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**SECOND SUBSTITUTE HOUSE BILL 2253**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** House General Government Appropriations & Oversight (originally sponsored by Representatives Fitzgibbon, Billig, and Jenkins)

READ FIRST TIME 02/06/12.

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 and create a categorical exemption for  
9 projects designed to restore natural wildlife or fishery habitats or  
10 serve as environmental mitigation for other projects. During this  
11 process, the department of ecology may also review and update the  
12 thresholds resulting from the 2012 rule-making process outlined in  
13 subsection (2) of this section.

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

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

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

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

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

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

1 statement under this chapter. (~~In a county, city, or town planning~~  
2 ~~under RCW 36.70A.040, a planned action, as provided for in subsection~~  
3 ~~(2) of this section, does not require a threshold determination or the~~  
4 ~~preparation of an environmental impact statement under this chapter,~~  
5 ~~but is subject to environmental review and mitigation as provided in~~  
6 ~~this chapter.~~)

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

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

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

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

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

31 ~~(iv) Are located within an urban growth area, as defined in RCW~~  
32 ~~36.70A.030;~~

33 ~~(v) Are not essential public facilities, as defined in RCW~~  
34 ~~36.70A.200; and~~

35 ~~(vi) Are consistent with a comprehensive plan adopted under chapter~~  
36 ~~36.70A RCW.~~

37 ~~(b) A county, city, or town shall limit planned actions to certain~~  
38 ~~types of development or to specific geographical areas that are less~~

1 ~~extensive than the jurisdictional boundaries of the county, city, or~~  
2 ~~town and may limit a planned action to a time period identified in the~~  
3 ~~environmental impact statement or the ordinance or resolution adopted~~  
4 ~~under this subsection.))~~

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

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

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

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

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

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

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

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

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

34 (e) Are not essential public facilities, as defined in RCW  
35 36.70A.200, unless an essential public facility is accessory to or part

1 of a residential, office, school, commercial, recreational, service, or  
2 industrial development that is designated a planned action under this  
3 subsection; and

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

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

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

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

12 (3)(a) A county, city, or town shall determine during permit review  
13 whether a proposal is consistent with a planned action ordinance  
14 adopted by the jurisdiction. To determine project consistency with a  
15 planned action ordinance, a county, city, or town may utilize a  
16 modified checklist pursuant to the rules adopted to implement RCW  
17 43.21C.110, a form that is designated within the planned action  
18 ordinance, or a form contained in agency rules adopted pursuant to RCW  
19 43.21C.120.

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

29 (4) For a planned action that encompasses the entire jurisdictional  
30 boundary of a county, city, or town, at least one community meeting  
31 must be held before the scoping notice for such a planned action is  
32 issued. Notice of scoping for such a planned action and notice of the  
33 community meeting required by this subsection must be mailed to:

34 (a) All property owners of record within the county, city, or town;

35 (b) All affected federally recognized tribal governments whose  
36 ceded area is within one-half mile of the jurisdictional boundaries of  
37 the county, city, or town, and to agencies with jurisdiction over the  
38 future development anticipated for the planned action.

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

3       (1) In order to accommodate infill development and thereby realize  
4 the goals and policies of comprehensive plans adopted according to  
5 chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is  
6 authorized by this section to establish categorical exemptions from the  
7 requirements of this chapter. An exemption adopted under this section  
8 applies even if it differs from the categorical exemptions adopted by  
9 rule of the department under RCW 43.21C.110(1)(a) and section 1 of this  
10 act. An exemption may be adopted by a city or county under this  
11 section if it meets the following criteria:

12       (a) It categorically exempts government action related to  
13 development (~~((that is new residential or mixed use development))~~)  
14 proposed to fill in an urban growth area, designated according to RCW  
15 36.70A.110, where current density and intensity of use in the area is  
16 lower than called for in the goals and policies of the applicable  
17 comprehensive plan and the development is either new:

18       (i) Residential development; or

19       (ii) Mixed-use development;

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

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

28       (ii) The city has prepared an environmental impact statement for  
29 the area where the exemption created by this section applies if the  
30 underlying environmental impact statement considered the proposed use  
31 or intensity of use.

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

1           NEW SECTION.   **Sec. 6.** A new section is added to chapter 43.21C RCW  
2 to read as follows:

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

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

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

11           (b) With funding from private sources; and

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

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

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

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

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

33           **Sec. 7.** RCW 43.21C.420 and 2010 c 153 s 2 are each amended to read  
34 as follows:

35           (1) Cities with a population greater than five thousand, in  
36 accordance with their existing comprehensive planning and development  
37 regulation authority under chapter 36.70A RCW, and in accordance with

1 this section, may adopt optional elements of their comprehensive plans  
2 and optional development regulations that apply within specified  
3 subareas of the cities, that are either:

4 (a) Areas designated as mixed-use or urban centers in a land use or  
5 transportation plan adopted by a regional transportation planning  
6 organization; or

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

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

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

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

23 (b) Commuter rail stops;

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

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

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

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

37 (b) At least one community meeting must be held on the proposed  
38 subarea plan before the scoping notice for such a nonproject

1 environmental impact statement is issued. Notice of scoping for such  
2 a nonproject environmental impact statement and notice of the community  
3 meeting required by this section must be mailed to all property owners  
4 of record within the subarea to be studied, to all property owners  
5 within one hundred fifty feet of the boundaries of such a subarea, to  
6 all affected federally recognized tribal governments whose ceded area  
7 is within one-half mile of the boundaries of the subarea, and to  
8 agencies with jurisdiction over the future development or its impacts  
9 anticipated within the subarea.

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

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

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

33 (f) Cities with over five hundred thousand residents shall prepare  
34 a study that accompanies or is appended to the nonproject environmental  
35 impact statement, but must not be part of that statement, that analyzes  
36 the extent to which the proposed subarea plan may result in the  
37 displacement or fragmentation of existing businesses, existing  
38 residents, including people living with poverty, families with

1 children, and intergenerational households, or cultural groups within  
2 the proposed subarea plan. The city shall also discuss the results of  
3 the analysis at the community meeting.

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

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

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

34 (~~It is recognized that a city that prepares a nonproject~~  
35 ~~environmental impact statement under subsection (4) of this section~~  
36 ~~must endure a substantial financial burden. A city may recover its~~  
37 ~~reasonable expenses of preparation of a nonproject environmental impact~~  
38 ~~statement prepared under subsection (4) of this section through access~~

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

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

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

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

32 (1) Amendments to development regulations that are required to  
33 ensure consistency with an adopted comprehensive plan pursuant to RCW  
34 36.70A.040, where the comprehensive plan was previously subjected to  
35 environmental review pursuant to this chapter;

36 (2) Amendments to development regulations that are required to

1 ensure consistency with a shoreline master program approved pursuant to  
2 RCW 90.58.090, where the shoreline master program was previously  
3 subjected to environmental review pursuant to this chapter;

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

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

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

11 (c) Increased vegetation retention or decreased impervious surface  
12 areas in critical areas;

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

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

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

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

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

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

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

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

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

1 (5) Nothing in this section affects the appeal provisions provided  
2 in this chapter.

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

8 **Sec. 10.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to  
9 read as follows:

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

19 **Sec. 11.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to  
20 read as follows:

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

31 (2) A grant or loan may be awarded to a county or city that is  
32 required to or has chosen to plan under RCW 36.70A.040 and that is  
33 qualified pursuant to this section. The grant or loan shall be  
34 provided to assist a county or city in paying for the cost of preparing  
35 an environmental analysis under chapter 43.21C RCW, that is integrated

1 with a comprehensive plan, subarea plan, plan element, countywide  
2 planning policy, development regulation, monitoring program, or other  
3 planning activity adopted under or implementing this chapter that:

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

6 (b) Encourages use of plans and information developed for purposes  
7 of complying with this chapter to satisfy requirements of other state  
8 programs.

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

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

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

21 (c) Demonstrate that procedures for review of development permit  
22 applications will be based on the integrated plans and environmental  
23 analysis;

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

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

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

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

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

1 (b) Identification and monitoring of system capacities for elements  
2 of the built environment, and to the extent appropriate, of the natural  
3 environment;

4 (c) Coordination with state, federal, and tribal governments in  
5 project review;

6 (d) Furtherance of important state objectives related to economic  
7 development, protection of areas of statewide significance, and siting  
8 of essential public facilities;

9 (e) Programs to improve the efficiency and effectiveness of the  
10 permitting process by greater reliance on integrated plans and  
11 prospective environmental analysis;

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

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

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

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

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

29 NEW SECTION. Sec. 12. A new section is added to chapter 82.02 RCW  
30 to read as follows:

31 (1) The legislature finds that:

32 (a) Detailed environmental analysis integrated with comprehensive  
33 plans, subarea plans, and development regulations will facilitate  
34 planning for and managing growth, allow greater protection of the  
35 environment, and benefit both the general public and private property  
36 owners;

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

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

8 (d) Planning for compact or increased growth in urban growth areas,  
9 or receiving areas under chapter 43.362 RCW in compliance with chapter  
10 43.21C RCW, presents a financial burden on cities and towns;

11 (e) 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, should be encouraged to ensure that the quality of life in  
14 receiving neighborhoods and the protection of environmental values over  
15 time are maintained by providing financial assistance through the  
16 growth management planning and environmental review fund created in RCW  
17 36.70A.490;

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

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

32 (2) Counties, cities, and towns that conduct detailed environmental  
33 review under chapter 43.21C RCW, integrated with a comprehensive plan  
34 or subarea plan within urban growth areas, are authorized to impose  
35 environmental fees on development activity as part of the financing for  
36 environmental review conducted under chapter 43.21C RCW on a  
37 comprehensive plan or subarea plan.

38 (3) The environmental fees:

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

3 (b) May not exceed the proportionate share of the costs of  
4 environmental review conducted for a comprehensive plan or subarea  
5 plan; and

6 (c) May, if applicable, be used to repay a loan from the growth  
7 management planning and environmental review fund created in RCW  
8 36.70A.490.

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

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

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

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

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

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

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

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

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

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

36 Nothing in this section prohibits a transportation benefit district  
37 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits

1 the legislative authority of a county, city, or town from approving the  
2 imposition of such fees within a transportation benefit district.

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

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

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

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

15 **Sec. 14.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to  
16 read as follows:

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

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

33 (a) Categories of governmental actions which are not to be  
34 considered as potential major actions significantly affecting the  
35 quality of the environment, including categories pertaining to  
36 applications for water right permits pursuant to chapters 90.03 and  
37 90.44 RCW. The types of actions included as categorical exemptions in

1 the rules shall be limited to those types which are not major actions  
2 significantly affecting the quality of the environment. The rules  
3 shall provide for certain circumstances where actions which potentially  
4 are categorically exempt require environmental review. An action that  
5 is categorically exempt under the rules adopted by the department may  
6 not be conditioned or denied under this chapter.

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

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

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

23 (e) Rules and procedures for public notification of actions taken  
24 and documents prepared.

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

37 (g) Rules for determining the obligations and powers under this

1 chapter of two or more branches of government involved in the same  
2 project significantly affecting the quality of the environment.

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

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

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

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

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

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

36 (2) In exercising its powers, functions, and duties under this  
37 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. 15.** 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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