
SECOND ENGROSSED SUBSTITUTE SENATE BILL 6406

State of Washington 62nd Legislature 2012 1st Special 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) "Multiple site permit" means a hydraulic project approval
5 issued to a person under RCW 77.55.021 for hydraulic projects occurring
6 at more than one specific location and which includes site-specific
7 requirements.

8 (24) "Pamphlet hydraulic project" means a hydraulic project for the
9 removal or control of aquatic noxious weeds conducted under the aquatic
10 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
11 prospecting and mining conducted under the gold and fish pamphlet
12 authorized by RCW 77.55.091.

13 (25) "Permit modification" means a hydraulic project approval
14 issued to a person under RCW 77.55.021 that extends, renews, or changes
15 the conditions of a previously issued hydraulic project approval.

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

18 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
19 77.55.041, and section 201 of this act, in the event that any person or
20 government agency desires to undertake a hydraulic project, the person
21 or government agency shall, before commencing work thereon, secure the
22 approval of the department in the form of a permit as to the adequacy
23 of the means proposed for the protection of fish life.

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

26 (a) General plans for the overall project;

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

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

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

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

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

4 (4) The department may accept complete, written applications as
5 provided in this section for multiple site permits and may issue these
6 permits. For multiple site permits, each specific location must be
7 identified.

8 (5) With the exception of emergency permits as provided in
9 subsection (12) of this section, applications for permits must be
10 submitted to the department's headquarters office in Olympia. Requests
11 for emergency permits as provided in subsection (12) of this section
12 may be made to the permitting biologist assigned to the location in
13 which the emergency occurs, to the department's regional office in
14 which the emergency occurs, or to the department's headquarters office.

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

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

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

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

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

30 (iii) The applicant requests a delay; or

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

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

36 (~~((e))~~) (d) The period of forty-five calendar days may be extended
37 if the permit is part of a multiagency permit streamlining effort and

1 all participating permitting agencies and the permit applicant agree to
2 an extended timeline longer than forty-five calendar days.

3 ~~((+4))~~ (8) If the department denies approval of a permit, the
4 department shall provide the applicant a written statement of the
5 specific reasons why and how the proposed project would adversely
6 affect fish life.

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

11 (b) Issuance, denial, conditioning, or modification of a permit may
12 be informally appealed to the department within thirty days from the
13 date of receipt of the decision. Requests for informal appeals must be
14 filed in the form and manner prescribed by the department by rule. A
15 permit decision that has been informally appealed to the department is
16 appealable to the board within thirty days from the date of receipt of
17 the department's decision on the informal appeal.

18 ~~((+5))~~ (9)(a) The permittee must demonstrate substantial progress
19 on construction of that portion of the project relating to the permit
20 within two years of the date of issuance.

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

24 (c) A permit remains in effect without need for periodic renewal
25 for hydraulic projects that divert water for agricultural irrigation or
26 stock watering purposes and that involve seasonal construction or other
27 work. A permit for streambank stabilization projects to protect farm
28 and agricultural land as defined in RCW 84.34.020 remains in effect
29 without need for periodic renewal if the problem causing the need for
30 the streambank stabilization occurs on an annual or more frequent
31 basis. The permittee must notify the appropriate agency before
32 commencing the construction or other work within the area covered by
33 the permit.

34 ~~((+6))~~ (10) The department may, after consultation with the
35 permittee, modify a permit due to changed conditions. A modification
36 under this subsection is not subject to the fees provided under section
37 103 of this act. The modification is appealable as provided in
38 subsection ~~((+4))~~ (8) of this section. For a hydraulic project~~((s))~~

1 that diverts water for agricultural irrigation or stock watering
2 purposes, ~~((e))~~ when the hydraulic project or other work is associated
3 with streambank stabilization to protect farm and agricultural land as
4 defined in RCW 84.34.020, the burden is on the department to show that
5 changed conditions warrant the modification in order to protect fish
6 life.

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

19 ~~((+8))~~ (12)(a) The department, the county legislative authority,
20 or the governor may declare and continue an emergency. If the county
21 legislative authority declares an emergency under this subsection, it
22 shall immediately notify the department. A declared state of emergency
23 by the governor under RCW 43.06.010 shall constitute a declaration
24 under this subsection.

25 (b) The department, through its authorized representatives, shall
26 issue immediately, upon request, ~~((e))~~ verbal approval for a stream
27 crossing, or work to remove any obstructions, repair existing
28 structures, restore streambanks, protect fish life, or protect property
29 threatened by the stream or a change in the stream flow without the
30 necessity of obtaining a written permit prior to commencing work.
31 Conditions of the emergency ~~((e))~~ verbal permit must be
32 ~~((established by the department and))~~ reduced to writing within thirty
33 days and complied with as provided for in this chapter.

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

37 ~~((+9))~~ (d) The department may not charge a person requesting an

1 emergency permit any of the fees authorized by section 103 of this act
2 until after the emergency permit is issued and reduced to writing.

3 (13) All state and local agencies with authority under this chapter
4 to issue permits or other authorizations in connection with emergency
5 water withdrawals and facilities authorized under RCW 43.83B.410 shall
6 expedite the processing of such permits or authorizations in keeping
7 with the emergency nature of such requests and shall provide a decision
8 to the applicant within fifteen calendar days of the date of
9 application.

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

24 ~~((+11+))~~ (15)(a) For any property, except for property located on
25 a marine shoreline, that has experienced at least two consecutive years
26 of flooding or erosion that has damaged or has threatened to damage a
27 major structure, water supply system, septic system, or access to any
28 road or highway, the county legislative authority may determine that a
29 chronic danger exists. The county legislative authority shall notify
30 the department, in writing, when it determines that a chronic danger
31 exists. In cases of chronic danger, the department shall issue a
32 permit, upon request, for work necessary to abate the chronic danger by
33 removing any obstructions, repairing existing structures, restoring
34 banks, restoring road or highway access, protecting fish resources, or
35 protecting property. Permit requests must be made and processed in
36 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

37 (b) Any projects proposed to address a chronic danger identified
38 under (a) of this subsection that satisfies the project description

1 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
2 of the state environmental policy act, chapter 43.21C RCW. However,
3 the project is subject to the review process established in RCW
4 77.55.181(3) as if it were a fish habitat improvement project.

5 ~~((12))~~ (16) The department may issue an expedited written permit
6 in those instances where normal permit processing would result in
7 significant hardship for the applicant or unacceptable damage to the
8 environment. Expedited permit requests require a complete written
9 application as provided in subsection (2) of this section and must be
10 issued within fifteen calendar days of the receipt of a complete
11 written application. Approval of an expedited permit is valid for up
12 to sixty days from the date of issuance. The department may not
13 require the provisions of the state environmental policy act, chapter
14 43.21C RCW, to be met as a condition of issuing a permit under this
15 subsection.

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

18 (1) The department shall charge an application fee of one hundred
19 fifty dollars for a hydraulic project permit or permit modification
20 issued under RCW 77.55.021 where the project is located at or below the
21 ordinary high water line. The application fee established under this
22 subsection may not be charged after June 30, 2017.

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

25 (a) Hydraulic projects approved under applicant-funded contracts
26 with the department that pay for the costs of processing those
27 projects;

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

30 (c) Pamphlet hydraulic projects;

31 (d) Mineral prospecting and mining activities; and

32 (e) Hydraulic projects occurring on farm and agricultural land, as
33 that term is defined in RCW 84.34.020.

34 (3) All fees collected under this section must be deposited in the
35 hydraulic project approval account created in section 104 of this act.

36 (4) The fee provisions contained in this section are prospective

1 only. The department of fish and wildlife may not charge fees for
2 hydraulic project permits issued under this title prior to the
3 effective date of this section.

4 (5) This section expires June 30, 2017.

5 NEW SECTION. Sec. 104. A new section is added to chapter 77.55
6 RCW to read as follows:

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

11 (2) Except for unanticipated receipts under RCW 43.79.260 through
12 43.79.282, moneys in the hydraulic project approval account may be
13 spent only after appropriation.

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

17 **Sec. 105.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to
18 read as follows:

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

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

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

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

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

3 (a) Maintenance or repair of a boat ramp, launch, or float within
4 the existing footprint;

5 (b) Maintenance or repair of an existing overwater structure within
6 the existing footprint;

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

8 (d) Maintenance or repair of pilings, including the replacement of
9 bumper pilings;

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

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

12 (g) Maintenance or repair of wetland, riparian, or estuarine
13 habitat; and

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

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

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

20 **Sec. 106.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to
21 read as follows:

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

27 (2) The permit must contain provisions allowing for minor
28 modifications to the plans and specifications without requiring
29 reissuance of the permit.

30 (3) The permit must contain provisions that allow for minor
31 modifications to the required work timing without requiring the
32 reissuance of the permit. "Minor modifications to the required work
33 timing" means a minor deviation from the timing window set forth in the
34 permit when there are no spawning or incubating fish present within the
35 vicinity of the project.

1 consistent with section 202 of this act. The concurrence review
2 process must allow the department up to thirty days to review forest
3 practices hydraulic projects meeting the criteria under section 202(2)
4 (a) and (b) of this act for consistency with fish protection standards.

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

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

12 (6) The department may review and provide comments on any forest
13 practices application. The department shall review, and either verify
14 that the review has occurred or comment on, forest practices
15 applications that include a forest practices hydraulic project
16 involving fish bearing waters or shorelines of the state, as that term
17 is defined in RCW 90.58.030. Prior to commenting and whenever
18 reasonably practicable, the department shall communicate with the
19 applicant regarding the substance of the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) Establish minimum standards for forest practices;

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

29 (iii) Set forth necessary administrative provisions;

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

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

33 (b) Forest practices rules pertaining to water quality protection
34 shall be adopted by the board after reaching agreement with the
35 director of the department of ecology or the director's designee on the
36 board with respect (~~thereto~~) to these rules. All other forest
37 practices rules shall be adopted by the board.

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

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

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

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

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

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

36 (b) Thereafter, the board shall incorporate into the forest
37 practices rules any changes to those fish protection standards in the
38 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent

1 with section 201 of this act; and (ii) applicable to activities
2 regulated under the forest practices rules. If fish protection
3 standards are incorporated by reference, the board shall minimize
4 administrative processes by utilizing the exception from the
5 administrative procedures controlling significant legislative rules
6 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted
7 by other state agencies.

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

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

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

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

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

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

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

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

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

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

8 (2) The initial memorandum of agreement required under subsection
9 (1) of this section between the two departments must be executed by
10 December 31, 2012. The memorandum of agreement may be amended as
11 agreed to by the two departments.

12 (3) The department and the department of natural resources shall
13 enter into and maintain an interagency contract to ensure
14 implementation of this act and the memorandum of agreement between the
15 two agencies required under subsection (1) of this section. The
16 contract must include funding provisions for the department's review of
17 forest practices hydraulic projects.

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

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

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

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

1 been received by the department. Class II shall not include forest
2 practices:

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

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

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

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

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

11 Class III: Forest practices other than those contained in Class I,
12 II, or IV. A Class III application must be approved or disapproved by
13 the department within thirty calendar days from the date the department
14 receives the application. However, the applicant may not begin work on
15 that forest practice until all forest practice fees required under RCW
16 76.09.065 have been received by the department;

17 Class IV: Forest practices other than those contained in Class I
18 or II:

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

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

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

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

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

35 (d) Which have a potential for a substantial impact on the
36 environment and therefore require an evaluation by the department as to
37 whether or not a detailed statement must be prepared pursuant to the
38 state environmental policy act, chapter 43.21C RCW. Such evaluation

1 shall be made within ten days from the date the department receives the
2 application: PROVIDED, That nothing herein shall be construed to
3 prevent any local or regional governmental entity from determining that
4 a detailed statement must be prepared for an action pursuant to a Class
5 IV forest practice taken by that governmental entity concerning the
6 land on which forest practices will be conducted. A Class IV
7 application must be approved or disapproved by the department within
8 thirty calendar days from the date the department receives the
9 application, (~~unless the department determines that a detailed~~
10 ~~statement must be made, in which case the application must be approved~~
11 ~~or disapproved by the department within sixty calendar days from the~~
12 ~~date the department receives the application, unless the commissioner~~
13 ~~of public lands, through the promulgation of a formal order, determines~~
14 ~~that the process cannot be completed within such period)) except that
15 the department must: Approve or disapprove an application within sixty
16 calendar days from the date the department receives the application if
17 the department determines that a detailed statement must be made,
18 unless the commissioner of public lands, through the promulgation of a
19 formal order, determines that the process cannot be completed within
20 such a period. However, the applicant may not begin work on that
21 forest practice until all forest practice fees required under RCW
22 76.09.065 have been received by the department.~~

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

26 (2) Except for those forest practices being regulated by local
27 governmental entities as provided elsewhere in this chapter, no Class
28 II, Class III, or Class IV forest practice shall be commenced or
29 continued after January 1, 1975, unless the department has received a
30 notification with regard to a Class II forest practice or approved an
31 application with regard to a Class III or Class IV forest practice
32 containing all information required by RCW 76.09.060 as now or
33 hereafter amended. However, in the event forest practices regulations
34 necessary for the scheduled implementation of this chapter and RCW
35 90.48.420 have not been adopted in time to meet such schedules, the
36 department shall have the authority to regulate forest practices and
37 approve applications on such terms and conditions consistent with this

1 chapter and RCW 90.48.420 and the purposes and policies of RCW
2 76.09.010 until applicable forest practices regulations are in effect.

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

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

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

1 forest practice is to be commenced. Any comments by such agencies
2 shall be directed to the department of natural resources.

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

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

12 (a) The department receives written notice from the county, city,
13 or town of such objections within fourteen business days from the time
14 of transmittal of the application to the county, city, or town, or one
15 day before the department acts on the application, whichever is later;
16 and

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

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

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

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

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

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

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

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

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

35 (a) Name and address of the forest landowner, timber owner, and
36 operator;

1 (b) Description of the proposed forest practice or practices to be
2 conducted;

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

5 (d) Planimetric and topographic maps showing location and size of
6 all lakes and streams and other public waters in and immediately
7 adjacent to the operating area and showing all existing and proposed
8 roads and major tractor roads;

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

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

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

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

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

24 (~~(i)~~) (j) Provisions for continuing maintenance of roads and
25 other construction or other measures necessary to afford protection to
26 public resources;

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

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

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

32 (3) The application for a forest practice or the notification of a
33 forest practice is subject to the reforestation requirement of RCW
34 76.09.070.

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

37 (i) The reforestation requirements of this chapter and of the

1 forest practices rules shall not apply if the land is in fact converted
2 unless applicable alternatives or limitations are provided in forest
3 practices rules issued under RCW 76.09.070;

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

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

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

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

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

24 (iii) Copies of any applicable outstanding final orders or
25 decisions issued by the department related to the forest practices
26 application or notification.

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

33 (d) Conversion to a use other than commercial forest product
34 operations within six years after approval of the forest practices
35 application or notification without the consent of the county, city, or
36 town shall constitute a violation of each of the county, municipal
37 city, town, and regional authorities to which the forest practice

1 operations would have been subject if the application had stated an
2 intent to convert.

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

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

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

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

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

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

33 (b) A notification or application may be renewed for an additional
34 three-year term by the filing and approval of a notification or
35 application, as applicable, prior to the expiration of the original
36 application or notification. A renewal application or notification is
37 subject to the forest practices rules in effect at the time the renewal

1 application or notification is filed. Nothing in this section
2 precludes the applicant from applying for a new application or
3 notification after the renewal period has lapsed.

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

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

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

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

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

37 (b) In order to minimize adverse impacts to public resources,
38 control measures must be based on integrated pest management, as

1 defined in RCW 17.15.010, and must follow forest practices rules
2 relating to road construction and maintenance, timber harvest, and
3 forest chemicals, to the extent possible without compromising control
4 objectives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (b)(i) If sections 201 through 203 and 206 of this act are enacted
37 into law by June 30, 2012, then:

1 (A) The fee for applications and notifications relating to the
2 commercial harvest of timber submitted to the department shall be one
3 hundred dollars for class II applications and notifications, class III
4 applications, and class IV forest practices that have a potential for
5 a substantial impact on the environment and therefore require an
6 evaluation by the department as to whether or not a detailed statement
7 must be prepared pursuant to the state environmental policy act,
8 chapter 43.21C RCW, when the application or notification is submitted
9 by a landowner who satisfies the definition of small forest landowner
10 provided in RCW 76.09.450 and the application or notification applies
11 to a single contiguous ownership consisting of one or more parcels;

12 (B) The fee for applications and notifications relating to the
13 commercial harvest of timber submitted to the department shall be one
14 hundred fifty dollars for class II applications and notifications,
15 class III applications, and class IV forest practices that have a
16 potential for a substantial impact on the environment and therefore
17 require an evaluation by the department as to whether or not a detailed
18 statement must be prepared pursuant to the state environmental policy
19 act, chapter 43.21C RCW, when the application or notification is
20 submitted by a landowner who does not satisfy the criteria for a
21 reduced application fee as provided in (b)(i)(A) of this subsection
22 (2); and

23 (C) The fee shall be one thousand five hundred dollars for class IV
24 forest practices applications on lands being converted to other uses or
25 on lands that are not to be reforested because of the likelihood of
26 future conversion to urban development or on lands that are contained
27 within urban growth areas, designated pursuant to chapter 36.70A RCW,
28 except the fee shall be the same as for a class III forest practices
29 application where the forest landowner provides:

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

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

1 (ii) If the board has not incorporated fish protection standards
2 adopted under chapter 77.55 RCW into the forest practices rules and
3 approved technical guidance as required under RCW 76.09.040 by December
4 31, 2013, the fee for applications and notifications submitted to the
5 department shall be as provided under (a) of this subsection until the
6 rules are adopted and technical guidance approved.

7 (3) The forest practices application account is created in the
8 state treasury. Moneys in the account may be spent only after
9 appropriation. All money collected from fees under ~~((this))~~ subsection
10 (2) of this section shall be deposited in the ~~((state general fund))~~
11 forest practices application account for the purposes of implementing
12 this chapter, chapter 76.13 RCW, and Title 222 WAC.

13 ~~((3))~~ (4) For applications submitted to ~~((the))~~ a local
14 governmental entity as provided in this chapter, the fee shall be
15 ~~((five hundred dollars for class IV forest practices on lands being~~
16 ~~converted to other uses or lands that are contained within "urban~~
17 ~~growth areas," designated pursuant to chapter 36.70A RCW, except as~~
18 ~~otherwise provided in this section, unless a different fee is otherwise~~
19 ~~provided))~~ determined, collected, and retained by the local
20 governmental entity.

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

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

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

29 (1) If a landowner who did not state an intent to convert his or
30 her land to a nonforestry use decides to convert his or her land to a
31 nonforestry use within six years of receiving an approved forest
32 practices application or notification under this chapter, the landowner
33 must:

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

36 (b) Contact the department of ecology and the applicable county,

1 city, town, or regional governmental entity to begin the permitting
2 process; and

3 (c) Notify the department (~~and~~), withdraw any applicable
4 applications or notifications (~~or request~~), and submit a new
5 application for the conversion. The fee for a new application for
6 conversion under this subsection (1)(c) is the difference between the
7 applicable fee for the new application under RCW 76.09.065 and the fee
8 previously paid for the original application or notification, which
9 must be deposited in the forest practices application account created
10 in RCW 76.09.065.

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

13 (a) Notify the department and request from the department the
14 status of any applicable forest practices applications, notifications,
15 or final orders or decisions; and

16 (b) Complete the following activities:

17 (i) Require that the landowner be in full compliance with chapter
18 43.21C RCW, if applicable;

19 (ii) Receive notification from the department that the landowner
20 has resolved any outstanding final orders or decisions issued by the
21 department; and

22 (iii) Make a determination as to whether or not the condition of
23 the land in question is in full compliance with local ordinances and
24 regulations. If full compliance is not found, a mitigation plan to
25 address violations of local ordinances or regulations must be required
26 for the parcel in question by the county, city, town, or regional
27 governmental entity. Required mitigation plans must be prepared by the
28 landowner and approved by the county, city, town, or regional
29 governmental entity. Once approved, the mitigation plan must be
30 implemented by the landowner. Mitigation measures that may be required
31 include, but are not limited to, revegetation requirements to plant and
32 maintain trees of sufficient maturity and appropriate species
33 composition to restore critical area and buffer function or to be in
34 compliance with applicable local government regulations.

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

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

4 (a) The commissioner of public lands or the commissioner's
5 designee;

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

8 (c) The director of the department of agriculture or the director's
9 designee;

10 (d) The director of the department of ecology or the director's
11 designee;

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

14 (f) An elected member of a county legislative authority appointed
15 by the governor(~~;~~ ~~PROVIDED, That such~~). However, the county
16 member's service on the board shall be conditioned on the member's
17 continued service as an elected county official;

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

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

26 (~~(2) (The director of the department of fish and wildlife's service~~
27 ~~on the board may be terminated two years after August 18, 1999, if the~~
28 ~~legislature finds that after two years the department has not made~~
29 ~~substantial progress toward integrating the laws, rules, and programs~~
30 ~~governing forest practices, chapter 76.09 RCW, and the laws, rules, and~~
31 ~~programs governing hydraulic projects, chapter 77.55 RCW. Such a~~
32 ~~finding shall be based solely on whether the department of fish and~~
33 ~~wildlife makes substantial progress as defined in this subsection, and~~
34 ~~will not be based on other actions taken as a member of the board.~~
35 ~~Substantial progress shall include recommendations to the legislature~~
36 ~~for closer integration of the existing rule-making authorities of the~~
37 ~~board and the department of fish and wildlife, and closer integration~~
38 ~~of the forest practices and hydraulics permitting processes, including~~

1 ~~exploring the potential for a consolidated permitting process. These~~
2 ~~recommendations shall be designed to resolve problems currently~~
3 ~~associated with the existing dual regulatory and permitting processes.~~

4 ~~(3))~~) The members of the initial board appointed by the governor
5 shall be appointed so that the term of one member shall expire December
6 31, 1975, the term of one member shall expire December 31, 1976, the
7 term of one member shall expire December 31, 1977, the terms of two
8 members shall expire December 31, 1978, and the terms of two members
9 shall expire December 31, 1979. Thereafter, each member shall be
10 appointed for a term of four years. Vacancies on the board shall be
11 filled in the same manner as the original appointments. Each member of
12 the board shall continue in office until his or her successor is
13 appointed and qualified. The commissioner of public lands or the
14 commissioner's designee shall be the chair of the board.

15 ~~((4))~~) (3) The board shall meet at such times and places as shall
16 be designated by the chair or upon the written request of the majority
17 of the board. The principal office of the board shall be at the state
18 capital.

19 ~~((5))~~) (4) Members of the board, except public employees and
20 elected officials, shall be compensated in accordance with RCW
21 43.03.250. Each member shall be entitled to reimbursement for travel
22 expenses incurred in the performance of their duties as provided in RCW
23 43.03.050 and 43.03.060.

24 ~~((6))~~) (5) The board may employ such clerical help and staff
25 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

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

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

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

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

35 (3) "Application" means the application required pursuant to RCW
36 76.09.050.

1 (4) "Aquatic resources" includes water quality, salmon, other
2 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
3 identified in the forests and fish report, the Columbia torrent
4 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
5 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
6 *olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's
7 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
8 their respective habitats.

9 (5) "Board" means the forest practices board created in RCW
10 76.09.030.

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

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

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

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

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

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

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

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

29 (14) "Forest land" means all land which is capable of supporting a
30 merchantable stand of timber and is not being actively used for a use
31 which is incompatible with timber growing. Forest land does not
32 include agricultural land that is or was enrolled in the conservation
33 reserve enhancement program by contract if such agricultural land was
34 historically used for agricultural purposes and the landowner intends
35 to continue to use the land for agricultural purposes in the future.
36 As it applies to the operation of the road maintenance and abandonment
37 plan element of the forest practices rules on small forest landowners,
38 the term "forest land" excludes:

- 1 (a) Residential home sites, which may include up to five acres; and
- 2 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
- 3 and the land on which appurtenances necessary to the production,
- 4 preparation, or sale of crops, fruit, dairy products, fish, and
- 5 livestock exist.

6 (15) "Forest landowner" means any person in actual control of
7 forest land, whether such control is based either on legal or equitable
8 title, or on any other interest entitling the holder to sell or
9 otherwise dispose of any or all of the timber on such land in any
10 manner. However, any lessee or other person in possession of forest
11 land without legal or equitable title to such land shall be excluded
12 from the definition of "forest landowner" unless such lessee or other
13 person has the right to sell or otherwise dispose of any or all of the
14 timber located on such forest land.

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

18 (a) Road and trail construction, including forest practices
19 hydraulic projects that include water crossing structures, and
20 associated activities and maintenance;

- 21 (b) Harvesting, final and intermediate;
- 22 (c) Precommercial thinning;
- 23 (d) Reforestation;
- 24 (e) Fertilization;
- 25 (f) Prevention and suppression of diseases and insects;
- 26 (g) Salvage of trees; and
- 27 (h) Brush control.

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

34 (17) "Forest practices rules" means any rules adopted pursuant to
35 RCW 76.09.040.

36 (18) "Forest road," as it applies to the operation of the road
37 maintenance and abandonment plan element of the forest practices rules

1 on small forest landowners, means a road or road segment that crosses
2 land that meets the definition of forest land, but excludes residential
3 access roads.

4 (19) "Forest trees" does not include hardwood trees cultivated by
5 agricultural methods in growing cycles shorter than fifteen years if
6 the trees were planted on land that was not in forest use immediately
7 before the trees were planted and before the land was prepared for
8 planting the trees. "Forest trees" includes Christmas trees, but does
9 not include Christmas trees that are cultivated by agricultural
10 methods, as that term is defined in RCW 84.33.035.

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

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

15 (22) "Person" means any individual, partnership, private, public,
16 or municipal corporation, county, the department or other state or
17 local governmental entity, or association of individuals of whatever
18 nature.

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

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

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

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

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

36 (28) "Unconfined stream" means generally fifth order or larger
37 waters that experience abrupt shifts in channel location, creating a
38 complex floodplain characterized by extensive gravel bars, disturbance

1 species of vegetation of variable age, numerous side channels, wall-
2 based channels, oxbow lakes, and wetland complexes. Many of these
3 streams have dikes and levees that may temporarily or permanently
4 restrict channel movement.

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

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

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

12 The incorporation of fish protection standards adopted under
13 chapter 77.55 RCW into the forest practices rules as required under RCW
14 76.09.040(3) is exempt from compliance with this chapter.

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

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

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

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

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

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

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

1 in place under chapters 36.70A and 90.58 RCW, and other laws. It is
2 the intent of the legislature to direct the department of ecology to
3 conduct two phases of rule making over the next two years to increase
4 the thresholds for these categorical exemptions.

5 (2) By December 31, 2012, the department of ecology shall increase
6 the rule-based categorical exemptions to chapter 43.21C RCW found in
7 WAC 197-11-800 and update the environmental checklist found in WAC 197-
8 11-960. In updating the categorical exemptions, the department of
9 ecology must:

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

12 (i) The construction or location of single-family residential
13 developments;

14 (ii) The construction or location of multifamily residential
15 developments;

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

20 (iv) The construction of the following, including any associated
21 parking areas or facilities: An office, a school, a commercial
22 building, a recreational building, a service building, or a storage
23 building;

24 (v) Landfilling or excavation activities; and

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

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

29 (i) An incorporated city;

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

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

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

35 (c) In updating the environmental checklist found in WAC 197-11-
36 960, the department of ecology shall:

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

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

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

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

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

14 (ii) Propose methods for integrating the state environmental policy
15 act process with provisions of the growth management act, chapter
16 36.70A RCW, including consideration of ways to revise WAC 197-11-210
17 through 197-11-232 to further the goals of RCW 43.21C.240; and

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

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

24 (4)(a) The department of ecology shall convene an advisory
25 committee consisting of members representing, at minimum, cities,
26 counties, business interests, environmental interests, agricultural
27 interests, cultural resources interests, state agencies, and tribal
28 governments to:

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

32 (ii) Ensure that state agencies and other interested parties can
33 receive notice about projects of interest through notice under chapter
34 43.21C RCW and means other than chapter 43.21C RCW; and

35 (iii) Ensure that federally recognized tribes receive notice about
36 projects that impact tribal interests through notice under chapter
37 43.21C RCW and means other than chapter 43.21C RCW.

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

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

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

6 (1) An environmental impact statement (the detailed statement
7 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
8 legislation and other major actions having a probable significant,
9 adverse environmental impact. The environmental impact statement may
10 be combined with the recommendation or report on the proposal or issued
11 as a separate document. The substantive decisions or recommendations
12 shall be clearly identifiable in the combined document. Actions
13 categorically exempt under RCW 43.21C.110(1)(a) and section 307 of this
14 act do not require environmental review or the preparation of an
15 environmental impact statement under this chapter. (~~In a county,~~
16 ~~city, or town planning under RCW 36.70A.040, a planned action, as~~
17 ~~provided for in subsection (2) of this section, does not require a~~
18 ~~threshold determination or the preparation of an environmental impact~~
19 ~~statement under this chapter, but is subject to environmental review~~
20 ~~and mitigation as provided in this chapter.))~~

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

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

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

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

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

8 ~~(iv) Are located within an urban growth area, as defined in RCW~~
9 ~~36.70A.030;~~

10 ~~(v) Are not essential public facilities, as defined in RCW~~
11 ~~36.70A.200; and~~

12 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~
13 ~~36.70A RCW.~~

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

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

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

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

27 (b) Have had the significant impacts adequately addressed in an
28 environmental impact statement under the requirements of this chapter
29 in conjunction with, or to implement, a comprehensive plan or subarea
30 plan adopted under chapter 36.70A RCW, or a fully contained community,
31 a master planned resort, a master planned development, or a phased
32 project;

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

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

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

5 (f) Are not essential public facilities, as defined in RCW
6 36.70A.200, unless an essential public facility is accessory to or part
7 of a residential, office, school, commercial, recreational, service, or
8 industrial development that is designated a planned action under this
9 subsection; and

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

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

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

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

18 (3)(a) A county, city, or town shall determine during permit review
19 whether a proposed project is consistent with a planned action
20 ordinance adopted by the jurisdiction. To determine project
21 consistency with a planned action ordinance, a county, city, or town
22 may utilize a modified checklist pursuant to the rules adopted to
23 implement RCW 43.21C.110, a form that is designated within the planned
24 action ordinance, or a form contained in agency rules adopted pursuant
25 to RCW 43.21C.120.

26 (b) A county, city, or town is not required to make a threshold
27 determination and may not require additional environmental review, for
28 a proposal that is determined to be consistent with the development or
29 redevelopment described in the planned action ordinance, except for
30 impacts that are specifically deferred to the project level at the time
31 of the planned action ordinance's adoption. At least one community
32 meeting must be held before the notice is issued for the planned action
33 ordinance. Notice for the planned action and notice of the community
34 meeting required by this subsection (3)(b) must be mailed or otherwise
35 verifiably provided to: (i) All affected federally recognized tribal
36 governments; and (ii) agencies with jurisdiction over the future
37 development anticipated for the planned action. The determination of
38 consistency, and the adequacy of any environmental review that was

1 specifically deferred, are subject to the type of administrative appeal
2 that the county, city, or town provides for the proposal itself
3 consistent with RCW 36.70B.060.

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

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

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

16 (1) In order to accommodate infill development and thereby realize
17 the goals and policies of comprehensive plans adopted according to
18 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is
19 authorized by this section to establish categorical exemptions from the
20 requirements of this chapter. An exemption adopted under this section
21 applies even if it differs from the categorical exemptions adopted by
22 rule of the department under RCW 43.21C.110(1)(a). An exemption may be
23 adopted by a city or county under this section if it meets the
24 following criteria:

25 (a) It categorically exempts government action related to
26 development (~~((that is new residential or mixed use development))~~)
27 proposed to fill in an urban growth area, designated according to RCW
28 36.70A.110, where current density and intensity of use in the area is
29 lower than called for in the goals and policies of the applicable
30 comprehensive plan and the development is either:

- 31 (i) Residential development;
32 (ii) Mixed-use development; or
33 (iii) Commercial development up to sixty-five thousand square feet,
34 excluding retail development;

35 (b) It does not exempt government action related to development
36 that is inconsistent with the applicable comprehensive plan or would

1 exceed the density or intensity of use called for in the goals and
2 policies of the applicable comprehensive plan; (~~and~~)

3 (c) The local government considers the specific probable adverse
4 environmental impacts of the proposed action and determines that these
5 specific impacts are adequately addressed by the development
6 regulations or other applicable requirements of the comprehensive plan,
7 subarea plan element of the comprehensive plan, planned action
8 ordinance, or other local, state, or federal rules or laws; and

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

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

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

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

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

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

26 (b) With funding from private sources; and

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

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

36 (b) The amount of the fee must be reasonable and proportionate to

1 the total expenses incurred by the county, city, or town in the
2 preparation of the environmental impact statement.

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

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

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

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

35 (7) The city, county, or town shall refund fees collected where a
36 court of competent jurisdiction determines that the environmental
37 review conducted under section 303 of this act, regarding planned
38 actions, or under RCW 43.21C.229, regarding infill development, was not

1 sufficient to comply with the requirements of this chapter regarding
2 the proposed development activity for which the fees were collected.
3 The applicant and the city, county, or town may mutually agree to a
4 partial refund or to waive the refund in the interest of resolving any
5 dispute regarding compliance with this chapter.

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

8 Except only as expressly provided in chapters 67.28, 81.104, and
9 82.14 RCW, the state preempts the field of imposing retail sales and
10 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
11 67.16.060, conveyances, and cigarettes, and no county, town, or other
12 municipal subdivision shall have the right to impose taxes of that
13 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
14 82.02.090, no county, city, town, or other municipal corporation shall
15 impose any tax, fee, or charge, either direct or indirect, on the
16 construction or reconstruction of residential buildings, commercial
17 buildings, industrial buildings, or on any other building or building
18 space or appurtenance thereto, or on the development, subdivision,
19 classification, or reclassification of land. However, this section
20 does not preclude dedications of land or easements within the proposed
21 development or plat which the county, city, town, or other municipal
22 corporation can demonstrate are reasonably necessary as a direct result
23 of the proposed development or plat to which the dedication of land or
24 easement is to apply.

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

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

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

3 (3) Any payment not so expended shall be refunded with interest to
4 be calculated from the original date the deposit was received by the
5 county and at the same rate applied to tax refunds pursuant to RCW
6 84.69.100; however, if the payment is not expended within five years
7 due to delay attributable to the developer, the payment shall be
8 refunded without interest.

9 No county, city, town, or other municipal corporation shall require
10 any payment as part of such a voluntary agreement which the county,
11 city, town, or other municipal corporation cannot establish is
12 reasonably necessary as a direct result of the proposed development or
13 plat.

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

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

25 Nothing in this section prohibits counties, cities, or towns from
26 imposing or permits counties, cities, or towns to impose water, sewer,
27 natural gas, drainage utility, and drainage system charges. However,
28 no such charge shall exceed the proportionate share of such utility or
29 system's capital costs which the county, city, or town can demonstrate
30 are attributable to the property being charged. Furthermore, these
31 provisions may not be interpreted to expand or contract any existing
32 authority of counties, cities, or towns to impose such charges.

33 Nothing in this section prohibits a transportation benefit district
34 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
35 the legislative authority of a county, city, or town from approving the
36 imposition of such fees within a transportation benefit district.

37 Nothing in this section prohibits counties, cities, or towns from

1 imposing transportation impact fees authorized pursuant to chapter
2 39.92 RCW.

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

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

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

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

14 The following nonproject actions are categorically exempt from the
15 requirements of this chapter:

16 (1) Amendments to development regulations that are required to
17 ensure consistency with an adopted comprehensive plan pursuant to RCW
18 36.70A.040, where the comprehensive plan was previously subjected to
19 environmental review pursuant to this chapter and the impacts
20 associated with the proposed regulation were specifically addressed in
21 the prior environmental review;

22 (2) Amendments to development regulations that are required to
23 ensure consistency with a shoreline master program approved pursuant to
24 RCW 90.58.090, where the shoreline master program was previously
25 subjected to environmental review pursuant to this chapter and the
26 impacts associated with the proposed regulation were specifically
27 addressed in the prior environmental review;

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

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

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

35 (c) Increased vegetation retention or decreased impervious surface
36 areas in critical areas;

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

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

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

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

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

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

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

19 (3) In instances where the locally adopted ordinance, development
20 regulation, land use plan, or other legal authority provide the
21 necessary information to answer a specific question, the lead agency
22 must explain how the proposed project satisfies the underlying local
23 legal authority.

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

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

30 (6) Nothing in this section changes the standard for whether an
31 environmental impact statement is required for an action that may have
32 a probable significant, adverse environmental impact pursuant to RCW
33 43.21C.030.

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

36 (8) Nothing in this section modifies existing rules for determining
37 the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor

1 does it modify agency procedures for complying with the state
2 environmental policy act when an agency other than a local government
3 is serving as the lead agency.

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

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

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

17 (1) The department of (~~community, — trade, — and — economic~~
18 ~~development~~) commerce shall provide management services for the growth
19 management planning and environmental review fund created by RCW
20 36.70A.490. The department shall establish procedures for fund
21 management. The department shall encourage participation in the grant
22 or loan program by other public agencies. The department shall develop
23 the grant or loan criteria, monitor the grant or loan program, and
24 select grant or loan recipients in consultation with state agencies
25 participating in the grant or loan program through the provision of
26 grant or loan funds or technical assistance.

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

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

1 (b) Encourages use of plans and information developed for purposes
2 of complying with this chapter to satisfy requirements of other state
3 programs.

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

6 (a) Demonstrate that it will prepare an environmental analysis
7 pursuant to chapter 43.21C RCW and subsection (2) of this section that
8 is integrated with a comprehensive plan, subarea plan, plan element,
9 countywide planning policy, development regulations, monitoring
10 program, or other planning activity adopted under or implementing this
11 chapter;

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

16 (c) Demonstrate that procedures for review of development permit
17 applications will be based on the integrated plans and environmental
18 analysis;

19 (d) Include mechanisms to monitor the consequences of growth as it
20 occurs in the plan area and to use the resulting data to update the
21 plan, policy, or implementing mechanisms and associated environmental
22 analysis;

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

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

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

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

34 (b) Identification and monitoring of system capacities for elements
35 of the built environment, and to the extent appropriate, of the natural
36 environment;

37 (c) Coordination with state, federal, and tribal governments in
38 project review;

1 (d) Furtherance of important state objectives related to economic
2 development, protection of areas of statewide significance, and siting
3 of essential public facilities;

4 (e) Programs to improve the efficiency and effectiveness of the
5 permitting process by greater reliance on integrated plans and
6 prospective environmental analysis;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (m) Rules and procedures that provide for the integration of
27 environmental review with project review as provided in RCW 43.21C.240.
28 The rules and procedures shall be jointly developed with the department
29 of (~~community, trade, and economic development~~) commerce and shall be
30 applicable to the preparation of environmental documents for actions in
31 counties, cities, and towns planning under RCW 36.70A.040. The rules
32 and procedures shall also include procedures and criteria to analyze
33 planned actions under (~~RCW 43.21C.031(2)~~) section 303 of this act and
34 revisions to the rules adopted under this section to ensure that they
35 are compatible with the requirements and authorizations of chapter 347,
36 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or
37 procedures adopted by a county, city, or town to implement the
38 provisions of chapter 347, Laws of 1995 prior to the effective date of

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

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

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

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

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

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

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

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

26 (1) The department of ecology is hereby designated as the state
27 water pollution control agency for all purposes of the federal clean
28 water act as it exists on February 4, 1987, and is hereby authorized to
29 participate fully in the programs of the act as well as to take all
30 action necessary to secure to the state the benefits and to meet the
31 requirements of that act. With regard to the national estuary program
32 established by section 320 of that act, the department shall exercise
33 its responsibility jointly with the Puget Sound partnership, created in
34 RCW 90.71.210. The department of ecology may delegate its authority
35 under this chapter, including its national pollutant discharge
36 elimination permit system authority and duties regarding animal feeding

1 operations and concentrated animal feeding operations, to the
2 department of agriculture through a memorandum of understanding. Until
3 any such delegation receives federal approval, the department of
4 agriculture's adoption or issuance of animal feeding operation and
5 concentrated animal feeding operation rules, permits, programs, and
6 directives pertaining to water quality shall be accomplished after
7 reaching agreement with the director of the department of ecology.
8 Adoption or issuance and implementation shall be accomplished so that
9 compliance with such animal feeding operation and concentrated animal
10 feeding operation rules, permits, programs, and directives will achieve
11 compliance with all federal and state water pollution control laws.
12 The powers granted herein include, among others, and notwithstanding
13 any other provisions of this chapter (~~(90.48-RCW)~~) or otherwise, the
14 following:

15 (a) Complete authority to establish and administer a comprehensive
16 state point source waste discharge or pollution discharge elimination
17 permit program which will enable the department to qualify for full
18 participation in any national waste discharge or pollution discharge
19 elimination permit system and will allow the department to be the sole
20 agency issuing permits required by such national system operating in
21 the state of Washington subject to the provisions of RCW 90.48.262(2).
22 Program elements authorized herein may include, but are not limited to:
23 (i) Effluent treatment and limitation requirements together with timing
24 requirements related thereto; (ii) applicable receiving water quality
25 standards requirements; (iii) requirements of standards of performance
26 for new sources; (iv) pretreatment requirements; (v) termination and
27 modification of permits for cause; (vi) requirements for public notices
28 and opportunities for public hearings; (vii) appropriate relationships
29 with the secretary of the army in the administration of his or her
30 responsibilities which relate to anchorage and navigation, with the
31 administrator of the environmental protection agency in the performance
32 of his or her duties, and with other governmental officials under the
33 federal clean water act; (viii) requirements for inspection,
34 monitoring, entry, and reporting; (ix) enforcement of the program
35 through penalties, emergency powers, and criminal sanctions; (x) a
36 continuing planning process; and (xi) user charges.

37 (b) The power to establish and administer state programs in a
38 manner which will (~~(insure)~~) ensure the procurement of moneys, whether

1 in the form of grants, loans, or otherwise; to assist in the
2 construction, operation, and maintenance of various water pollution
3 control facilities and works; and the administering of various state
4 water pollution control management, regulatory, and enforcement
5 programs.

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

9 (2) The governor shall have authority to perform those actions
10 required of him or her by the federal clean water act.

11 ((+2)) (3) By July 31, 2012, the department shall:

12 (a) Reissue without modification and for a term of one year any
13 national pollutant discharge elimination system municipal storm water
14 general permit applicable to western Washington municipalities first
15 issued on January 17, 2007; and

16 (b) Issue an updated national pollutant discharge elimination
17 system municipal storm water general permit applicable to western
18 Washington municipalities for any permit first issued on January 17,
19 2007. An updated permit issued under this subsection shall become
20 effective beginning August 1, 2013.

21 (i) Provisions of the updated permit issued under (b) of this
22 subsection relating to new requirements for low-impact development and
23 review and revision of local development codes, rules, standards, or
24 other enforceable documents to incorporate low-impact development
25 principles must be implemented simultaneously. These requirements may
26 go into effect no earlier than December 31, 2016, or the time of the
27 scheduled update under RCW 36.70A.130(5), as existing on the effective
28 date of this section, whichever is later.

29 (ii) Provisions of the updated permit issued under (b) of this
30 subsection related to increased catch basin inspection and illicit
31 discharge detection frequencies and application of new storm water
32 controls to projects smaller than one acre may go into effect no
33 earlier than December 31, 2016, or the time of the scheduled update
34 under RCW 36.70A.130(5), as existing on the effective date of this
35 section, whichever is later.

36 (4) By July 31, 2012, the department shall:

37 (a) Reissue without modification and for a term of two years any

1 national pollutant discharge elimination system municipal storm water
2 general permit applicable to eastern Washington municipalities first
3 issued on January 17, 2007; and

4 (b) Issue an updated national pollutant discharge elimination
5 system municipal storm water general permit for any permit first issued
6 on January 17, 2007, applicable to eastern Washington municipalities.
7 An updated permit issued under this subsection becomes effective August
8 1, 2014.

--- END ---