
SUBSTITUTE HOUSE BILL 2253

State of Washington 62nd Legislature 2012 Regular Session

By House Environment (originally sponsored by Representatives Fitzgibbon, Billig, and Jenkins)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to modernizing the functionality of the state
2 environmental policy act without compromising the underlying intent of
3 the original legislation; amending RCW 43.21C.031, 43.21C.087,
4 43.21C.229, 43.21C.420, 36.70A.490, 36.70A.500, 82.02.020, 43.21C.110,
5 and 43.21C.095; adding new sections to chapter 43.21C RCW; adding a new
6 section to chapter 82.02 RCW; creating a new section; and providing an
7 expiration date.

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

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

17 (2) By December 31, 2012, the department of ecology shall update
18 the rule-based categorical exemptions to chapter 43.21C RCW found in

1 WAC 197-11-800 and update the environmental checklist found in WAC 197-
2 11-960. In updating the categorical exemptions, the department of
3 ecology must:

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

6 (i) The construction or location of single-family residential
7 developments;

8 (ii) The construction or location of multifamily residential
9 developments;

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

14 (iv) The construction of the following, including any associated
15 parking areas or facilities: An office, a school, a commercial
16 building, a recreational building, a service building, or a storage
17 building;

18 (v) Landfilling or excavation activities; and

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

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

23 (i) An incorporated city;

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

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

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

29 (c) In updating the environmental checklist found in WAC 197-11-
30 960, the department of ecology shall:

31 (i) Reduce duplication in the checklist that has occurred due to
32 subsequent amendments to chapter 43.21C RCW and chapter 197-11 WAC that
33 have occurred since the checklist was last updated; and

34 (ii) Not include any new subjects into the scope of the checklist.

35 (d) Until the completion of the rule making required under this
36 section, any actions located within a city or a city's urban growth
37 area may apply the highest categorical exemption levels authorized
38 under WAC 197-11-800, regardless if the city or county with

1 jurisdiction has exercised its authority to raise the exemption levels
2 above the established minimums, unless the city or county with
3 jurisdiction passes an ordinance or resolution that lowers the
4 exemption levels to a level below the allowed maximum but not less than
5 the default minimum levels detailed in WAC 197-11-800.

6 (3) By December 31, 2013, the department of ecology shall update
7 the thresholds for all other project actions not specified in
8 subsection (2) of this section. During this process, the department of
9 ecology may also review and update the thresholds resulting from the
10 2012 rule-making process outlined in subsection 2 of this section.

11 (4) For both rule-making processes under subsections (2) and (3) of
12 this section, the department of ecology shall:

13 (a) Convene an advisory committee consisting of members
14 representing, at minimum, cities, counties, business interests,
15 environmental interests, agricultural interests, cultural resources
16 interests, state agencies, and tribal governments to assist in updating
17 the environmental checklist and updating the thresholds for other
18 project actions; and

19 (b) Consider opportunities to ensure that state agencies and other
20 interested parties can continue to receive notice about projects of
21 interest through a means other than through notice under chapter 43.21C
22 RCW.

23 (5) This section expires July 31, 2013.

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

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

1 ~~preparation of an environmental impact statement under this chapter,~~
2 ~~but is subject to environmental review and mitigation as provided in~~
3 ~~this chapter.)~~)

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

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

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

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

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

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

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

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

34 ~~(b) A county, city, or town shall limit planned actions to certain~~
35 ~~types of development or to specific geographical areas that are less~~
36 ~~extensive than the jurisdictional boundaries of the county, city, or~~
37 ~~town and may limit a planned action to a time period identified in the~~

1 ~~environmental impact statement or the ordinance or resolution adopted~~
2 ~~under this subsection.))~~

3 **Sec. 3.** RCW 43.21C.087 and 1974 ex.s. c 179 s 14 are each amended
4 to read as follows:

5 (1) The department of ecology shall prepare a list of all filings
6 required by RCW 43.21C.080 each week and shall make such list available
7 to any interested party. The list of filings shall include a brief
8 description of the governmental action and the project involved in such
9 action, along with the location of where information on the project or
10 action may be obtained. Failure of the department to include any
11 project or action shall not affect the running of the statute of
12 limitations provided in RCW 43.21C.080.

13 (2) The department of ecology shall accept electronic submittal of
14 all required filings from lead agencies under this section.

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

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

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

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

28 (c) Are subsequent or implementing projects for the proposals
29 listed in (b) of this subsection;

30 (d) Are located within an urban growth area designated pursuant to
31 RCW 36.70A.110;

32 (e) Are not essential public facilities, as defined in RCW
33 36.70A.200, unless an essential public facility is accessory to or part
34 of a residential, office, school, commercial, recreational, service, or
35 industrial development that is designated a planned action under this
36 subsection; and

1 (f) Are consistent with a comprehensive plan or subarea plan
2 adopted under chapter 36.70A RCW.

3 (2) A county, city, or town shall define the types of development
4 included in the planned action or a specific geographical area that is
5 less extensive than the jurisdictional boundaries of the county, city,
6 or town, and may limit a planned action to a time period identified in
7 the ordinance or resolution adopted under this subsection.

8 (3)(a) A county, city, or town shall determine during permit review
9 whether a proposal is consistent with a planned action ordinance
10 adopted by the jurisdiction. To determine project consistency with a
11 planned action ordinance, a county, city, or town may utilize a
12 modified checklist pursuant to the rules adopted to implement RCW
13 43.21C.110, a form that is designated within the planned action
14 ordinance, or a form contained in agency rules adopted pursuant to RCW
15 43.21C.120.

16 (b) Except for impacts that are specifically deferred for
17 consideration at the project level, a county, city, or town is not
18 required to make a threshold determination and may not require
19 additional environmental review for a proposal that is determined to be
20 consistent with the development or redevelopment described in the
21 planned action ordinance. The determination of consistency, and the
22 adequacy of any environmental review that was specifically deferred, is
23 subject to any administrative appeal that the county, city, or town
24 provides consistent with RCW 36.70B.060.

25 **Sec. 5.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to read
26 as follows:

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

36 (a) It categorically exempts government action related to
37 development (~~((that is new residential or mixed use development))~~)

1 proposed to fill in an urban growth area, designated according to RCW
2 36.70A.110, where current density and intensity of use in the area is
3 lower than called for in the goals and policies of the applicable
4 comprehensive plan and the development is either new:

5 (i) Residential development; or

6 (ii) Mixed-use development;

7 (b) It does not exempt government action related to development
8 that would be for a use or would exceed the density or intensity of use
9 called for in the goals and policies of the applicable comprehensive
10 plan; and

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

15 (ii) The city has prepared an environmental impact statement for
16 the area where the exemption created by this section applies if the
17 underlying environmental impact statement considered the proposed use
18 or intensity of use.

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

24 NEW SECTION. Sec. 6. A new section is added to chapter 43.21C RCW
25 to read as follows:

26 (1) This chapter does not apply to projects designed exclusively to
27 restore natural wildlife or fishery habitats or projects that serve as
28 environmental mitigation for other projects, except for:

29 (a) Projects that are stand-alone commercial wetland mitigation
30 banks located on more than five acres;

31 (b) Projects that are fish hatcheries; and

32 (c) Projects that are located on, or that would affect lands
33 designated as, agricultural lands of long-term commercial significance
34 pursuant to chapter 36.70A RCW.

35 (2) The lead agency permitting a project that qualifies for an
36 exemption under this section must still consult with the department of

1 archaeology and historic preservation to evaluate any potential impacts
2 to historic or archaeological sites.

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

5 (1) The legislature recognizes that a county, city, or town that
6 prepares a nonproject environmental review under RCW 43.21C.030(2),
7 including reviews necessary for compliance with RCW 43.21C.420, must
8 endure a substantial financial burden.

9 (2) A county, city, or town may recover reasonable expenses
10 incurred by the preparation of a nonproject environmental impact
11 statement prepared under RCW 43.21C.030(2):

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

13 (b) With funding from private sources; and

14 (c) By the assessment of a reasonable and proportionate fee upon
15 subsequent development that is consistent with the plan and development
16 regulations adopted under RCW 43.21C.030(2), as long as the development
17 makes use of and benefits from, as described in RCW 43.21C.030(2), the
18 nonproject environmental review prepared by the county, city, or town.

19 (3) In order to collect fees under this section, the county, city,
20 or town must enact an ordinance that sets forth objective standards for
21 determining how the fees to be imposed upon each development will be
22 proportionate to the impacts of each development and to the benefits
23 accruing to each development from the nonproject environmental review.

24 (4) Any assessment of fees collected under this section from
25 subsequent development may be used to reimburse funding received from
26 private sources.

27 (5)(a) Any disagreement about the reasonableness or amount of the
28 fees imposed upon a development may not be the basis for delay in
29 issuance of a project permit for that development.

30 (b) The fee assessed by the county, city, or town may be paid with
31 the written stipulation "paid under protest" and, if the city provides
32 for an administrative appeal of its decision on the project for which
33 the fees are imposed, any dispute about the amount of the fees must be
34 resolved in the same administrative appeal process.

35 **Sec. 8.** RCW 43.21C.420 and 2010 c 153 s 2 are each amended to read
36 as follows:

1 (1) Cities with a population greater than five thousand, in
2 accordance with their existing comprehensive planning and development
3 regulation authority under chapter 36.70A RCW, and in accordance with
4 this section, may adopt optional elements of their comprehensive plans
5 and optional development regulations that apply within specified
6 subareas of the cities, that are either:

7 (a) Areas designated as mixed-use or urban centers in a land use or
8 transportation plan adopted by a regional transportation planning
9 organization; or

10 (b) Areas within one-half mile of a major transit stop that are
11 zoned to have an average minimum density of fifteen dwelling units or
12 more per gross acre.

13 (2) Cities located on the east side of the Cascade mountains and
14 located in a county with a population of two hundred thirty thousand or
15 less, in accordance with their existing comprehensive planning and
16 development regulation authority under chapter 36.70A RCW, and in
17 accordance with this section, may adopt optional elements of their
18 comprehensive plans and optional development regulations that apply
19 within the mixed-use or urban centers. The optional elements of their
20 comprehensive plans and optional development regulations must enhance
21 pedestrian, bicycle, transit, or other nonvehicular transportation
22 methods.

23 (3) A major transit stop is defined as:

24 (a) A stop on a high capacity transportation service funded or
25 expanded under the provisions of chapter 81.104 RCW;

26 (b) Commuter rail stops;

27 (c) Stops on rail or fixed guideway systems, including transitways;

28 (d) Stops on bus rapid transit routes or routes that run on high
29 occupancy vehicle lanes; or

30 (e) Stops for a bus or other transit mode providing fixed route
31 service at intervals of at least thirty minutes during the peak hours
32 of operation.

33 (4)(a) A city that elects to adopt such an optional comprehensive
34 plan element and optional development regulations shall prepare a
35 nonproject environmental impact statement, pursuant to RCW 43.21C.030,
36 assessing and disclosing the probable significant adverse environmental
37 impacts of the optional comprehensive plan element and development

1 regulations and of future development that is consistent with the plan
2 and regulations.

3 (b) At least one community meeting must be held on the proposed
4 subarea plan before the scoping notice for such a nonproject
5 environmental impact statement is issued. Notice of scoping for such
6 a nonproject environmental impact statement and notice of the community
7 meeting required by this section must be mailed to all property owners
8 of record within the subarea to be studied, to all property owners
9 within one hundred fifty feet of the boundaries of such a subarea, to
10 all affected federally recognized tribal governments whose ceded area
11 is within one-half mile of the boundaries of the subarea, and to
12 agencies with jurisdiction over the future development anticipated
13 within the subarea.

14 (c) In cities with over five hundred thousand residents, notice of
15 scoping for such a nonproject environmental impact statement and notice
16 of the community meeting required by this section must be mailed to all
17 small businesses as defined in RCW 19.85.020, and to all community
18 preservation and development authorities established under chapter
19 43.167 RCW, located within the subarea to be studied or within one
20 hundred fifty feet of the boundaries of such subarea. The process for
21 community involvement must have the goal of fair treatment and
22 meaningful involvement of all people with respect to the development
23 and implementation of the subarea planning process.

24 (d) The notice of the community meeting must include general
25 illustrations and descriptions of buildings generally representative of
26 the maximum building envelope that will be allowed under the proposed
27 plan and indicate that future appeals of proposed developments that are
28 consistent with the plan will be limited. Notice of the community
29 meeting must include signs located on major travel routes in the
30 subarea. If the building envelope increases during the process,
31 another notice complying with the requirements of this section must be
32 issued before the next public involvement opportunity.

33 (e) Any person that has standing to appeal the adoption of this
34 subarea plan or the implementing regulations under RCW 36.70A.280 has
35 standing to bring an appeal of the nonproject environmental impact
36 statement required by this subsection.

37 (f) Cities with over five hundred thousand residents shall prepare
38 a study that accompanies or is appended to the nonproject environmental

1 impact statement, but must not be part of that statement, that analyzes
2 the extent to which the proposed subarea plan may result in the
3 displacement or fragmentation of existing businesses, existing
4 residents, including people living with poverty, families with
5 children, and intergenerational households, or cultural groups within
6 the proposed subarea plan. The city shall also discuss the results of
7 the analysis at the community meeting.

8 (g) As an incentive for development authorized under this section,
9 a city shall consider establishing a transfer of development rights
10 program in consultation with the county where the city is located, that
11 conserves county-designated agricultural and forest land of long-term
12 commercial significance. If the city decides not to establish a
13 transfer of development rights program, the city must state in the
14 record the reasons for not adopting the program. The city's decision
15 not to establish a transfer of development rights program is not
16 subject to appeal. Nothing in this subsection (4)(g) may be used as a
17 basis to challenge the optional comprehensive plan or subarea plan
18 policies authorized under this section.

19 (5)(a) Until July 1, 2018, a proposed development that is
20 consistent with the optional comprehensive plan or subarea plan
21 policies and development regulations adopted under subsection (1) or
22 (2) of this section and that is environmentally reviewed under
23 subsection (4) of this section may not be challenged in administrative
24 or judicial appeals for noncompliance with this chapter as long as a
25 complete application for such a development that vests the application
26 or would later lead to vested status under city or state law is
27 submitted to the city within a time frame established by the city, but
28 not to exceed ten years from the date of issuance of the final
29 environmental impact statement.

30 (b) After July 1, 2018, the immunity from appeals under this
31 chapter of any application that vests or will vest under this
32 subsection or the ability to vest under this subsection is still valid,
33 provided that the final subarea environmental impact statement is
34 issued by July 1, 2018. (~~After July 1, 2018, a city may continue to~~
35 ~~collect reimbursement fees under subsection (6) of this section for the~~
36 ~~proportionate share of a subarea environmental impact statement issued~~
37 ~~prior to July 1, 2018.~~)

1 (6) (~~It is recognized that a city that prepares a nonproject~~
2 ~~environmental impact statement under subsection (4) of this section~~
3 ~~must endure a substantial financial burden. A city may recover its~~
4 ~~reasonable expenses of preparation of a nonproject environmental impact~~
5 ~~statement prepared under subsection (4) of this section through access~~
6 ~~to financial assistance under RCW 36.70A.490 or funding from private~~
7 ~~sources. In addition, a city is authorized to recover a portion of its~~
8 ~~reasonable expenses of preparation of such a nonproject environmental~~
9 ~~impact statement by the assessment of reasonable and proportionate fees~~
10 ~~upon subsequent development that is consistent with the plan and~~
11 ~~development regulations adopted under subsection (5) of this section,~~
12 ~~as long as the development makes use of and benefits [from], as~~
13 ~~described in subsection (5) of this section, from the nonproject~~
14 ~~environmental impact statement prepared by the city. Any assessment~~
15 ~~fees collected from subsequent development may be used to reimburse~~
16 ~~funding received from private sources. In order to collect such fees,~~
17 ~~the city must enact an ordinance that sets forth objective standards~~
18 ~~for determining how the fees to be imposed upon each development will~~
19 ~~be proportionate to the impacts of each development and to the benefits~~
20 ~~accruing to each development from the nonproject environmental impact~~
21 ~~statement. Any disagreement about the reasonableness or amount of the~~
22 ~~fees imposed upon a development may not be the basis for delay in~~
23 ~~issuance of a project permit for that development. The fee assessed by~~
24 ~~the city may be paid with the written stipulation "paid under protest"~~
25 ~~and if the city provides for an administrative appeal of its decision~~
26 ~~on the project for which the fees are imposed, any dispute about the~~
27 ~~amount of the fees must be resolved in the same administrative appeal~~
28 ~~process.~~

29 (7)) If a proposed development is inconsistent with the optional
30 comprehensive plan or subarea plan policies and development regulations
31 adopted under subsection (1) of this section, the city shall require
32 additional environmental review in accordance with this chapter.

33 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.21C RCW
34 to read as follows:

35 (1)(a) Except as otherwise provided in this subsection (1), the
36 proposed actions contained in subsections (2) and (3) of this section
37 are categorically exempt from the requirements of this chapter. If a

1 proposed action is located in more than one county, city, or town, the
2 lower of the agencies' adopted categorical exemption levels controls,
3 regardless of which agency is the lead agency.

4 (b) An ordinance or resolution may be adopted by a city, county, or
5 town to establish lower exemption levels for specific geographic areas
6 within the city, county, or town and remove the otherwise exempt
7 proposed actions identified in subsections (2) and (3) of this section
8 from being considered exempt.

9 (2) Except as provided in subsection (1)(b) of this section, the
10 following actions are categorically exempt from the requirements of
11 this chapter if the proposed action is located within an urban growth
12 area designated pursuant to RCW 36.70A.110. The following are
13 nonproject actions:

14 (a) Amendments to development regulations that are required to
15 ensure consistency with an adopted comprehensive plan pursuant to RCW
16 36.70A.040, where the comprehensive plan was previously subjected to
17 environmental review pursuant to this chapter;

18 (b) Amendments to development regulations that are required to
19 ensure consistency with a shoreline master program approved pursuant to
20 RCW 90.58.090, where the shoreline master program was previously
21 subjected to environmental review pursuant to this chapter;

22 (c) Amendments to development regulations that, upon implementation
23 of a project action, will provide increased environmental protection,
24 limited to the following:

25 (i) Increased protections for critical areas, such as enhanced
26 buffers or setbacks;

27 (ii) Increased vegetation retention or decreased impervious surface
28 areas in shoreline jurisdiction; and

29 (iii) Increased vegetation retention or decreased impervious
30 surface areas in critical areas;

31 (d) Amendments to technical codes adopted by a county, city, or
32 town to ensure consistency with minimum standards contained in state
33 law, including the following:

34 (i) Building codes required by chapter 19.27 RCW;

35 (ii) Energy codes required by chapter 19.27A RCW; and

36 (iii) Electrical codes required by chapter 19.28 RCW.

37 (3) Except as provided in subsection (1)(b) of this section, the
38 following types of construction are categorically exempt from the

1 requirements of this chapter if the proposed action is located outside
2 an urban growth area designated pursuant to RCW 36.70A.110. The
3 following are nonproject actions:

4 (a) Amendments to development regulations that are required to
5 ensure consistency with an adopted comprehensive plan pursuant to RCW
6 36.70A.040, where the comprehensive plan was previously subjected to
7 environmental review pursuant to this chapter;

8 (b) Amendments to development regulations that are required to
9 ensure consistency with a shoreline master program approved pursuant to
10 RCW 90.58.090, where the shoreline master program was previously
11 subjected to environmental review pursuant to this chapter;

12 (c) Amendments to development regulations that, upon implementation
13 of a project action, will provide increased environmental protection,
14 limited to the following:

15 (i) Increased protections for critical areas such as enhanced
16 buffers or setbacks;

17 (ii) Increased vegetation retention or decreased impervious surface
18 areas in shoreline jurisdiction; and

19 (iii) Increased vegetation retention or decreased impervious
20 surface areas in critical areas;

21 (d) Amendments to technical codes adopted by a county, city, or
22 town to ensure consistency with minimum standards contained in state
23 law, including the following:

24 (i) Building codes required by chapter 19.27 RCW;

25 (ii) Energy codes required by chapter 19.27A RCW; and

26 (iii) Electrical codes required by chapter 19.28 RCW.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.21C
28 RCW to read as follows:

29 (1) The lead agency for an environmental review under this chapter
30 utilizing an environmental checklist developed by the department of
31 ecology pursuant to RCW 43.21C.110 may satisfy the requirements of the
32 checklist by identifying instances where questions on the checklist are
33 adequately covered by a locally adopted ordinance, development
34 regulation, land use plan, or other legal authority.

35 (2) In instances where the locally adopted ordinance, development
36 regulation, land use plan, or other legal authority provide the

1 necessary information to answer a specific question, the lead agency
2 must explain how the proposed project satisfies the underlying local
3 legal authority.

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

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

10 (5) Nothing in this section affects the appeal provisions provided
11 in this chapter.

12 **Sec. 11.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to
13 read as follows:

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

23 **Sec. 12.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to
24 read as follows:

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

35 (2) A grant or loan may be awarded to a county or city that is
36 required to or has chosen to plan under RCW 36.70A.040 and that is

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

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

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

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

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

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

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

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

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

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

37 (4) In awarding grants or loans, the department shall give

1 preference to proposals that include one or more of the following
2 elements:

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

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

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

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

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

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

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

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

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

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

33 NEW SECTION. Sec. 13. A new section is added to chapter 82.02 RCW
34 to read as follows:

35 (1) The legislature finds that:

36 (a) Detailed environmental analysis integrated with comprehensive
37 plans, subarea plans, and development regulations will facilitate

1 planning for and managing growth, allow greater protection of the
2 environment, and benefit both the general public and private property
3 owners;

4 (b) Compact development in urban growth areas, or transfer of
5 development rights programs, will assist in the conservation of rural,
6 agricultural, and forest land by redirecting growth from this land to
7 areas designated for compact development or receiving areas in cities
8 and towns where growth should occur;

9 (c) Cities and towns planning for increased growth in receiving
10 areas under chapter 43.362 RCW must comply with chapter 43.21C RCW;

11 (d) Planning for compact or increased growth in urban growth areas,
12 or receiving areas under chapter 43.362 RCW in compliance with chapter
13 43.21C RCW, presents a financial burden on cities and towns;

14 (e) Planning for compact or increased growth in urban growth areas,
15 or receiving areas under chapter 43.362 RCW in compliance with chapter
16 43.21C RCW, should be encouraged to ensure that the quality of life in
17 receiving neighborhoods and the protection of environmental values over
18 time are maintained by providing financial assistance through the
19 growth management planning and environmental review fund created in RCW
20 36.70A.490;

21 (f) Access to financial assistance through the growth management
22 planning and environmental review fund created in RCW 36.70A.490 may be
23 increased by allowing the fund to become a revolving loan program
24 rather than only a grant program; and

25 (g) Counties, cities, and towns will have the ability to repay
26 loans from the growth management planning and environmental review fund
27 created in RCW 36.70A.490, or recoup their own costs associated with
28 environmental review conducted at a comprehensive plan or subarea plan
29 level, with fees they collect from developers who will benefit from the
30 environmental review that the city or county has already conducted
31 under chapter 43.21C RCW on a comprehensive plan or subarea plan, or in
32 conjunction with the designation of a receiving area under chapter
33 43.362 RCW, and that addresses the impacts of compact development or
34 projects using transferable development rights.

35 (2) Counties, cities, and towns that conduct detailed environmental
36 review under chapter 43.21C RCW, integrated with a comprehensive plan
37 or subarea plan within urban growth areas, are authorized to impose

1 environmental fees on development activity as part of the financing for
2 environmental review conducted under chapter 43.21C RCW on a
3 comprehensive plan or subarea plan.

4 (3) The environmental fees:

5 (a) May only be imposed for environmental review costs that have
6 been identified as reasonably related to the new development;

7 (b) May not exceed the proportionate share of the costs of
8 environmental review conducted for a comprehensive plan or subarea
9 plan; and

10 (c) May, if applicable, be used to repay a loan from the growth
11 management planning and environmental review fund created in RCW
12 36.70A.490.

13 **Sec. 14.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read
14 as follows:

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

32 This section does not prohibit voluntary agreements with counties,
33 cities, towns, or other municipal corporations that allow a payment in
34 lieu of a dedication of land or to mitigate a direct impact that has
35 been identified as a consequence of a proposed development,
36 subdivision, or plat. A local government shall not use such voluntary
37 agreements for local off-site transportation improvements within the

1 geographic boundaries of the area or areas covered by an adopted
2 transportation program authorized by chapter 39.92 RCW. Any such
3 voluntary agreement is subject to the following provisions:

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

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

9 (3) Any payment not so expended shall be refunded with interest to
10 be calculated from the original date the deposit was received by the
11 county and at the same rate applied to tax refunds pursuant to RCW
12 84.69.100; however, if the payment is not expended within five years
13 due to delay attributable to the developer, the payment shall be
14 refunded without interest.

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

20 Nothing in this section prohibits cities, towns, counties, or other
21 municipal corporations from collecting reasonable fees from an
22 applicant for a permit or other governmental approval to cover the cost
23 to the city, town, county, or other municipal corporation of processing
24 applications, inspecting and reviewing plans, or preparing detailed
25 statements required by chapter 43.21C RCW, including reasonable fees
26 that are consistent with ((RCW 43.21C.420(6))) section 7 of this act.

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

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

1 Nothing in this section prohibits a transportation benefit district
2 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
3 the legislative authority of a county, city, or town from approving the
4 imposition of such fees within a transportation benefit district.

5 Nothing in this section prohibits counties, cities, or towns from
6 imposing transportation impact fees authorized pursuant to chapter
7 39.92 RCW.

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

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

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

17 **Sec. 15.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to
18 read as follows:

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

20 (1) To adopt and amend (~~((thereafter))~~) rules of interpretation and
21 implementation of this chapter, subject to the requirements of chapter
22 34.05 RCW, for the purpose of providing uniform rules and guidelines to
23 all branches of government including state agencies, political
24 subdivisions, public and municipal corporations, and counties. The
25 proposed rules shall be subject to full public hearings requirements
26 associated with rule (~~((promulgation))~~) adoption. Suggestions for
27 modifications of the proposed rules shall be considered on their
28 merits, and the department shall have the authority and responsibility
29 for full and appropriate independent (~~((promulgation and))~~) adoption of
30 rules, assuring consistency with this chapter as amended and with the
31 preservation of protections afforded by this chapter. The rule-making
32 powers authorized in this section shall include, but shall not be
33 limited to, the following phases of interpretation and implementation
34 of this chapter:

35 (a) Categories of governmental actions which are not to be
36 considered as potential major actions significantly affecting the
37 quality of the environment, including categories pertaining to

1 applications for water right permits pursuant to chapters 90.03 and
2 90.44 RCW. The types of actions included as categorical exemptions in
3 the rules shall be limited to those types which are not major actions
4 significantly affecting the quality of the environment. The rules
5 shall provide for certain circumstances where actions which potentially
6 are categorically exempt require environmental review. An action that
7 is categorically exempt under the rules adopted by the department may
8 not be conditioned or denied under this chapter.

9 (b) Rules for criteria and procedures applicable to the
10 determination of when an act of a branch of government is a major
11 action significantly affecting the quality of the environment for which
12 a detailed statement is required to be prepared pursuant to RCW
13 43.21C.030.

14 (c) Rules and procedures applicable to the preparation of detailed
15 statements and other environmental documents, including but not limited
16 to rules for timing of environmental review, obtaining comments, data
17 and other information, and providing for and determining areas of
18 public participation which shall include the scope and review of draft
19 environmental impact statements.

20 (d) Scope of coverage and contents of detailed statements assuring
21 that such statements are simple, uniform, and as short as practicable;
22 statements are required to analyze only reasonable alternatives and
23 probable adverse environmental impacts which are significant, and may
24 analyze beneficial impacts.

25 (e) Rules and procedures for public notification of actions taken
26 and documents prepared.

27 (f) Definition of terms relevant to the implementation of this
28 chapter including the establishment of a list of elements of the
29 environment. Analysis of environmental considerations under RCW
30 43.21C.030(2) may be required only for those subjects listed as
31 elements of the environment (or portions thereof). The list of
32 elements of the environment shall consist of the "natural" and "built"
33 environment. The elements of the built environment shall consist of
34 public services and utilities (such as water, sewer, schools, fire and
35 police protection), transportation, environmental health (such as
36 explosive materials and toxic waste), and land and shoreline use
37 (including housing, and a description of the relationships with land
38 use and shoreline plans and designations, including population).

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

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

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

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

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

15 (l) Rules relating to the use of environmental documents in
16 planning and decision making and the implementation of the substantive
17 policies and requirements of this chapter, including procedures for
18 appeals under this chapter.

19 (m) Rules and procedures that provide for the integration of
20 environmental review with project review as provided in RCW 43.21C.240.
21 The rules and procedures shall be jointly developed with the department
22 of (~~community, trade, and economic development~~) commerce and shall be
23 applicable to the preparation of environmental documents for actions in
24 counties, cities, and towns planning under RCW 36.70A.040. The rules
25 and procedures shall also include procedures and criteria to analyze
26 planned actions under (~~RCW 43.21C.031(2)~~) section 4 of this act and
27 revisions to the rules adopted under this section to ensure that they
28 are compatible with the requirements and authorizations of chapter 347,
29 Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or
30 procedures adopted by a county, city, or town to implement the
31 provisions of chapter 347, Laws of 1995 prior to the effective date of
32 rules adopted under this subsection (1)(m) shall continue to be
33 effective until the adoption of any new or revised ordinances or
34 procedures that may be required. If any revisions are required as a
35 result of rules adopted under this subsection (1)(m), those revisions
36 shall be made within the time limits specified in RCW 43.21C.120.

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

1 (a) Consult with the state agencies and with representatives of
2 science, industry, agriculture, labor, conservation organizations,
3 state and local governments, and other groups, as it deems advisable;
4 and

5 (b) Utilize, to the fullest extent possible, the services,
6 facilities, and information (including statistical information) of
7 public and private agencies, organizations, and individuals, in order
8 to avoid duplication of effort and expense, overlap, or conflict with
9 similar activities authorized by law and performed by established
10 agencies.

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

13 **Sec. 16.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to
14 read as follows:

15 The rules (~~promulgated~~) adopted under RCW 43.21C.110 and section
16 1 of this act shall be accorded substantial deference in the
17 interpretation of this chapter.

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