criteria and procedures applicable to the  
28 determination of when an act of a branch of government is a major  
29 action significantly affecting the quality of the environment for which  
30 a detailed statement is required to be prepared pursuant to RCW  
31 43.21C.030.

32           (c) Rules and procedures applicable to the preparation of detailed  
33 statements and other environmental documents, including but not limited  
34 to rules for timing of environmental review, obtaining comments, data  
35 and other information, and providing for and determining areas of  
36 public participation which shall include the scope and review of draft  
37 environmental impact statements.

1 (d) Scope of coverage and contents of detailed statements assuring  
2 that such statements are simple, uniform, and as short as practicable;  
3 statements are required to analyze only reasonable alternatives and  
4 probable adverse environmental impacts which are significant, and may  
5 analyze beneficial impacts.

6 (e) Rules and procedures for public notification of actions taken  
7 and documents prepared.

8 (f) Definition of terms relevant to the implementation of this  
9 chapter including the establishment of a list of elements of the  
10 environment. Analysis of environmental considerations under RCW  
11 43.21C.030(2) may be required only for those subjects listed as  
12 elements of the environment (or portions thereof). The list of  
13 elements of the environment shall consist of the "natural" and "built"  
14 environment. The elements of the built environment shall consist of  
15 public services and utilities (such as water, sewer, schools, fire and  
16 police protection), transportation, environmental health (such as  
17 explosive materials and toxic waste), and land and shoreline use  
18 (including housing, and a description of the relationships with land  
19 use and shoreline plans and designations, including population).

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

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

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

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

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

34 (l) Rules relating to the use of environmental documents in  
35 planning and decision making and the implementation of the substantive  
36 policies and requirements of this chapter, including procedures for  
37 appeals under this chapter.

1 (m) Rules and procedures that provide for the integration of  
2 environmental review with project review as provided in RCW 43.21C.240.  
3 The rules and procedures shall be jointly developed with the department  
4 of (~~community, trade, and economic development~~) commerce and shall be  
5 applicable to the preparation of environmental documents for actions in  
6 counties, cities, and towns planning under RCW 36.70A.040. The rules  
7 and procedures shall also include procedures and criteria to analyze  
8 planned actions under (~~RCW 43.21C.031(2)~~) section 3 of this act and  
9 revisions to the rules adopted under this section to ensure that they  
10 are compatible with the requirements and authorizations of chapter 347,  
11 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or  
12 procedures adopted by a county, city, or town to implement the  
13 provisions of chapter 347, Laws of 1995 prior to the effective date of  
14 rules adopted under this subsection (1)(m) shall continue to be  
15 effective until the adoption of any new or revised ordinances or  
16 procedures that may be required. If any revisions are required as a  
17 result of rules adopted under this subsection (1)(m), those revisions  
18 shall be made within the time limits specified in RCW 43.21C.120.

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

21 (a) Consult with the state agencies and with representatives of  
22 science, industry, agriculture, labor, conservation organizations,  
23 state and local governments, and other groups, as it deems advisable;  
24 and

25 (b) Utilize, to the fullest extent possible, the services,  
26 facilities, and information (including statistical information) of  
27 public and private agencies, organizations, and individuals, in order  
28 to avoid duplication of effort and expense, overlap, or conflict with  
29 similar activities authorized by law and performed by established  
30 agencies.

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

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

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

1        NEW SECTION.    **Sec. 13.**    If specific funding for the purposes of  
2 this act, referencing this act by bill or chapter number, is not  
3 provided by June 30, 2012, in the omnibus appropriations act, this act  
4 is null and void."

5        Correct the title

EFFECT:    Removes the requirement that the department of ecology (DOE) must create a categorical exemption for projects designed to restore natural wildlife or fishery habitats or serve as environmental mitigation for other projects by December 31, 2013. Adds the requirement that by December 31, 2013, the DOE must create minor code amendments for which state environmental policy act (SEPA) review is not required because these amendments do not lessen environmental protection. Specifies that the advisory committee the DOE is required to convene to assist with both the 2012 and 2013 phases of rule making must assist the DOE in ensuring that state agencies, tribes, and other interested parties can receive notice about projects of interest through notice under the SEPA, as well as through other means.

     Adds the requirement that at least one community meeting must be held before notice is issued for a planned action ordinance, regardless of whether the planned action ordinance is jurisdiction-wide or not. Requires notice for the planned action and notice of the community meeting be provided by mail or otherwise verifiably provided to affected federally recognized tribal governments, as well as agencies with jurisdiction over the future development anticipated for the planned action, regardless of whether the planned action ordinance is jurisdiction-wide or not.

     Adds the requirement that in order to adopt a categorical exemption from the SEPA, a city or county must consider the specific probable adverse environmental impacts of the proposed action and determine that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws.

     Replaces two sections of the underlying bill regarding cost recovery options for local governments with one new section on the same topic. The new section specifies that local governments may recover a reasonable fee that is proportionate to the expenses incurred in preparation of a nonproject environmental impact statement (EIS) regarding planned actions and infill development. A project proponent may elect to pay the fee; to pay the fee under protest because the fee is disproportionate, unreasonable, or of an incorrect amount; or certify that they do not want the local jurisdiction to use the nonproject EIS. If a project proponent selects the latter, they may not make use of or benefit from the up-front EIS prepared by the local jurisdiction. Prior to collecting fees, a local government must enact an ordinance establishing the total amount of expenses to be recovered through fees. No fee may be assessed after the expenses have been

fully recovered. If a court holds the environmental review regarding planned actions or infill development was not sufficient to comply with the SEPA, the local government must refund the fees it collected for the project. This requirement may be negotiated in order to reach a settlement.

Specifies that under RCW 82.02.020, a local government is authorized to collect reasonable fees consistent with the new cost recovery section described above.

Removes amendments to development regulations that do not change regulations applicable to allowed uses or activities, intensity, density, building height, and a list of other specified activities from the list of nonproject actions that are categorically exempt from the requirements of the SEPA.

Specifies that when amendments are made to development regulations that create nonproject categorical exemptions to the SEPA, the impacts associated with the proposed regulations must be specifically addressed in the prior environmental review process.

Adds a section that authorizes a local government to identify items on the SEPA environmental checklist that are adequately covered by a local ordinance, development regulation, land use plan, or other legal authority. If a lead agency identifies such instances, it still must consider the impact of the action on the particular environmental element and explain how the proposed project satisfies the underlying legal authority.

Removes the section of the underlying bill containing legislative findings.

Removes the section of the underlying bill regarding notification to tribal governments upon a lead agencies' receipt of a completed environmental checklist, and instead specifies that the DOE and the SEPA rule-making advisory committee must ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under the SEPA, as well as through other means.

Adds a null and void clause.

Makes technical corrections.

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