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No. 70796-5-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

WHATCOM COUNTY,

Appellant,

v.

ERIC HIRST, LAURA LEIGH BRAKKE, WENDY HARRIS, DAVID
STALHEIM, FUTURE WISE, AND WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

**APPELLANT / CROSS-RESPONDENT WHATCOM COUNTY'S
ANSWER TO AMICUS CURIAE BRIEF OF
THE CENTER FOR ENVIRONMENTAL LAW & POLICY**

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 ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT.....	3
A.	CEL P’s Interpretation of the GMA’s “Rural Character” Provisions Is Not Supported by Applicable Authority.	3
1.	CEL P’s interpretation is inconsistent with the cooperative approach described in <i>Kittitas County</i>	4
2.	CEL P’s interpretation is inconsistent with rules of statutory construction.	7
3.	CEL P’s interpretation is inconsistent with the legislative history of the “rural character” provisions.	9
B.	CEL P’s Collateral Attack on Ecology’s Interpretation of the Nooksack Rule Is Impermissible and Incorrect.	10
1.	CEL P’s collateral attack on Ecology’s interpretation of the Nooksack Rule is impermissible.	10
2.	CEL P’s interpretation of the Nooksack Rule is inconsistent with the Supreme Court’s other decisions addressing water law.	11
III.	CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<i>Dep't of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1, 43 P.3d 4 (2002)	8, 13
<i>Kittitas Cnty. et al. v. Eastern Washington Growth Management Hearings Board, et al.</i> , 172 Wn.2d 144, 256 P.3d 1193 (2011).....	passim
<i>Lewis v. Dep't of Licensing</i> , 157 Wn.2d 446, 139 P.3d 1078 (2006).....	8
<i>Port of Seattle v. Pollution Control Hearings Bd.</i> , 151 Wn. 2d 568, 90 P.3d 659 (2004)	13
<i>State v. Keller</i> , 143 Wn.2d 267, 19 P.3d 1030 (2001).....	8
<i>Swinomish Indian Tribal Community v. Ecology</i> , 178 Wn.2d 571, 311 P.3d 6 (2013)	12
<i>Thurston Cnty. v. W. Washington Growth Mgmt. Hearings Bd.</i> , 164 Wn. 2d 329, 190 P.3d 38 (2008).....	7
<i>Tobin v. Dep't of Labor & Indus.</i> , 145 Wn. App. 607, 187 P.3d 780 (2008), <i>aff'd</i> , 169 Wn. 2d 396, 239 P.3d 544 (2010).....	9

Statutes

RCW 19.27.097	4, 10
RCW 36.70A.280	11
RCW 43.21A.020	5
RCW 58.17.060	4
RCW 58.17.110	4
RCW 90.03.247	5
RCW 90.22.010	5
RCW 90.44.050	10, 13

RCW 90.54.020	5
RCW 90.54.040	5
Session Law	
E.S.B. 6094, Laws of 1997, ch. 429	9
Regulations	
WAC 365-196-700	5
WAC 365-196-735	5
WAC 365-196-745	4
WAC 365-196-825	4
Bills	
E.S.H.B. 2929, 51 st Leg., Reg. Sess. (Wash. 1990).....	10
Articles	
Jared B. Black, The Land Use Study Commission and the 1997 Amendments to Washington State's Growth Management Act, 22 Harv. Envtl. L. Rev. 559 (1998).....	9

I. INTRODUCTION

Whatcom County files this Answer to the Amicus Curiae Brief of the Center for Environmental Law & Policy (“CELP”). CELP’s arguments are without merit.

CELP’s entire argument, like that of the Hirst Petitioners, stems from the false premise that the County’s regulations do not require an evaluation of the legal availability of water. Contrary to that characterization, the question before this Court is not whether the County’s regulations evaluate the legal availability of water, but how the County evaluates legal availability. The County’s regulations, which are incorporated into the rural element of its comprehensive plan, work in concert with the Department of Ecology (“Ecology”) and rely on Ecology’s interpretation and implementation of the relevant instream flow rule. This cooperative approach is entirely consistent with the Supreme Court’s decision in *Kittitas County* because the County’s regulations ensure that the County exercises its land use authority in a manner that is consistent with Ecology’s interpretation and implementation of the Water Code.¹

By contrast, CELP (like the Hirst Petitioners) advocates a novel interpretation of the Growth Management Act (“GMA”) that would require the County to interpret and implement the Water Code in a manner

¹ We use the term “Water Code” to refer to the various statutes governing water resources, including the surface water code, Chapter 90.03 RCW, the groundwater code, Chapter 90.44 RCW, the Water Resources Act, Chapter 90.54 RCW, and statutes governing water rights registration and relinquishment, Chapter 90.14 RCW.

that is independent of and inconsistent with that of Ecology. CELP and the Hirst Petitioners' approach would shift the primary responsibility for managing water resources from Ecology, the agency with primary authority over water resource management, to local governments throughout the state. CELP, like the Hirst Petitioners in their reply brief, argues that the GMA's "rural character" provisions were intended to drastically transform the state's approach to water resource management by requiring local governments to make independent decisions regarding the legal availability of water for subdivision, short plat, and building permit proposals – and to override Ecology's water availability decisions in cases of disagreement. If adopted, CELP's interpretation would create uncertainty in water resource management, with conflicting interpretations at the state and local levels and no mechanism for resolving such conflicts other than case-by-case litigation.

The Court should reject CELP's interpretation of the GMA's rural character provisions. As explained below, CELP's interpretation is inconsistent with all applicable authorities cited by the parties, including: the Supreme Court's *Kittitas County* decision, which described the need to exercise land use authority in manner that is cooperative with Ecology's water resource management; fundamental rules of statutory construction; and the legislative history surrounding the "rural character" provisions.

Fundamentally, CELP contests Ecology's interpretation of the Nooksack Rule. At times, CELP's brief reads like a response to Ecology's Amicus Brief in this case. Indeed, while CELP makes several conclusory

statements about the County's regulations that are incorporated into its rural element, CELP's brief does not include any meaningful discussion of or even citation to the regulations themselves. CELP's dispute with Ecology's interpretation of the Water Code is not properly before this Court. The question before this Court is whether the County's cooperative approach complies with the GMA. Neither CELP nor the Hirst Petitioners should be allowed to use the GMA and the County's rural element to seek a precedential interpretation of the Water Code that is different from Ecology's. Indeed, CELP's focus on Ecology and its interpretation of the Water Code underscores the reason why the County should be allowed to rely on Ecology and work in concert with Ecology's legal interpretations. In any event, as explained below and in Ecology's amicus brief, CELP's interpretation of the Nooksack Rule is simply incorrect. It is inconsistent with Ecology's longstanding interpretations and decisions and with Supreme Court decisions addressing fundamental water law principles.

II. ARGUMENT

A. CELP's Interpretation of the GMA's "Rural Character" Provisions Is Not Supported by Applicable Authority.

The key GMA provision at issue in this case is in RCW 36.70A.070(5)(c)(iv), which requires the County to adopt "measures that apply to rural development and protect the rural character of the area, as established by the county, by . . . [p]rotecting . . . surface water and ground water resources." CELP interprets this language, when read together with the GMA's water availability requirements for subdivisions, short plats,

and building permits,² as requiring local governments to independently interpret the Water Code even if that interpretation is inconsistent with Ecology’s determinations. That interpretation is not supported by controlling case law, well-established rules of statutory construction, or the GMA’s legislative history.

1. CELP’s interpretation is inconsistent with the cooperative approach described in *Kittitas County*.

As explained in the County’s briefing, *Kittitas County* requires counties to adopt rural measures that are cooperative and consistent with Ecology’s water resource management decisions.³ *Kittitas County* affirmed that “Ecology is the primary administrator of chapter 90.44 RCW” and that “Ecology maintains its role, as provided by statute, and ought to assist counties in their land use planning to adequately protect water resources.”⁴ The Supreme Court held that local governments have some authority to regulate water resources, but emphasized that Chapter 90.44 RCW allows only “consistent local regulation” – that is, local land use regulation that is consistent with Ecology’s management of water resources.⁵

² RCW 19.27.097; RCW 58.17.060; RCW 58.17.110; WAC 365-196-745(1)(a), (l), (m).

³ See Brief of Appellant Whatcom County at 14-16 (citing *Kittitas Cnty. et al. v. Eastern Washington Growth Management Hearings Board, et al.*, 172 Wn.2d 144, 175-81, 256 P.3d 1193 (2011)).

⁴ *Kittitas Cnty.*, 172 Wn.2d at 180.

⁵ *Id.*, 172 Wn.2d at 178 (“Nothing in the text of chapter 90.44 RCW expressly preempts consistent local regulation.”). As noted in the Brief of Amici Curiae Washington Realtors® *et al.*, the cooperative approach described in *Kittitas County* harmonizes with GMA regulations promulgated by the Washington Department of Commerce, which state that local planning actions related to potable water “should be consistent with” Ecology’s water resource rules. See Realtors® *et al.* Brief at 17-19 (citing WAC 365-196-825(3);

Ignoring this language in *Kittitas County*, CELP suggests that *Kittitas County* should be interpreted to mean that local governments are directly and independently responsible for interpreting the Water Code and other water resource regulations when making water availability determinations, even if the local government’s legal interpretation of the Water Code is ultimately inconsistent with that of Ecology.⁶ Nothing in *Kittitas County* supports this proposition. *Kittitas County* held that local governments “must regulate to some extent to assure that land use is not inconsistent with available water resources,” but it did not hold that local governments must regulate to the maximum possible extent, even beyond the limits of the County’s authority and in a manner inconsistent with Ecology.⁷ Indeed, as confirmed in *Kittitas County*, the “extent” of the County’s ability to regulate is limited by Ecology’s authority under Chapter 90.44 and other laws.⁸

As discussed in the Brief of Amici Curiae Washington Realtors® *et al.*,⁹ CELP’s interpretation is contrary to multiple provisions of

WAC 365-196-700(1); WAC 365-196-735).

⁶ See Amicus Curiae Brief of CELP at 12 (asserting that Chapter 90.44 RCW “is not directed solely to the Department of Ecology”) and that “local government administration of GMA water adequacy requirements must be consistent with” RCW 90.54.020(9); see *id.* at 8 (“The purposes of the Nooksack rule help define the scope of Whatcom County’s duties to protect water resources under the GMA.”).

⁷ *Kittitas Cnty.*, 172 Wn.2d at 178

⁸ *Id.*

⁹ See Realtors® *et al.* Brief at 3-6 (citing RCW 90.22.010; RCW 90.54.040; RCW 43.21A.020; RCW 90.03.247).

Washington's Water Code, which grant Ecology exclusive authority over water allocation and management actions, including the adoption of instream flows rules. In particular, RCW 90.03.247 expressly provides as follows:

No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW 77.55.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section.

Contrary to this clear provision, CELP's position would require Whatcom County and other local governments to independently evaluate Ecology's instream flow rules and to establish *de facto* instream flow restrictions in cases of disagreement with Ecology. CELP, like the Petitioners, confuses the question of whether the County is responsible for adopting measures to protect water resources (which the County does not dispute) with the question of how the County must fulfill that obligation.¹⁰ Contrary to CELP's suggestion, the mere fact that the GMA requires local governments to protect rural character by including measures to protect water resources does not mean that the Legislature intended to authorize local governments to step into Ecology's shoes in order to fulfill that

¹⁰ See Amicus Curiae Brief of CELP at 5, 7, 12.

GMA obligation. In fact, *Kittitas County* clarified that the County may not exercise Ecology’s exclusive authority, and must instead adopt an approach that is “consistent” with Ecology’s approach.

In short, *Kittitas County* confirmed that the GMA requires local land use regulation that is “consistent” with Ecology’s management of water resources. The GMA does not require independent local regulation of water resources that contradicts Ecology’s interpretation and implementation of the Water Code. Indeed, the independent and contradictory approach to local regulation sought by CELP and the Hirst Petitioners is prohibited by the Water Code. CELP’s desired result is unsupported by *Kittitas County*.

2. CELP’s interpretation is inconsistent with rules of statutory construction.

CELP’s interpretation of the GMA is inconsistent with several specific and general rules of statutory construction. First, CELP’s interpretation would violate the rule that “the GMA ‘is not to be liberally construed.’”¹¹ The Supreme Court has explained that this rule is appropriate because the GMA “was spawned by controversy, not consensus.”¹² As discussed in Section II.A.1 above, CELP’s reading of the GMA is clearly a liberal one, and one that disregards the readily apparent lack of consensus surrounding the “rural character” provisions at issue in this case (which is evidenced by the Governor decision to veto the

¹¹ *Kittitas Cnty.*, 172 Wn.2d at 155 (citing *Thurston Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 164 Wn. 2d 329, 342, 190 P.3d 38, 44 (2008)).

¹² *Thurston County*, 164 Wn.2d at 342.

statement of intent regarding the rural element passed by the Legislature). CELP's interpretation also fails to harmonize related provisions of the GMA, the Water Code, and other related authorities.¹³ Its interpretation gives no consideration to sequential drafts of the GMA or other legislative history surrounding the "rural character" provisions.¹⁴ Finally, CELP's interpretation would lead to absurd results, including the creation of unnecessary conflict and duplication between Ecology's authority to adopt and administer instream flow rules for particular basins and the obligations of local governments to protect water availability during subdivision, short plat, and building permit processes.¹⁵ It would unreasonably burden local planning department staff members who lack the resources and expertise to make independent interpretations of the complex web of laws, regulations, and court decisions that govern water resources. It would expose local governments to potential liability for making decisions that are inconsistent with Ecology's regulations and interpretations.¹⁶ The Legislature did not intend such absurd results when it adopted the GMA's "rural character" provisions.

¹³ *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 43 P.3d 4 (2002) (plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question"). See Sections II.A.2, *supra*, II.B.2, *infra*.

¹⁴ *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 470, 139 P.3d 1078 (2006). See Section II.A.1, *supra*.

¹⁵ *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030, 1036 (2001).

¹⁶ See Brief of Appellant Whatcom County at 24-25.

3. CELP's interpretation is inconsistent with the legislative history of the "rural character" provisions.

The GMA's "rural character" provisions were adopted in 1997 as part of a larger package of GMA amendments. *See* E.S.B. 6094, Laws of 1997, ch. 429, attached as **Appendix A**.¹⁷ The majority of E.S.B. 6094's provisions affecting rural development originated from the Governor's Land Use Study Commission, which published its final report in January 1997.¹⁸

The central GMA provision at issue in this case is found in Section 7 of E.S.B. 6094, which added the requirement to adopt "Measures governing rural development."¹⁹ CELP suggests that this language requires local governments to independently interpret the Water Code in a manner contrary to Ecology. Nothing in the legislative history surrounding E.S.B. 6094, including the bill itself and the final report issued by the Governor's Land Use Study Commission, support this reading.²⁰

If the Legislature had intended the E.S.B. 6094's "rural character" provisions to result in the striking transformation of water resource

¹⁷ The Court may take judicial notice of such legislative materials. *Tobin v. Dep't of Labor & Indus.*, 145 Wn. App. 607, 616, 187 P.3d 780, 784 (2008), *aff'd*, 169 Wn. 2d 396, 239 P.3d 544 (2010).

¹⁸ *See* E.S.B. 6094.

¹⁹ *See id.*, Section 7.

²⁰ The Land Use Study Commission's final report is available at:

<http://www.commerce.wa.gov/Documents/GMS-Land-Use-Study-Commission-Report-1998.pdf>. *See also* Jared B. Black, The Land Use Study Commission and the 1997 Amendments to Washington State's Growth Management Act, 22 Harv. Envtl. L. Rev. 559 (1998).

management suggested by CELP, it would have done so expressly. As explained in the Brief of Amici Curiae Washington Realtors® *et al.*,²¹ the Legislature considered but ultimately declined to include language in the original GMA legislation that would have required Ecology to subject all new groundwater uses, including uses exempt under RCW 90.44.050, to a permit review process similar to the four-part test in RCW 90.03.290. *See* E.S.H.B. 2929, 51st Leg., Reg. Sess. (Wash. 1990).²² This result, which the Legislature rejected, is precisely what CELP seeks to find in E.S.B. 6094's "rural character" provisions, except that CELP's end goal is even more drastic: CELP wants to hold local governments responsible for such a review process, and to authorize (and sometimes require) local governments to override Ecology's water availability decisions. Nothing in the language of the GMA or its history supports such an interpretation.

B. CELP's Collateral Attack on Ecology's Interpretation of the Nooksack Rule Is Impermissible and Incorrect.

1. CELP's collateral attack on Ecology's interpretation of the Nooksack Rule is impermissible.

Like the Hirst Petitioners, CELP's critique of the County's rural element relies on a collateral attack on Ecology's interpretation of the Nooksack Rule. CELP's brief barely mentions the substance of Whatcom

²¹ *See* Brief of Amici Curiae Washington Realtors®, Building Industry Association of Washington, and Washington State Farm Bureau (the "Realtors® *et al.* Brief") at 16-17.

²² Notably, the original GMA legislation requiring local governments to evaluate evidence of potable water supply for building permits also included a provision authorizing Ecology to adopt rules to implement the provisions of that section. *See* RCW 19.27.097(3).

County's rural measures, focusing instead on Ecology's interpretation of the Nooksack Rule and related authorities.²³ CELP's attack on the merits of Ecology's interpretation of the Nookasck Rule is not properly before the Court in this GMA appeal. As explained in Section II.A above, Whatcom County has satisfied the GMA's "rural character" requirements by adopting regulations that require consistency with Ecology's approach. It is not the County's burden in this GMA proceeding to defend the Nooksack Rule or Ecology's interpretation of that rule, and the Court need not resolve CELP's collateral attack on Ecology's position.²⁴ Notwithstanding CELP's prediction that Ecology would not amend the Nooksack Rule if presented with a request,²⁵ CELP and the Hirst Petitioners have other potential avenues to seek relief from the rule, including rulemaking proceedings before Ecology and possibly other forums. The County is not obligated to assist CELP in selecting a forum for seeking relief from the Nooksack Rule, but in any event, this GMA appeal is not the appropriate forum.

2. CELP's interpretation of the Nooksack Rule is inconsistent with the Supreme Court's other decisions addressing water law.

Even if the merits of Ecology's interpretation of its rule were properly before this Court, CELP's interpretation of the Nooksack Rule is incorrect. CELP's reading of the rule is inconsistent with several other

²³ See Amicus Curiae Brief of CELP at 2-20.

²⁴ See RCW 36.70A.280. See also Brief of Appellant Whatcom County at 28-29.

²⁵ See Amicus Curiae Brief of CELP at 18-19.

Supreme Court decisions addressing fundamental water law principles. Contrary to CELP's "straw man" argument, the County and Ecology clearly do not believe they are "free to ignore" the Supreme Court's recent decisions.²⁶ Rather, the County and Ecology simply disagree with CELP's interpretations of Supreme Court precedent.

Most fundamentally, CELP's interpretation, which advocates for a uniform reading of all instream flow rules, ignores the holding in *Postema v. Pollution Control Hearings Bd.*, 142 Wash. 2d 68, 87, 11 P.3d 726, 738 (2000). CELP strains to argue that the Nooksack Rule (and all other instream flow rules) should be interpreted to apply to permit-exempt wells – "not because of any language in the Nooksack rule per se," but because of the generic purpose of Ecology's instream flow rules and "well-established principles of water law."²⁷ *Postema* flatly rejected this notion, declining to search for a "uniform meaning to rules that simply are not the same."²⁸ Instead, consistent with Ecology's interpretations in this case, the Court concluded that differences in the rules result in different regulatory outcomes.²⁹

²⁶ See *id.*, at 2, 9 (suggesting that the County and Ecology believe "Ecology's unofficial interpretation would trump post-adoption decisional law").

²⁷ See Amicus Curiae Brief of CELP at 7-8.

²⁸ *Postema*, 142 Wn.2d at 84 ("Ultimately, we are unconvinced by the parties' arguments urging their respective versions of a consistent interpretation applying to all WRIAs... While there is some appeal to the idea that all of the rules should mean the same thing therefor, we too decline to search for a uniform meaning to rules that simply are not the same.")

²⁹ CELP's reliance on *Swinomish Indian Tribal Community v. Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013) is also misplaced. See Amicus Curiae Brief of CELP at 14 (citing *Swinomish* for the proposition that "the rules of priority apply to limit permit-exempt groundwater uses that deplete flow in surface waters that are protected by instream flow

CELP's interpretation is also unsupported by *Campbell & Gwinn*. CELP relies on *Campbell & Gwinn* for its assertion that the County is required to adopt regulations that "properly assess water availability" for projects involving exempt wells. While *Campbell & Gwinn* held that exempt uses are subject to the basic principle of prior appropriation, it did not suggest that Ecology or any other agency was required to complete an impairment analysis prior to the initiation of an exempt use. On the contrary, the Court recognized that, "where the exemption in RCW 90.44.050 applies, Ecology does not engage in the usual review of a permit application under RCW 90.03.290, including review addressing impairment of existing rights and public interest review." *Campbell & Gwinn*, 146 Wn.2d at 16. *Campbell & Gwinn* is unhelpful to CELP's position.³⁰

In sum, CELP's interpretation of the Nooksack Rule need not be considered by this Court, but if it is, it should be rejected as inconsistent with the plain language of the rule, with Ecology's interpretations of the

rules"). *Swinomish* involved a challenge to Ecology's amendment to the instream flow for the Skagit basin (the "Skagit Rule"). Unlike the Nooksack Rule, the Skagit Rule expressly governed permit exempt-withdrawals, in addition to permits and certificates. Under *Postema*, the Nooksack Rule and the Skagit Rule have different meanings.

³⁰ CELP cites no authority for its suggestion that Ecology's interpretation of the Nooksack Rule is not entitled to deference because it has not been adopted as a "policy statement" or an "interpretive statement." See Amicus Curiae Brief of CELP at 19-20. Moreover, CELP's suggestion is contradicted by well-established precedent. See, e.g., *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn. 2d 568, 593, 90 P.3d 659, 672 (2004) (holding that Ecology's interpretation of water resources "is entitled to great weight," without regard to whether the interpretation had been formally adopted).

rule (which are entitled to deference),³¹ and with relevant Supreme Court decisions addressing water law.

III. CONCLUSION

For these reasons, the Court should reject CELP's arguments and reverse the Board's conclusions regarding water availability.

Respectfully submitted this 4th day of December, 2014.

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³¹ CELP's position is similarly unsupported by the Attorney General Opinions cited in its brief, which simply do not state what CELP would like them to say. *See* Amicus Curiae Brief of CELP at 14 (citing AGO 2009 No. 6 at 11); *id.* at 16-17 (citing AGO 1992 No. 17). Indeed, AGO 1992 No. 17 directly supports the County's position in this appeal. That opinion, like *Kittitas County*, described a cooperative approach under which local governments must exercise their authority consistently with Ecology's rules:

[I]n determining whether a water supply is adequate, therefore, a local building department must consider both the quantity and the quality of the water. RCW 19.27.097(3) authorizes the Department of Ecology to adopt rules to implement the provisions of that section. If the Department of Ecology exercises this authority, then local building departments will make their determinations in accordance with the standards set in those rules.

Appendix A

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6094

Chapter 429, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

GROWTH MANAGEMENT--MODIFICATIONS

EFFECTIVE DATE: 7/27/97 - Except sections 29 and 30 which become effective 5/9/97

Passed by the Senate April 27, 1997
YEAS 30 NAYS 18

BRAD OWEN

President of the Senate

Passed by the House April 27, 1997
YEAS 62 NAYS 36

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved May 19, 1997, with the exception of sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, which are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6094** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

May 19, 1997 - 7:38 p.m.

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6094

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session
By Senators McCaslin and Haugen; by request of Governor Locke
Read first time 04/04/97.

1 AN ACT Relating to growth management; amending RCW 36.70A.030,
2 36.70A.060, 36.70A.070, 36.70A.130, 36.70A.270, 36.70A.290, 36.70A.300,
3 36.70A.305, 36.70A.320, 36.70A.330, 36.70A.110, 43.62.035, 36.70A.500,
4 43.155.070, 70.146.070, 84.34.020, 84.34.060, 84.34.065, 84.40.030,
5 90.60.030, 35A.14.295, 35.13.174, 36.93.170, 84.14.010, 84.14.030,
6 84.14.050, 90.61.020, 90.61.040, 36.70B.040, 43.21C.110, 36.70B.110,
7 43.21C.075, 90.58.090, 90.58.143, and 34.05.518; adding new sections to
8 chapter 36.70A RCW; adding a new section to chapter 35.13 RCW; creating
9 new sections; providing expiration dates; and declaring an emergency.

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

11 ***NEW SECTION.** *Sec. 1. A new section is added to chapter 36.70A*
12 *RCW to read as follows:*

13 *In enacting the section 7(5), chapter . . ., Laws of 1997 (section*
14 *7(5) of this act) amendments to RCW 36.70A.070(5), the legislature*
15 *finds that chapter 36.70A RCW is intended to recognize the importance*
16 *of agriculture, forestry, and rural lands and rural character to*
17 *Washington's economy, its people, and its environment, while respecting*
18 *regional differences and, in accordance with one of the goals of the*
19 *growth management act, protecting the property rights of landowners*
20 *from arbitrary and discriminatory actions. Rural lands and rural-based*
21 *economies, including agriculture and forest uses that are located*

1 outside of designated resource lands, enhance the economic desirability
2 of the state, help to preserve traditional economic activities, and
3 contribute to the state's overall quality of life. The legislature
4 also finds that in developing its rural element under RCW
5 36.70A.070(5), a county should foster land use patterns and develop a
6 local vision of rural character that: Will help preserve rural-based
7 economies and traditional rural lifestyles; will encourage the economic
8 prosperity of rural residents; will foster opportunities for small-
9 scale, rural-based employment and self-employment; will permit the
10 operation of rural-based agricultural, commercial, recreational, and
11 tourist businesses that are consistent with existing and planned land
12 use patterns; will foster the private stewardship of the land and
13 preservation of open space; and will enhance the rural sense of
14 community and quality of life. The legislature recognizes that there
15 will be a variety of interpretations by counties of how best to
16 implement a rural element, reflecting the diverse needs and local
17 circumstances found across the state. RCW 36.70A.070(5) provides a
18 framework for local elected officials to make these determinations.
19 References to both wildlife and water are intended in RCW 36.70A.030
20 and 36.70A.070 to acknowledge their importance as features or
21 components of rural character. It is expected that these matters will
22 be addressed in comprehensive plans, but that counties may not
23 necessarily need to adopt new regulations to account adequately for
24 them in establishing a pattern of land use and development for rural
25 areas.

26 *Sec. 1 was vetoed. See message at end of chapter.

27 NEW SECTION. Sec. 2. A new section is added to chapter 36.70A RCW
28 to read as follows:

29 In amending RCW 36.70A.320(3) by section 20(3), chapter . . ., Laws
30 of 1997 (section 20(3) of this act), the legislature intends that the
31 boards apply a more deferential standard of review to actions of
32 counties and cities than the preponderance of the evidence standard
33 provided for under existing law. In recognition of the broad range of
34 discretion that may be exercised by counties and cities consistent with
35 the requirements of this chapter, the legislature intends for the
36 boards to grant deference to counties and cities in how they plan for
37 growth, consistent with the requirements and goals of this chapter.
38 Local comprehensive plans and development regulations require counties

1 and cities to balance priorities and options for action in full
2 consideration of local circumstances. The legislature finds that while
3 this chapter requires local planning to take place within a framework
4 of state goals and requirements, the ultimate burden and responsibility
5 for planning, harmonizing the planning goals of this chapter, and
6 implementing a county's or city's future rests with that community.

7 **Sec. 3.** RCW 36.70A.030 and 1995 c 382 s 9 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Adopt a comprehensive land use plan" means to enact a new
12 comprehensive land use plan or to update an existing comprehensive land
13 use plan.

14 (2) "Agricultural land" means land primarily devoted to the
15 commercial production of horticultural, viticultural, floricultural,
16 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
17 straw, turf, seed, Christmas trees not subject to the excise tax
18 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
19 hatcheries, or livestock, and that has long-term commercial
20 significance for agricultural production.

21 (3) "City" means any city or town, including a code city.

22 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
23 means a generalized coordinated land use policy statement of the
24 governing body of a county or city that is adopted pursuant to this
25 chapter.

26 (5) "Critical areas" include the following areas and ecosystems:
27 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
28 used for potable water; (c) fish and wildlife habitat conservation
29 areas; (d) frequently flooded areas; and (e) geologically hazardous
30 areas.

31 (6) "Department" means the department of community, trade, and
32 economic development.

33 (7) "Development regulations" or "regulation" means the controls
34 placed on development or land use activities by a county or city,
35 including, but not limited to, zoning ordinances, critical areas
36 ordinances, shoreline master programs, official controls, planned unit
37 development ordinances, subdivision ordinances, and binding site plan
38 ordinances together with any amendments thereto. A development

1 regulation does not include a decision to approve a project permit
2 application, as defined in RCW 36.70B.020, even though the decision may
3 be expressed in a resolution or ordinance of the legislative body of
4 the county or city.

5 (8) "Forest land" means land primarily devoted to growing trees for
6 long-term commercial timber production on land that can be economically
7 and practically managed for such production, including Christmas trees
8 subject to the excise tax imposed under RCW 84.33.100 through
9 84.33.140, and that has long-term commercial significance. In
10 determining whether forest land is primarily devoted to growing trees
11 for long-term commercial timber production on land that can be
12 economically and practically managed for such production, the following
13 factors shall be considered: (a) The proximity of the land to urban,
14 suburban, and rural settlements; (b) surrounding parcel size and the
15 compatibility and intensity of adjacent and nearby land uses; (c) long-
16 term local economic conditions that affect the ability to manage for
17 timber production; and (d) the availability of public facilities and
18 services conducive to conversion of forest land to other uses.

19 (9) "Geologically hazardous areas" means areas that because of
20 their susceptibility to erosion, sliding, earthquake, or other
21 geological events, are not suited to the siting of commercial,
22 residential, or industrial development consistent with public health or
23 safety concerns.

24 (10) "Long-term commercial significance" includes the growing
25 capacity, productivity, and soil composition of the land for long-term
26 commercial production, in consideration with the land's proximity to
27 population areas, and the possibility of more intense uses of the land.

28 (11) "Minerals" include gravel, sand, and valuable metallic
29 substances.

30 (12) "Public facilities" include streets, roads, highways,
31 sidewalks, street and road lighting systems, traffic signals, domestic
32 water systems, storm and sanitary sewer systems, parks and recreational
33 facilities, and schools.

34 (13) "Public services" include fire protection and suppression, law
35 enforcement, public health, education, recreation, environmental
36 protection, and other governmental services.

37 (14) "Rural character" refers to the patterns of land use and
38 development established by a county in the rural element of its
39 comprehensive plan:

1 (a) In which open space, the natural landscape, and vegetation
2 predominate over the built environment;

3 (b) That foster traditional rural lifestyles, rural-based
4 economies, and opportunities to both live and work in rural areas;

5 (c) That provide visual landscapes that are traditionally found in
6 rural areas and communities;

7 (d) That are compatible with the use of the land by wildlife and
8 for fish and wildlife habitat;

9 (e) That reduce the inappropriate conversion of undeveloped land
10 into sprawling, low-density development;

11 (f) That generally do not require the extension of urban
12 governmental services; and

13 (g) That are consistent with the protection of natural surface
14 water flows and ground water and surface water recharge and discharge
15 areas.

16 (15) "Rural development" refers to development outside the urban
17 growth area and outside agricultural, forest, and mineral resource
18 lands designated pursuant to RCW 36.70A.170. Rural development can
19 consist of a variety of uses and residential densities, including
20 clustered residential development, at levels that are consistent with
21 the preservation of rural character and the requirements of the rural
22 element. Rural development does not refer to agriculture or forestry
23 activities that may be conducted in rural areas.

24 (16) "Rural governmental services" or "rural services" include
25 those public services and public facilities historically and typically
26 delivered at an intensity usually found in rural areas, and may include
27 domestic water systems, fire and police protection services,
28 transportation and public transit services, and other public utilities
29 associated with rural development and normally not associated with
30 urban areas. Rural services do not include storm or sanitary sewers,
31 except as otherwise authorized by RCW 36.70A.110(4).

32 (17) "Urban growth" refers to growth that makes intensive use of
33 land for the location of buildings, structures, and impermeable
34 surfaces to such a degree as to be incompatible with the primary use of
35 ((sueh)) land for the production of food, other agricultural products,
36 or fiber, or the extraction of mineral resources, rural uses, rural
37 development, and natural resource lands designated pursuant to RCW
38 36.70A.170. A pattern of more intensive rural development, as provided
39 in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread

1 over wide areas, urban growth typically requires urban governmental
2 services. "Characterized by urban growth" refers to land having urban
3 growth located on it, or to land located in relationship to an area
4 with urban growth on it as to be appropriate for urban growth.

5 ~~((15))~~ (18) "Urban growth areas" means those areas designated by
6 a county pursuant to RCW 36.70A.110.

7 ~~((16))~~ (19) "Urban governmental services" or "urban services"
8 include those ~~((governmental))~~ public services and public facilities at
9 an intensity historically and typically ~~((delivered by))~~ provided in
10 cities, ~~((and include))~~ specifically including storm and sanitary sewer
11 systems, domestic water systems, street cleaning services, fire and
12 police protection services, public transit services, and other public
13 utilities associated with urban areas and normally not associated with
14 ~~((nonurban))~~ rural areas.

15 ~~((17))~~ (20) "Wetland" or "wetlands" means areas that are
16 inundated or saturated by surface water or ground water at a frequency
17 and duration sufficient to support, and that under normal circumstances
18 do support, a prevalence of vegetation typically adapted for life in
19 saturated soil conditions. Wetlands generally include swamps, marshes,
20 bogs, and similar areas. Wetlands do not include those artificial
21 wetlands intentionally created from nonwetland sites, including, but
22 not limited to, irrigation and drainage ditches, grass-lined swales,
23 canals, detention facilities, wastewater treatment facilities, farm
24 ponds, and landscape amenities, or those wetlands created after July 1,
25 1990, that were unintentionally created as a result of the construction
26 of a road, street, or highway. Wetlands may include those artificial
27 wetlands intentionally created from nonwetland areas created to
28 mitigate conversion of wetlands.

29 ***NEW SECTION.** *Sec. 4. A new section is added to chapter 36.70A*
30 *RCW to read as follows:*

31 *(1) A county, after conferring with its cities, may develop*
32 *alternative methods of achieving the planning goals established by RCW*
33 *36.70A.020.*

34 *(2) The authority provided by this section may not be used to*
35 *modify:*

36 *(a) Requirements for the designation and protection of critical*
37 *areas or for the designation of natural resource lands under RCW*
38 *36.70A.060(2), 36.70A.170, and 36.70A.172;*

1 (b) The requirement that wetlands be delineated consistent with the
2 requirements of RCW 36.70A.175; or

3 (c) The requirement to establish a process for the siting of
4 essential public facilities pursuant to RCW 36.70A.200.

5 (3) Before adopting any alternative methods of achieving the
6 planning goals established by RCW 36.70A.020, a county shall provide an
7 opportunity for public review and comment. An ordinance or resolution
8 proposing or adopting alternative methods must be submitted to the
9 department in the same manner as provided in RCW 36.70A.106 for
10 submittal of proposed and adopted comprehensive plans and development
11 regulations.

12 *Sec. 4 was vetoed. See message at end of chapter.

13 *NEW SECTION. Sec. 5. A new section is added to chapter 36.70A
14 RCW to read as follows:

15 The legislature finds that it is the goal of the state of
16 Washington to achieve no overall net loss of wetland functions.
17 Wetlands can provide public benefits related to flood control,
18 groundwater recharge, water quality, and wildlife habitat. The
19 legislature further finds that consideration should be given to the
20 functions wetlands provide and to the needs of private property owners
21 to assure that wetlands regulations both reflect the impact to wetland
22 functions and allow for a reasonable use of property. In adopting
23 critical areas development regulations, counties and cities should
24 consider and balance all of the goals under RCW 36.70A.020. The
25 legislature intends that no goal takes precedence over any of the
26 others, but that counties and cities may prioritize the goals in
27 accordance with local history, conditions, circumstances, and choice.

28 *Sec. 5 was vetoed. See message at end of chapter.

29 *Sec. 6. RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
30 to read as follows:

31 (1) Each county that is required or chooses to plan under RCW
32 36.70A.040, and each city within such county, shall adopt development
33 regulations on or before September 1, 1991, to assure the conservation
34 of agricultural, forest, and mineral resource lands designated under
35 RCW 36.70A.170. Regulations adopted under this subsection may not
36 prohibit uses legally existing on any parcel prior to their adoption
37 and shall remain in effect until the county or city adopts development
38 regulations pursuant to RCW 36.70A.120. Such regulations shall assure

1 that the use of lands adjacent to agricultural, forest, or mineral
2 resource lands shall not interfere with the continued use, in the
3 accustomed manner and in accordance with best management practices, of
4 these designated lands for the production of food, agricultural
5 products, or timber, or for the extraction of minerals. Counties and
6 cities shall require that all plats, short plats, development permits,
7 and building permits issued for development activities on, or within
8 three hundred feet of, lands designated as agricultural lands, forest
9 lands, or mineral resource lands, contain a notice that the subject
10 property is within or near designated agricultural lands, forest lands,
11 or mineral resource lands on which a variety of commercial activities
12 may occur that are not compatible with residential development for
13 certain periods of limited duration.

14 (2) Each county and city shall adopt development regulations that
15 protect critical areas that are required to be designated under RCW
16 36.70A.170. For counties and cities that are required or choose to
17 plan under RCW 36.70A.040, such development regulations shall be
18 adopted on or before September 1, 1991. For the remainder of the
19 counties and cities, such development regulations shall be adopted on
20 or before March 1, 1992.

21 (3) Such counties and cities shall review these designations and
22 development regulations when adopting their comprehensive plans under
23 RCW 36.70A.040 and implementing development regulations under RCW
24 36.70A.120 and may alter such designations and development regulations
25 to insure consistency.

26 (4) Forest land and agricultural land located within urban growth
27 areas shall not be designated by a county or city as forest land or
28 agricultural land of long-term commercial significance under RCW
29 36.70A.170 unless the city or county has enacted a program authorizing
30 transfer or purchase of development rights.

31 (5) Counties and cities may exempt the following from critical
32 areas development regulations:

33 (a) Emergency activities; and

34 (b) Activities with minor impacts on critical areas.

35 *Sec. 6 was vetoed. See message at end of chapter.

36 **Sec. 7.** RCW 36.70A.070 and 1996 c 239 s 1 are each amended to read
37 as follows:

1 The comprehensive plan of a county or city that is required or
2 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
3 and descriptive text covering objectives, principles, and standards
4 used to develop the comprehensive plan. The plan shall be an
5 internally consistent document and all elements shall be consistent
6 with the future land use map. A comprehensive plan shall be adopted
7 and amended with public participation as provided in RCW 36.70A.140.

8 Each comprehensive plan shall include a plan, scheme, or design for
9 each of the following:

10 (1) A land use element designating the proposed general
11 distribution and general location and extent of the uses of land, where
12 appropriate, for agriculture, timber production, housing, commerce,
13 industry, recreation, open spaces, general aviation airports, public
14 utilities, public facilities, and other land uses. The land use
15 element shall include population densities, building intensities, and
16 estimates of future population growth. The land use element shall
17 provide for protection of the quality and quantity of ground water used
18 for public water supplies. Where applicable, the land use element
19 shall review drainage, flooding, and storm water run-off in the area
20 and nearby jurisdictions and provide guidance for corrective actions to
21 mitigate or cleanse those discharges that pollute waters of the state,
22 including Puget Sound or waters entering Puget Sound.

23 (2) A housing element ensuring the vitality and character of
24 established residential neighborhoods that: (a) Includes an inventory
25 and analysis of existing and projected housing needs; (b) includes a
26 statement of goals, policies, objectives, and mandatory provisions for
27 the preservation, improvement, and development of housing, including
28 single-family residences; (c) identifies sufficient land for housing,
29 including, but not limited to, government-assisted housing, housing for
30 low-income families, manufactured housing, multifamily housing, and
31 group homes and foster care facilities; and (d) makes adequate
32 provisions for existing and projected needs of all economic segments of
33 the community.

34 (3) A capital facilities plan element consisting of: (a) An
35 inventory of existing capital facilities owned by public entities,
36 showing the locations and capacities of the capital facilities; (b) a
37 forecast of the future needs for such capital facilities; (c) the
38 proposed locations and capacities of expanded or new capital
39 facilities; (d) at least a six-year plan that will finance such capital

1 facilities within projected funding capacities and clearly identifies
2 sources of public money for such purposes; and (e) a requirement to
3 reassess the land use element if probable funding falls short of
4 meeting existing needs and to ensure that the land use element, capital
5 facilities plan element, and financing plan within the capital
6 facilities plan element are coordinated and consistent.

7 (4) A utilities element consisting of the general location,
8 proposed location, and capacity of all existing and proposed utilities,
9 including, but not limited to, electrical lines, telecommunication
10 lines, and natural gas lines.

11 (5) Rural element. Counties shall include a rural element
12 including lands that are not designated for urban growth, agriculture,
13 forest, or mineral resources. The following provisions shall apply to
14 the rural element:

15 (a) Growth management act goals and local circumstances. Because
16 circumstances vary from county to county, in establishing patterns of
17 rural densities and uses, a county may consider local circumstances,
18 but shall develop a written record explaining how the rural element
19 harmonizes the planning goals in RCW 36.70A.020 and meets the
20 requirements of this chapter.

21 (b) Rural development. The rural element shall permit
22 ~~((appropriate land uses that are compatible with the rural character of~~
23 ~~such lands and)) rural development, forestry, and agriculture in rural
24 areas. The rural element shall provide for a variety of rural
25 densities ((and)), uses ((and may also provide)), essential public
26 facilities, and rural governmental services needed to serve the
27 permitted densities and uses. In order to achieve a variety of rural
28 densities and uses, counties may provide for clustering, density
29 transfer, design guidelines, conservation easements, and other
30 innovative techniques that will accommodate appropriate rural densities
31 and uses that are not characterized by urban growth and that are
32 consistent with rural character.~~

33 (c) Measures governing rural development. The rural element shall
34 include measures that apply to rural development and protect the rural
35 character of the area, as established by the county, by:

36 (i) Containing or otherwise controlling rural development;

37 (ii) Assuring visual compatibility of rural development with the
38 surrounding rural area;

1 (iii) Reducing the inappropriate conversion of undeveloped land
2 into sprawling, low-density development in the rural area;

3 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and
4 surface water and ground water resources; and

5 (v) Protecting against conflicts with the use of agricultural,
6 forest, and mineral resource lands designated under RCW 36.70A.170.

7 (d) Limited areas of more intensive rural development. Subject to
8 the requirements of this subsection and except as otherwise
9 specifically provided in this subsection (5)(d), the rural element may
10 allow for limited areas of more intensive rural development, including
11 necessary public facilities and public services to serve the limited
12 area as follows:

13 (i) Rural development consisting of the infill, development, or
14 redevelopment of existing commercial, industrial, residential, or
15 mixed-use areas, whether characterized as shoreline development,
16 villages, hamlets, rural activity centers, or crossroads developments.
17 A commercial, industrial, residential, shoreline, or mixed-use area
18 shall be subject to the requirements of (d)(iv) of this subsection, but
19 shall not be subject to the requirements of (c)(ii) and (iii) of this
20 subsection. An industrial area is not required to be principally
21 designed to serve the existing and projected rural population;

22 (ii) The intensification of development on lots containing, or new
23 development of, small-scale recreational or tourist uses, including
24 commercial facilities to serve those recreational or tourist uses, that
25 rely on a rural location and setting, but that do not include new
26 residential development. A small-scale recreation or tourist use is
27 not required to be principally designed to serve the existing and
28 projected rural population. Public services and public facilities
29 shall be limited to those necessary to serve the recreation or tourist
30 use and shall be provided in a manner that does not permit low-density
31 sprawl;

32 (iii) The intensification of development on lots containing
33 isolated nonresidential uses or new development of isolated cottage
34 industries and isolated small-scale businesses that are not principally
35 designed to serve the existing and projected rural population and
36 nonresidential uses, but do provide job opportunities for rural
37 residents. Public services and public facilities shall be limited to
38 those necessary to serve the isolated nonresidential use and shall be
39 provided in a manner that does not permit low-density sprawl;

1 (iv) A county shall adopt measures to minimize and contain the
2 existing areas or uses of more intensive rural development, as
3 appropriate, authorized under this subsection. Lands included in such
4 existing areas or uses shall not extend beyond the logical outer
5 boundary of the existing area or use, thereby allowing a new pattern of
6 low-density sprawl. Existing areas are those that are clearly
7 identifiable and contained and where there is a logical boundary
8 delineated predominately by the built environment, but that may also
9 include undeveloped lands if limited as provided in this subsection.
10 The county shall establish the logical outer boundary of an area of
11 more intensive rural development. In establishing the logical outer
12 boundary the county shall address (A) the need to preserve the
13 character of existing natural neighborhoods and communities, (B)
14 physical boundaries such as bodies of water, streets and highways, and
15 land forms and contours, (C) the prevention of abnormally irregular
16 boundaries, and (D) the ability to provide public facilities and public
17 services in a manner that does not permit low-density sprawl;

18 (v) For purposes of (d) of this subsection, an existing area or
19 existing use is one that was in existence:

20 (A) On July 1, 1990, in a county that was initially required to
21 plan under all of the provisions of this chapter;

22 (B) On the date the county adopted a resolution under RCW
23 36.70A.040(2), in a county that is planning under all of the provisions
24 of this chapter under RCW 36.70A.040(2); or

25 (C) On the date the office of financial management certifies the
26 county's population as provided in RCW 36.70A.040(5), in a county that
27 is planning under all of the provisions of this chapter pursuant to RCW
28 36.70A.040(5).

29 (e) Exception. This subsection shall not be interpreted to permit
30 in the rural area a major industrial development or a master planned
31 resort unless otherwise specifically permitted under RCW 36.70A.360 and
32 36.70A.365.

33 (6) A transportation element that implements, and is consistent
34 with, the land use element. The transportation element shall include
35 the following subelements:

36 (a) Land use assumptions used in estimating travel;

37 (b) Facilities and services needs, including:

38 (i) An inventory of air, water, and ground transportation
39 facilities and services, including transit alignments and general

1 aviation airport facilities, to define existing capital facilities and
2 travel levels as a basis for future planning;

3 (ii) Level of service standards for all arterials and transit
4 routes to serve as a gauge to judge performance of the system. These
5 standards should be regionally coordinated;

6 (iii) Specific actions and requirements for bringing into
7 compliance any facilities or services that are below an established
8 level of service standard;

9 (iv) Forecasts of traffic for at least ten years based on the
10 adopted land use plan to provide information on the location, timing,
11 and capacity needs of future growth;

12 (v) Identification of system expansion needs and transportation
13 system management needs to meet current and future demands;

14 (c) Finance, including:

15 (i) An analysis of funding capability to judge needs against
16 probable funding resources;

17 (ii) A multiyear financing plan based on the needs identified in
18 the comprehensive plan, the appropriate parts of which shall serve as
19 the basis for the six-year street, road, or transit program required by
20 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
21 35.58.2795 for public transportation systems;

22 (iii) If probable funding falls short of meeting identified needs,
23 a discussion of how additional funding will be raised, or how land use
24 assumptions will be reassessed to ensure that level of service
25 standards will be met;

26 (d) Intergovernmental coordination efforts, including an assessment
27 of the impacts of the transportation plan and land use assumptions on
28 the transportation systems of adjacent jurisdictions;

29 (e) Demand-management strategies.

30 After adoption of the comprehensive plan by jurisdictions required
31 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
32 must adopt and enforce ordinances which prohibit development approval
33 if the development causes the level of service on a transportation
34 facility to decline below the standards adopted in the transportation
35 element of the comprehensive plan, unless transportation improvements
36 or strategies to accommodate the impacts of development are made
37 concurrent with the development. These strategies may include
38 increased public transportation service, ride sharing programs, demand
39 management, and other transportation systems management strategies.

1 For the purposes of this subsection (6) "concurrent with the
2 development" shall mean that improvements or strategies are in place at
3 the time of development, or that a financial commitment is in place to
4 complete the improvements or strategies within six years.

5 The transportation element described in this subsection, and the
6 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
7 counties, and RCW 35.58.2795 for public transportation systems, must be
8 consistent.

9 ***NEW SECTION.** *Sec. 8. A new section is added to chapter 36.70A*
10 *RCW to read as follows:*

11 (1) *Except as otherwise provided in this chapter, residential and*
12 *nonresidential uses in the rural element shall not require urban*
13 *services and nonresidential rural development shall be principally*
14 *designed to serve and provide jobs for the existing and projected rural*
15 *population or serve existing nonresidential uses.*

16 (2) *This section applies to (a) a county with a population of*
17 *ninety-five thousand or more; and (b) a county that has committed five*
18 *percent or more of its land base to urban growth areas under RCW*
19 *36.70A.110 and that has no more than eighty percent of its land base in*
20 *public ownership or resource lands of long-term commercial significance*
21 *designated under RCW 36.70A.170.*

22 **Sec. 8 was vetoed. See message at end of chapter.*

23 **NEW SECTION.** *Sec. 9. A new section is added to chapter 36.70A RCW*
24 *to read as follows:*

25 (1) *The public participation requirements of this chapter shall*
26 *include notice procedures that are reasonably calculated to provide*
27 *notice to property owners and other affected and interested*
28 *individuals, tribes, government agencies, businesses, and organizations*
29 *of proposed amendments to comprehensive plans and development*
30 *regulation. Examples of reasonable notice provisions include:*

31 (a) *Posting the property for site-specific proposals;*

32 (b) *Publishing notice in a newspaper of general circulation in the*
33 *county, city, or general area where the proposal is located or that*
34 *will be affected by the proposal;*

35 (c) *Notifying public or private groups with known interest in a*
36 *certain proposal or in the type of proposal being considered;*

1 (d) Placing notices in appropriate regional, neighborhood, ethnic,
2 or trade journals; and

3 (e) Publishing notice in agency newsletters or sending notice to
4 agency mailing lists, including general lists or lists for specific
5 proposals or subject areas.

6 (2)(a) Except as otherwise provided in (b) of this subsection, if
7 the legislative body for a county or city chooses to consider a change
8 to an amendment to a comprehensive plan or development regulation, and
9 the change is proposed after the opportunity for review and comment has
10 passed under the county's or city's procedures, an opportunity for
11 review and comment on the proposed change shall be provided before the
12 local legislative body votes on the proposed change.

13 (b) An additional opportunity for public review and comment is not
14 required under (a) of this subsection if:

15 (i) An environmental impact statement has been prepared under
16 chapter 43.21C RCW for the pending resolution or ordinance and the
17 proposed change is within the range of alternatives considered in the
18 environmental impact statement;

19 (ii) The proposed change is within the scope of the alternatives
20 available for public comment;

21 (iii) The proposed change only corrects typographical errors,
22 corrects cross-references, makes address or name changes, or clarifies
23 language of a proposed ordinance or resolution without changing its
24 effect;

25 (iv) The proposed change is to a resolution or ordinance making a
26 capital budget decision as provided in RCW 36.70A.120; or

27 (v) The proposed change is to a resolution or ordinance enacting a
28 moratorium or interim control adopted under RCW 36.70A.390.

29 (3) This section is prospective in effect and does not apply to a
30 comprehensive plan, development regulation, or amendment adopted before
31 the effective date of this section.

32 **Sec. 10.** RCW 36.70A.130 and 1995 c 347 s 106 are each amended to
33 read as follows:

34 (1) Each comprehensive land use plan and development regulations
35 shall be subject to continuing (~~evaluation and~~) review and evaluation
36 by the county or city that adopted them. Not later than September 1,
37 2002, and at least every five years thereafter, a county or city shall
38 take action to review and, if needed, revise its comprehensive land use

1 plan and development regulations to ensure that the plan and
2 regulations are complying with the requirements of this chapter. The
3 review and evaluation required by this subsection may be combined with
4 the review required by subsection (3) of this section.

5 Any amendment or revision to a comprehensive land use plan shall
6 conform to this chapter, and any change to development regulations
7 shall be consistent with and implement the comprehensive plan.

8 (2)(a) Each county and city shall establish and broadly disseminate
9 to the public a public participation program identifying procedures
10 whereby proposed amendments or revisions of the comprehensive plan are
11 considered by the governing body of the county or city no more
12 frequently than once every year except that amendments may be
13 considered more frequently under the following circumstances:

14 (i) The initial adoption of a subarea plan; ~~((and))~~

15 (ii) The adoption or amendment of a shoreline master program under
16 the procedures set forth in chapter 90.58 RCW; and

17 (iii) The amendment of the capital facilities element of a
18 comprehensive plan that occurs concurrently with the adoption or
19 amendment of a county or city budget.

20 (b) Except as otherwise provided in (a) of this subsection, all
21 proposals shall be considered by the governing body concurrently so the
22 cumulative effect of the various proposals can be ascertained.
23 However, after appropriate public participation a county or city may
24 adopt amendments or revisions to its comprehensive plan that conform
25 with this chapter whenever an emergency exists or to resolve an appeal
26 of a comprehensive plan filed with a growth management hearings board
27 or with the court.

28 (3) Each county that designates urban growth areas under RCW
29 36.70A.110 shall review, at least every ten years, its designated urban
30 growth area or areas, and the densities permitted within both the
31 incorporated and unincorporated portions of each urban growth area. In
32 conjunction with this review by the county, each city located within an
33 urban growth area shall review the densities permitted within its
34 boundaries, and the extent to which the urban growth occurring within
35 the county has located within each city and the unincorporated portions
36 of the urban growth areas. The county comprehensive plan designating
37 urban growth areas, and the densities permitted in the urban growth
38 areas by the comprehensive plans of the county and each city located
39 within the urban growth areas, shall be revised to accommodate the

1 urban growth projected to occur in the county for the succeeding
2 twenty-year period. The review required by this subsection may be
3 combined with the review and evaluation required by section 25 of this
4 act.

5 **Sec. 11.** RCW 36.70A.270 and 1996 c 325 s 1 are each amended to
6 read as follows:

7 Each growth management hearings board shall be governed by the
8 following rules on conduct and procedure:

9 (1) Any board member may be removed for inefficiency, malfeasance,
10 and misfeasance in office, under specific written charges filed by the
11 governor. The governor shall transmit such written charges to the
12 member accused and the chief justice of the supreme court. The chief
13 justice shall thereupon designate a tribunal composed of three judges
14 of the superior court to hear and adjudicate the charges. Removal of
15 any member of a board by the tribunal shall disqualify such member for
16 reappointment.

17 (2) Each board member shall receive reimbursement for travel
18 expenses incurred in the discharge of his or her duties in accordance
19 with RCW 43.03.050 and 43.03.060. If it is determined that the review
20 boards shall operate on a full-time basis, each member shall receive an
21 annual salary to be determined by the governor pursuant to RCW
22 43.03.040. If it is determined that a review board shall operate on a
23 part-time basis, each member shall receive compensation pursuant to RCW
24 43.03.250, provided such amount shall not exceed the amount that would
25 be set if they were a full-time board member. The principal office of
26 each board shall be located by the governor within the jurisdictional
27 boundaries of each board. The boards shall operate on either a part-
28 time or full-time basis, as determined by the governor.

29 (3) Each board member shall not: (a) Be a candidate for or hold
30 any other public office or trust; (b) engage in any occupation or
31 business interfering with or inconsistent with his or her duty as a
32 board member; and (c) for a period of one year after the termination of
33 his or her board membership, act in a representative capacity before
34 the board on any matter.

35 (4) A majority of each board shall constitute a quorum for making
36 orders or decisions, adopting rules necessary for the conduct of its
37 powers and duties, or transacting other official business, and may act
38 even though one position of the board is vacant. One or more members

1 may hold hearings and take testimony to be reported for action by the
2 board when authorized by rule or order of the board. The board shall
3 perform all the powers and duties specified in this chapter or as
4 otherwise provided by law.

5 (5) The board may appoint one or more hearing examiners to assist
6 the board in its hearing function, to make conclusions of law and
7 findings of fact and, if requested by the board, to make
8 recommendations to the board for decisions in cases before the board.
9 Such hearing examiners must have demonstrated knowledge of land use
10 planning and law. The boards shall specify in their joint rules of
11 practice and procedure, as required by subsection (7) of this section,
12 the procedure and criteria to be employed for designating hearing
13 examiners as a presiding officer. Hearing examiners selected by a
14 board shall meet the requirements of subsection (3) of this section.
15 The findings and conclusions of the hearing examiner shall not become
16 final until they have been formally approved by the board. This
17 authorization to use hearing examiners does not waive the requirement
18 of RCW 36.70A.300 that final orders be issued within one hundred eighty
19 days of board receipt of a petition.

20 (6) Each board shall make findings of fact and prepare a written
21 decision in each case decided by it, and such findings and decision
22 shall be effective upon being signed by two or more members of the
23 board and upon being filed at the board's principal office, and shall
24 be open for public inspection at all reasonable times.

25 (7) All proceedings before the board, any of its members, or a
26 hearing examiner appointed by the board shall be conducted in
27 accordance with such administrative rules of practice and procedure as
28 the boards jointly prescribe. All three boards shall jointly meet to
29 develop and adopt joint rules of practice and procedure, including
30 rules regarding expeditious and summary disposition of appeals. The
31 boards shall publish such rules and decisions they render and arrange
32 for the reasonable distribution of the rules and decisions. Except as
33 it conflicts with specific provisions of this chapter, the
34 administrative procedure act, chapter 34.05 RCW, and specifically
35 including the provisions of RCW 34.05.455 governing ex parte
36 communications, shall govern the practice and procedure of the boards.

37 (8) A board member or hearing examiner is subject to
38 disqualification under chapter 34.05 RCW. The joint rules of practice
39 of the boards shall establish procedures by which a party to a hearing

1 conducted before the board may file with the board a motion to
2 disqualify, with supporting affidavit, against a board member or
3 hearing examiner assigned to preside at the hearing.

4 (9) The members of the boards shall meet jointly on at least an
5 annual basis with the objective of sharing information that promotes
6 the goals and purposes of this chapter.

7 **Sec. 12.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
8 read as follows:

9 (1) All requests for review to a growth management hearings board
10 shall be initiated by filing a petition that includes a detailed
11 statement of issues presented for resolution by the board. The board
12 shall render written decisions articulating the basis for its holdings.
13 The board shall not issue advisory opinions on issues not presented to
14 the board in the statement of issues, as modified by any prehearing
15 order.

16 (2) All petitions relating to whether or not an adopted
17 comprehensive plan, development regulation, or permanent amendment
18 thereto, is in compliance with the goals and requirements of this
19 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
20 after publication by the legislative bodies of the county or city.

21 (a) Except as provided in (c) of this subsection, the date of
22 publication for a city shall be the date the city publishes the
23 ordinance, or summary of the ordinance, adopting the comprehensive plan
24 or development regulations, or amendment thereto, as is required to be
25 published.

26 (b) Promptly after adoption, a county shall publish a notice that
27 it has adopted the comprehensive plan or development regulations, or
28 amendment thereto.

29 Except as provided in (c) of this subsection, for purposes of this
30 section the date of publication for a county shall be the date the
31 county publishes the notice that it has adopted the comprehensive plan
32 or development regulations, or amendment thereto.

33 (c) For local governments planning under RCW 36.70A.040, promptly
34 after approval or disapproval of a local government s shoreline master
35 program or amendment thereto by the department of ecology as provided
36 in RCW 90.58.090, the local government shall publish a notice that the
37 shoreline master program or amendment thereto has been approved or
38 disapproved by the department of ecology. For purposes of this

1 section, the date of publication for the adoption or amendment of a
2 shoreline master program is the date the local government publishes
3 notice that the shoreline master program or amendment thereto has been
4 approved or disapproved by the department of ecology.

5 (3) Unless the board dismisses the petition as frivolous or finds
6 that the person filing the petition lacks standing, or the parties have
7 filed an agreement to have the case heard in superior court as provided
8 in section 13 of this act, the board shall, within ten days of receipt
9 of the petition, set a time for hearing the matter.

10 (4) The board shall base its decision on the record developed by
11 the city, county, or the state and supplemented with additional
12 evidence if the board determines that such additional evidence would be
13 necessary or of substantial assistance to the board in reaching its
14 decision.

15 (5) The board, shall consolidate, when appropriate, all petitions
16 involving the review of the same comprehensive plan or the same
17 development regulation or regulations.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 36.70A
19 RCW to read as follows:

20 (1) The superior court may directly review a petition for review
21 filed under RCW 36.70A.290 if all parties to the proceeding before the
22 board have agreed to direct review in the superior court. The
23 agreement of the parties shall be in writing and signed by all of the
24 parties to the proceeding or their designated representatives. The
25 agreement shall include the parties' agreement to proper venue as
26 provided in RCW 36.70A.300(5). The parties shall file their agreement
27 with the board within ten days after the date the petition is filed, or
28 if multiple petitions have been filed and the board has consolidated
29 the petitions pursuant to RCW 36.70A.300, within ten days after the
30 board serves its order of consolidation.

31 (2) Within ten days of receiving the timely and complete agreement
32 of the parties, the board shall file a certificate of agreement with
33 the designated superior court and shall serve the parties with copies
34 of the certificate. The superior court shall obtain exclusive
35 jurisdiction over a petition when it receives the certificate of
36 agreement. With the certificate of agreement the board shall also file
37 the petition for review, any orders entered by the board, all other

1 documents in the board's files regarding the action, and the written
2 agreement of the parties.

3 (3) For purposes of a petition that is subject to direct review,
4 the superior court's subject matter jurisdiction shall be equivalent to
5 that of the board. Consistent with the requirements of the superior
6 court civil rules, the superior court may consolidate a petition
7 subject to direct review under this section with a separate action
8 filed in the superior court.

9 (4)(a) Except as otherwise provided in (b) and (c) of this
10 subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which
11 specify the nature and extent of board review, shall apply to the
12 superior court's review.

13 (b) The superior court:

14 (i) Shall not have jurisdiction to directly review or modify an
15 office of financial management population projection;

16 (ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall
17 render its decision on the petition within one hundred eighty days of
18 receiving the certification of agreement; and

19 (iii) Shall give a compliance hearing under RCW 36.70A.330(2) the
20 highest priority of all civil matters before the court.

21 (c) An aggrieved party may secure appellate review of a final
22 judgment of the superior court under this section by the supreme court
23 or the court of appeals. The review shall be secured in the manner
24 provided by law for review of superior court decisions in other civil
25 cases.

26 (5) If, following a compliance hearing, the court finds that the
27 state agency, county, or city is not in compliance with the court's
28 prior order, the court may use its remedial and contempt powers to
29 enforce compliance.

30 (6) The superior court shall transmit a copy of its decision and
31 order on direct review to the board, the department, and the governor.
32 If the court has determined that a county or city is not in compliance
33 with the provisions of this chapter, the governor may impose sanctions
34 against the county or city in the same manner as if a board had
35 recommended the imposition of sanctions as provided in RCW 36.70A.330.

36 (7) After the court has assumed jurisdiction over a petition for
37 review under this section, the superior court civil rules shall govern
38 a request for intervention and all other procedural matters not
39 specifically provided for in this section.

1 **Sec. 14.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
2 read as follows:

3 (1) The board shall issue a final order (~~((within one hundred eighty~~
4 ~~days of receipt of the petition for review, or, when multiple petitions~~
5 ~~are filed, within one hundred eighty days of receipt of the last~~
6 ~~petition that is consolidated. Such a final order))~~ that shall be
7 based exclusively on whether or not a state agency, county, or city is
8 in compliance with the requirements of this chapter, chapter 90.58 RCW
9 as it relates to adoption or amendment of shoreline master programs, or
10 chapter 43.21C RCW as it relates to adoption of plans, development
11 regulations, and amendments thereto, ((adopted)) under RCW 36.70A.040
12 or chapter 90.58 RCW.

13 (2)(a) Except as provided in (b) of this subsection, the final
14 order shall be issued within one hundred eighty days of receipt of the
15 petition for review, or, if multiple petitions are filed, within one
16 hundred eighty days of receipt of the last petition that is
17 consolidated.

18 (b) The board may extend the period of time for issuing a decision
19 to enable the parties to settle the dispute if additional time is
20 necessary to achieve a settlement, and (i) an extension is requested by
21 all parties, or (ii) an extension is requested by the petitioner and
22 respondent and the board determines that a negotiated settlement
23 between the remaining parties could resolve significant issues in
24 dispute. The request must be filed with the board not later than seven
25 days before the date scheduled for the hearing on the merits of the
26 petition. The board may authorize one or more extensions for up to
27 ninety days each, subject to the requirements of this section.

28 (3) In the final order, the board shall either:

29 (a) Find that the state agency, county, or city is in compliance
30 with the requirements of this chapter (~~(or)~~) chapter 90.58 RCW as it
31 relates to the adoption or amendment of shoreline master programs, or
32 chapter 43.21C RCW as it relates to adoption of plans, development
33 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
34 90.58 RCW; or

35 (b) Find that the state agency, county, or city is not in
36 compliance with the requirements of this chapter (~~(or)~~) chapter 90.58
37 RCW as it relates to the adoption or amendment of shoreline master
38 programs, or chapter 43.21C RCW as it relates to adoption of plans,
39 development regulations, and amendments thereto, under RCW 36.70A.040

1 or chapter 90.58 RCW, in which case the board shall remand the matter
2 to the affected state agency, county, or city ~~((and))~~. The board shall
3 specify a reasonable time not in excess of one hundred eighty days, or
4 such longer period as determined by the board in cases of unusual scope
5 or complexity, within which the state agency, county, or city shall
6 comply with the requirements of this chapter. The board may require
7 periodic reports to the board on the progress the jurisdiction is
8 making towards compliance.

9 ~~((2))~~ (4) Unless the board makes a determination of invalidity as
10 provided in section 16 of this act, a finding of noncompliance and an
11 order of remand shall not affect the validity of comprehensive plans
12 and development regulations during the period of remand~~((, unless the~~
13 ~~board's final order also:~~

14 ~~(a) Includes a determination, supported by findings of fact and~~
15 ~~conclusions of law, that the continued validity of the plan or~~
16 ~~regulation would substantially interfere with the fulfillment of the~~
17 ~~goals of this chapter, and~~

18 ~~(b) Specifies the particular part or parts of the plan or~~
19 ~~regulation that are determined to be invalid, and the reasons for their~~
20 ~~invalidity.~~

21 ~~(3) A determination of invalidity shall:~~

22 ~~(a) Be prospective in effect and shall not extinguish rights that~~
23 ~~vested under state or local law before the date of the board's order,~~
24 ~~and~~

25 ~~(b) Subject any development application that would otherwise vest~~
26 ~~after the date of the board's order to the local ordinance or~~
27 ~~resolution that both is enacted in response to the order of remand and~~
28 ~~determined by the board pursuant to RCW 36.70A.330 to comply with the~~
29 ~~requirements of this chapter.~~

30 ~~(4) If the ordinance that adopts a plan or development regulation~~
31 ~~under this chapter includes a savings clause intended to revive prior~~
32 ~~policies or regulations in the event the new plan or regulations are~~
33 ~~determined to be invalid, the board shall determine under subsection~~
34 ~~(2) of this section whether the prior policies or regulations are valid~~
35 ~~during the period of remand)).~~

36 (5) Any party aggrieved by a final decision of the hearings board
37 may appeal the decision to superior court as provided in RCW 34.05.514
38 or 36.01.050 within thirty days of the final order of the board.

1 **NEW SECTION. Sec. 15. A new section is added to chapter 36.70A*
2 *RCW to read as follows:*

3 *After the effective date of this section, all appeals of a decision*
4 *taken from a final decision of a board shall be filed in the court of*
5 *appeals for assignment by the chief presiding judge.*

6 **Sec. 15 was vetoed. See message at end of chapter.*

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 36.70A
8 RCW to read as follows:

9 (1) A board may determine that part or all of a comprehensive plan
10 or development regulations are invalid if the board:

11 (a) Makes a finding of noncompliance and issues an order of remand
12 under RCW 36.70A.300;

13 (b) Includes in the final order a determination, supported by
14 findings of fact and conclusions of law, that the continued validity of
15 part or parts of the plan or regulation would substantially interfere
16 with the fulfillment of the goals of this chapter; and

17 (c) Specifies in the final order the particular part or parts of
18 the plan or regulation that are determined to be invalid, and the
19 reasons for their invalidity.

20 (2) A determination of invalidity is prospective in effect and does
21 not extinguish rights that vested under state or local law before
22 receipt of the board's order by the city or county. The determination
23 of invalidity does not apply to a completed development permit
24 application for a project that vested under state or local law before
25 receipt of the board's order by the county or city or to related
26 construction permits for that project.

27 (3)(a) Except as otherwise provided in subsection (2) of this
28 section and (b) of this subsection, a development permit application
29 not vested under state or local law before receipt of the board's order
30 by the county or city vests to the local ordinance or resolution that
31 is determined by the board not to substantially interfere with the
32 fulfillment of the goals of this chapter.

33 (b) Even though the application is not vested under state or local
34 law before receipt by the county or city of the board's order, a
35 determination of invalidity does not apply to a development permit
36 application for:

37 (i) A permit for construction by any owner, lessee, or contract
38 purchaser of a single-family residence for his or her own use or for

1 the use of his or her family on a lot existing before receipt by the
2 county or city of the board's order, except as otherwise specifically
3 provided in the board's order to protect the public health and safety;

4 (ii) A building permit and related construction permits for
5 remodeling, tenant improvements, or expansion of an existing structure
6 on a lot existing before receipt of the board's order by the county or
7 city; and

8 (iii) A boundary line adjustment or a division of land that does
9 not increase the number of buildable lots existing before receipt of
10 the board's order by the county or city.

11 (4) If the ordinance that adopts a plan or development regulation
12 under this chapter includes a savings clause intended to revive prior
13 policies or regulations in the event the new plan or regulations are
14 determined to be invalid, the board shall determine under subsection
15 (1) of this section whether the prior policies or regulations are valid
16 during the period of remand.

17 (5) A county or city subject to a determination of invalidity may
18 adopt interim controls and other measures to be in effect until it
19 adopts a comprehensive plan and development regulations that comply
20 with the requirements of this chapter. A development permit
21 application may vest under an interim control or measure upon
22 determination by the board that the interim controls and other measures
23 do not substantially interfere with the fulfillment of the goals of
24 this chapter.

25 (6) A county or city subject to a determination of invalidity may
26 file a motion requesting that the board clarify, modify, or rescind the
27 order. The board shall expeditiously schedule a hearing on the motion.
28 At the hearing on the motion, the parties may present information to
29 the board to clarify the part or parts of the comprehensive plan or
30 development regulations to which the final order applies. The board
31 shall issue any supplemental order based on the information provided at
32 the hearing not later than thirty days after the date of the hearing.

33 (7)(a) If a determination of invalidity has been made and the
34 county or city has enacted an ordinance or resolution amending the
35 invalidated part or parts of the plan or regulation or establishing
36 interim controls on development affected by the order of invalidity,
37 after a compliance hearing, the board shall modify or rescind the
38 determination of invalidity if it determines under the standard in
39 subsection (1) of this section that the plan or regulation, as amended

1 or made subject to such interim controls, will no longer substantially
2 interfere with the fulfillment of the goals of this chapter.

3 (b) If the board determines that part or parts of the plan or
4 regulation are no longer invalid as provided in this subsection, but
5 does not find that the plan or regulation is in compliance with all of
6 the requirements of this chapter, the board, in its order, may require
7 periodic reports to the board on the progress the jurisdiction is
8 making towards compliance.

9 *NEW SECTION. Sec. 17. A board shall determine that part or all
10 of a comprehensive plan or development regulations, or amendments
11 thereto, are invalid only if, in addition to the requirements of
12 section 16 of this act, the board finds that in adopting plans or
13 development regulations, or amendments thereto, the county or city
14 acted in an arbitrary and capricious manner.

15 *Sec. 17 was vetoed. See message at end of chapter.

16 *Sec. 18. RCW 36.70A.305 and 1996 c 325 s 4 are each amended to
17 read as follows:

18 (1) The court shall provide expedited review of ((a determination
19 of invalidity or)) an order ((effectuating)) that includes a
20 determination of invalidity made or issued under RCW 36.70A.300 and
21 section 16 of this act. The matter must be set for hearing within
22 sixty days of the date set for submitting the board's record, absent a
23 showing of good cause for a different date or a stipulation of the
24 parties.

25 (2) A determination of substantial interference under this chapter
26 must be based on evidence of actual development or development permit
27 applications that would substantially interfere with the goals of this
28 chapter, and not on hypothetical or speculative development potential.

29 *Sec. 18 was vetoed. See message at end of chapter.

30 *NEW SECTION. Sec. 19. A new section is added to chapter 36.70A
31 RCW to read as follows:

32 A court, in reviewing an order of the board, may:

33 (1) Affirm the board's order;

34 (2) Set aside the board's order, enjoin or stay the board's order,
35 remand the matter for further proceedings, order the board to rescind
36 or modify an order; or

1 (3) Enter a declaratory judgment order of compliance or
2 noncompliance, which may include a determination of invalidity if (a)
3 the determination is supported by findings of fact and conclusions of
4 law that the continued validity of part or parts of the plan or
5 regulation would substantially interfere with the fulfillment of the
6 goals of this chapter and (b) the court's order specifies the
7 particular part or parts of the plan or regulation that are determined
8 to be invalid, and the reasons for their invalidity.
9 *Sec. 19 was vetoed. See message at end of chapter.

10 **Sec. 20.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
11 read as follows:

12 (1) Except as provided in subsection ~~((+2))~~ (5) of this section,
13 comprehensive plans and development regulations, and amendments
14 thereto, adopted under this chapter are presumed valid upon adoption.

15 (2) Except as otherwise provided in subsection (4) of this section,
16 the burden is on the petitioner to demonstrate that any action taken by
17 a state agency, county, or city under this chapter is not in compliance
18 with the requirements of this chapter.

19 (3) In any petition under this chapter, the board, after full
20 consideration of the petition, shall determine whether there is
21 compliance with the requirements of this chapter. In making its
22 determination, the board shall consider the criteria adopted by the
23 department under RCW 36.70A.190(4). The board shall find compliance
24 unless it ~~((finds by a preponderance of the evidence that the state~~
25 agency, county, or city erroneously interpreted or applied this
26 chapter)) determines that the action by the state agency, county, or
27 city is clearly erroneous in view of the entire record before the board
28 and in light of the goals and requirements of this chapter.

29 ~~((+2))~~ (4) A county or city subject to a determination of
30 invalidity made under RCW 36.70A.300 or section 16 of this act has the
31 burden of demonstrating that the ordinance or resolution it has enacted
32 in response to the determination of invalidity will no longer
33 substantially interfere with the fulfillment of the goals of this
34 chapter under the standard in section 16(1) of this act.

35 (5) The shoreline element of a comprehensive plan and the
36 applicable development regulations adopted by a county or city shall
37 take effect as provided in chapter 90.58 RCW.

1 **Sec. 21.** RCW 36.70A.330 and 1995 c 347 s 112 are each amended to
2 read as follows:

3 (1) After the time set for complying with the requirements of this
4 chapter under RCW (~~(36.70A.300(1)(b))~~) 36.70A.300(3)(b) has expired, or
5 at an earlier time upon the motion of a county or city subject to a
6 determination of invalidity under RCW 36.70A.300, the board shall set
7 a hearing for the purpose of determining whether the state agency,
8 county, or city is in compliance with the requirements of this chapter.

9 (2) The board shall conduct a hearing and issue a finding of
10 compliance or noncompliance with the requirements of this chapter and
11 with any compliance schedule established by the board in its final
12 order. A person with standing to challenge the legislation enacted in
13 response to the board's final order may participate in the hearing
14 along with the petitioner and the state agency, (~~(city, or)~~) county, or
15 city. A hearing under this subsection shall be given the highest
16 priority of business to be conducted by the board, and a finding shall
17 be issued within forty-five days of the filing of the motion under
18 subsection (1) of this section with the board. The board shall issue
19 any order necessary to make adjustments to the compliance schedule and
20 set additional hearings as provided in subsection (5) of this section.

21 (3) If the board after a compliance hearing finds that the state
22 agency, county, or city is not in compliance, the board shall transmit
23 its finding to the governor. The board may recommend to the governor
24 that the sanctions authorized by this chapter be imposed. The board
25 shall take into consideration the county's or city's efforts to meet
26 its compliance schedule in making the decision to recommend sanctions
27 to the governor.

28 (4) In a compliance hearing upon petition of a party, the board
29 shall also reconsider its final order and decide(~~(-~~

30 ~~(a) If a determination of invalidity has been made, whether such a~~
31 ~~determination should be rescinded or modified under the standards in~~
32 ~~RCW 36.70A.300(2); or~~

33 ~~(b))~~, if no determination of invalidity has been made, whether one
34 now should be made (~~(under the standards in RCW 36.70A.300(2))~~) under
35 section 16 of this act.

36 (5) The board shall schedule additional hearings as appropriate
37 pursuant to subsections (1) and (2) of this section.

1 NEW SECTION. **Sec. 22.** A new section is added to chapter 36.70A
2 RCW to read as follows:

3 A county or city subject to an order of invalidity issued before
4 the effective date of section 14 of this act, by motion may request the
5 board to review the order of invalidity in light of the section 14,
6 chapter . . ., Laws of 1997 (section 14 of this act) amendments to RCW
7 36.70A.300, the section 21, chapter . . ., Laws of 1997 (section 21 of
8 this act) amendments to RCW 36.70A.330, and section 16 of this act. If
9 a request is made, the board shall rescind or modify the order of
10 invalidity as necessary to make it consistent with the section 14,
11 chapter . . ., Laws of 1997 (section 14 of this act) amendments to RCW
12 36.70A.300, and to the section 21, chapter . . ., Laws of 1997 (section
13 21 of this act) amendments to RCW 36.70A.330, and section 16 of this
14 act.

15 NEW SECTION. **Sec. 23.** A new section is added to chapter 36.70A
16 RCW to read as follows:

17 (1) A county or a city may use a variety of innovative zoning
18 techniques in areas designated as agricultural lands of long-term
19 commercial significance under RCW 36.70A.170. The innovative zoning
20 techniques should be designed to conserve agricultural lands and
21 encourage the agricultural economy. A county or city should encourage
22 nonagricultural uses to be limited to lands with poor soils or
23 otherwise not suitable for agricultural purposes.

24 (2) Innovative zoning techniques a county or city may consider
25 include, but are not limited to:

26 (a) Agricultural zoning, which limits the density of development
27 and restricts or prohibits nonfarm uses of agricultural land;

28 (b) Cluster zoning, which allows new development on one portion of
29 the land, leaving the remainder in agricultural or open space uses;

30 (c) Large lot zoning, which establishes as a minimum lot size the
31 amount of land necessary to achieve a successful farming practice;

32 (d) Quarter/quarter zoning, which permits one residential dwelling
33 on a one-acre minimum lot for each one-sixteenth of a section of land;
34 and

35 (e) Sliding scale zoning, which allows the number of lots for
36 single-family residential purposes with a minimum lot size of one acre
37 to increase inversely as the size of the total acreage increases.

1 **Sec. 24.** RCW 36.70A.110 and 1995 c 400 s 2 are each amended to
2 read as follows:

3 (1) Each county that is required or chooses to plan under RCW
4 36.70A.040 shall designate an urban growth area or areas within which
5 urban growth shall be encouraged and outside of which growth can occur
6 only if it is not urban in nature. Each city that is located in such
7 a county shall be included within an urban growth area. An urban
8 growth area may include more than a single city. An urban growth area
9 may include territory that is located outside of a city only if such
10 territory already is characterized by urban growth whether or not the
11 urban growth area includes a city, or is adjacent to territory already
12 characterized by urban growth, or is a designated new fully contained
13 community as defined by RCW 36.70A.350.

14 (2) Based upon the growth management population projection made for
15 the county by the office of financial management, (~~the urban growth~~
16 ~~areas in~~) the county and each city within the county shall include
17 areas and densities sufficient to permit the urban growth that is
18 projected to occur in the county or city for the succeeding twenty-year
19 period. Each urban growth area shall permit urban densities and shall
20 include greenbelt and open space areas. An urban growth area
21 determination may include a reasonable land market supply factor and
22 shall permit a range of urban densities and uses. In determining this
23 market factor, cities and counties may consider local circumstances.
24 Cities and counties have discretion in their comprehensive plans to
25 make many choices about accommodating growth.

26 Within one year of July 1, 1990, each county that as of June 1,
27 1991, was required or chose to plan under RCW 36.70A.040, shall begin
28 consulting with each city located within its boundaries and each city
29 shall propose the location of an urban growth area. Within sixty days
30 of the date the county legislative authority of a county adopts its
31 resolution of intention or of certification by the office of financial
32 management, all other counties that are required or choose to plan
33 under RCW 36.70A.040 shall begin this consultation with each city
34 located within its boundaries. The county shall attempt to reach
35 agreement with each city on the location of an urban growth area within
36 which the city is located. If such an agreement is not reached with
37 each city located within the urban growth area, the county shall
38 justify in writing why it so designated the area an urban growth area.
39 A city may object formally with the department over the designation of

1 the urban growth area within which it is located. Where appropriate,
2 the department shall attempt to resolve the conflicts, including the
3 use of mediation services.

4 (3) Urban growth should be located first in areas already
5 characterized by urban growth that have adequate existing public
6 facility and service capacities to serve such development, second in
7 areas already characterized by urban growth that will be served
8 adequately by a combination of both existing public facilities and
9 services and any additional needed public facilities and services that
10 are provided by either public or private sources, and third in the
11 remaining portions of the urban growth areas. Urban growth may also be
12 located in designated new fully contained communities as defined by RCW
13 36.70A.350.

14 (4) In general, cities are the units of local government most
15 appropriate to provide urban governmental services. In general, it is
16 not appropriate that urban governmental services be extended to or
17 expanded in rural areas except in those limited circumstances shown to
18 be necessary to protect basic public health and safety and the
19 environment and when such services are financially supportable at rural
20 densities and do not permit urban development.

21 (5) On or before October 1, 1993, each county that was initially
22 required to plan under RCW 36.70A.040(1) shall adopt development
23 regulations designating interim urban growth areas under this chapter.
24 Within three years and three months of the date the county legislative
25 authority of a county adopts its resolution of intention or of
26 certification by the office of financial management, all other counties
27 that are required or choose to plan under RCW 36.70A.040 shall adopt
28 development regulations designating interim urban growth areas under
29 this chapter. Adoption of the interim urban growth areas may only
30 occur after public notice; public hearing; and compliance with the
31 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
32 Such action may be appealed to the appropriate growth management
33 hearings board under RCW 36.70A.280. Final urban growth areas shall be
34 adopted at the time of comprehensive plan adoption under this chapter.

35 (6) Each county shall include designations of urban growth areas in
36 its comprehensive plan.

37 NEW SECTION. **Sec. 25.** A new section is added to chapter 36.70A
38 RCW to read as follows:

1 (1) Subject to the limitations in subsection (7) of this section,
2 a county shall adopt, in consultation with its cities, county-wide
3 planning policies to establish a review and evaluation program. This
4 program shall be in addition to the requirements of RCW 36.70A.110,
5 36.70A.130, and 36.70A.210. In developing and implementing the review
6 and evaluation program required by this section, the county and its
7 cities shall consider information from other appropriate jurisdictions
8 and sources. The purpose of the review and evaluation program shall be
9 to:

10 (a) Determine whether a county and its cities are achieving urban
11 densities within urban growth areas by comparing growth and development
12 assumptions, targets, and objectives contained in the county-wide
13 planning policies and the county and city comprehensive plans with
14 actual growth and development that has occurred in the county and its
15 cities; and

16 (b) Identify reasonable measures, other than adjusting urban growth
17 areas, that will be taken to comply with the requirements of this
18 chapter.

19 (2) The review and evaluation program shall:

20 (a) Encompass land uses and activities both within and outside of
21 urban growth areas and provide for annual collection of data on urban
22 and rural land uses, development, critical areas, and capital
23 facilities to the extent necessary to determine the quantity and type
24 of land suitable for development, both for residential and employment-
25 based activities;

26 (b) Provide for evaluation of the data collected under (a) of this
27 subsection every five years as provided in subsection (3) of this
28 section. The first evaluation shall be completed not later than
29 September 1, 2002. The county and its cities may establish in the
30 county-wide planning policies indicators, benchmarks, and other similar
31 criteria to use in conducting the evaluation;

32 (c) Provide for methods to resolve disputes among jurisdictions
33 relating to the county-wide planning policies required by this section
34 and procedures to resolve inconsistencies in collection and analysis of
35 data; and

36 (d) Provide for the amendment of the county-wide policies and
37 county and city comprehensive plans as needed to remedy an
38 inconsistency identified through the evaluation required by this

1 section, or to bring these policies into compliance with the
2 requirements of this chapter.

3 (3) At a minimum, the evaluation component of the program required
4 by subsection (1) of this section shall:

5 (a) Determine whether there is sufficient suitable land to
6 accommodate the county-wide population projection established for the
7 county pursuant to RCW 43.62.035 and the subsequent population
8 allocations within the county and between the county and its cities and
9 the requirements of RCW 36.70A.110;

10 (b) Determine the actual density of housing that has been
11 constructed and the actual amount of land developed for commercial and
12 industrial uses within the urban growth area since the adoption of a
13 comprehensive plan under this chapter or since the last periodic
14 evaluation as required by subsection (1) of this section; and

15 (c) Based on the actual density of development as determined under
16 (b) of this subsection, review commercial, industrial, and housing
17 needs by type and density range to determine the amount of land needed
18 for commercial, industrial, and housing for the remaining portion of
19 the twenty-year planning period used in the most recently adopted
20 comprehensive plan.

21 (4) If the evaluation required by subsection (3) of this section
22 demonstrates an inconsistency between what has occurred since the
23 adoption of the county-wide planning policies and the county and city
24 comprehensive plans and development regulations and what was envisioned
25 in those policies and plans and the planning goals and the requirements
26 of this chapter, as the inconsistency relates to the evaluation factors
27 specified in subsection (3) of this section, the county and its cities
28 shall adopt and implement measures that are reasonably likely to
29 increase consistency during the subsequent five-year period. If
30 necessary, a county, in consultation with its cities as required by RCW
31 36.70A.210, shall adopt amendments to county-wide planning policies to
32 increase consistency. The county and its cities shall annually monitor
33 the measures adopted under this subsection to determine their effect
34 and may revise or rescind them as appropriate.

35 (5) (a) Not later than July 1, 1998, the department shall prepare a
36 list of methods used by counties and cities in carrying out the types
37 of activities required by this section. The department shall provide
38 this information and appropriate technical assistance to counties and

1 cities required to or choosing to comply with the provisions of this
2 section.

3 (b) By December 31, 2007, the department shall submit to the
4 appropriate committees of the legislature a report analyzing the
5 effectiveness of the activities described in this section in achieving
6 the goals envisioned by the county-wide planning policies and the
7 comprehensive plans and development regulations of the counties and
8 cities.

9 (6) From funds appropriated by the legislature for this purpose,
10 the department shall provide grants to counties, cities, and regional
11 planning organizations required under subsection (7) of this section to
12 conduct the review and perform the evaluation required by this section.

13 (7) The provisions of this section shall apply to counties, and the
14 cities within those counties, that were greater than one hundred fifty
15 thousand in population in 1995 as determined by office of financial
16 management population estimates and that are located west of the crest
17 of the Cascade mountain range. Any other county planning under RCW
18 36.70A.040 may carry out the review, evaluation, and amendment programs
19 and procedures as provided in this section.

20 **Sec. 26.** RCW 43.62.035 and 1995 c 162 s 1 are each amended to read
21 as follows:

22 The office of financial management shall determine the population
23 of each county of the state annually as of April 1st of each year and
24 on or before July 1st of each year shall file a certificate with the
25 secretary of state showing its determination of the population for each
26 county. The office of financial management also shall determine the
27 percentage increase in population for each county over the preceding
28 ten-year period, as of April 1st, and shall file a certificate with the
29 secretary of state by July 1st showing its determination. At least
30 once every (~~ten~~) five years or upon the availability of decennial
31 census data, whichever is later, the office of financial management
32 shall prepare twenty-year growth management planning population
33 projections required by RCW 36.70A.110 for each county that adopts a
34 comprehensive plan under RCW 36.70A.040 and shall review these
35 projections with such counties and the cities in those counties before
36 final adoption. The county and its cities may provide to the office
37 such information as they deem relevant to the office's projection, and
38 the office shall consider and comment on such information before

1 adoption. Each projection shall be expressed as a reasonable range
2 developed within the standard state high and low projection. The
3 middle range shall represent the office's estimate of the most likely
4 population projection for the county. If any city or county believes
5 that a projection will not accurately reflect actual population growth
6 in a county, it may petition the office to revise the projection
7 accordingly. The office shall complete the first set of ranges for
8 every county by December 31, 1995.

9 A comprehensive plan adopted or amended before December 31, 1995,
10 shall not be considered to be in noncompliance with the twenty-year
11 growth management planning population projection if the projection used
12 in the comprehensive plan is in compliance with the range later adopted
13 under this section.

14 NEW SECTION. Sec. 27. In order to ensure that there will be no
15 unfunded responsibilities imposed on counties and cities, if specific
16 funding for the purposes of section 25 of this act, referencing this
17 act by bill or chapter number, is not provided by June 30, 1997, in the
18 omnibus appropriations act, section 25 of this act is null and void.

19 **Sec. 28.** RCW 36.70A.500 and 1995 c 347 s 116 are each amended to
20 read as follows:

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

30 (2) A grant may be awarded to a county or city that is required to
31 or has chosen to plan under RCW 36.70A.040 and that is qualified
32 pursuant to this section. The grant shall be provided to assist a
33 county or city in paying for the cost of preparing ~~((a detailed~~
34 ~~environmental impact statement))~~ an environmental analysis under
35 chapter 43.21C RCW, that is integrated with a comprehensive plan
36 ~~((or))~~, subarea plan ((and)), plan element, county-wide planning

1 policy, development regulation(~~(s)~~), monitoring program, or other
2 planning activity adopted under or implementing this chapter that:

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

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

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

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

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

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

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

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

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

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

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

37 (b) (~~Comprehensive and subarea plan proposals that are designed to~~
38 ~~identify and monitor~~) Identification and monitoring of system

1 capacities for elements of the built environment, and to the extent
2 appropriate, of the natural environment;

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

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

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

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

15 (~~(e) Plans that~~) (g) Programs to identify environmental impacts
16 and establish mitigation measures that provide effective means to
17 satisfy concurrency requirements and establish project consistency with
18 the plans.

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

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

26 **Sec. 29.** RCW 43.155.070 and 1996 c 168 s 3 are each amended to
27 read as follows:

28 (1) To qualify for loans or pledges under this chapter the board
29 must determine that a local government meets all of the following
30 conditions:

31 (a) The city or county must be imposing a tax under chapter 82.46
32 RCW at a rate of at least one-quarter of one percent;

33 (b) The local government must have developed a long-term plan for
34 financing public works needs;

35 (c) The local government must be using all local revenue sources
36 which are reasonably available for funding public works, taking into
37 consideration local employment and economic factors; and

1 (d) Except where necessary to address a public health need or
2 substantial environmental degradation, a county, city, or town that is
3 required or chooses to plan under RCW 36.70A.040 must have adopted a
4 comprehensive plan in conformance with the requirements of chapter
5 36.70A RCW, after it is required that the comprehensive plan be
6 adopted, and must have adopted development regulations in conformance
7 with the requirements of chapter 36.70A RCW, after it is required that
8 development regulations be adopted.

9 (2) The board shall develop a priority process for public works
10 projects as provided in this section. The intent of the priority
11 process is to maximize the value of public works projects accomplished
12 with assistance under this chapter. The board shall attempt to assure
13 a geographical balance in assigning priorities to projects. The board
14 shall consider at least the following factors in assigning a priority
15 to a project:

16 (a) Whether the local government receiving assistance has
17 experienced severe fiscal distress resulting from natural disaster or
18 emergency public works needs;

19 (b) Whether the project is critical in nature and would affect the
20 health and safety of a great number of citizens;

21 (c) The cost of the project compared to the size of the local
22 government and amount of loan money available;

23 (d) The number of communities served by or funding the project;

24 (e) Whether the project is located in an area of high unemployment,
25 compared to the average state unemployment;

26 (f) Whether the project is the acquisition, expansion, improvement,
27 or renovation by a local government of a public water system that is in
28 violation of health and safety standards, including the cost of
29 extending existing service to such a system;

30 (g) The relative benefit of the project to the community,
31 considering the present level of economic activity in the community and
32 the existing local capacity to increase local economic activity in
33 communities that have low economic growth; and

34 (h) Other criteria that the board considers advisable.

35 (3) Existing debt or financial obligations of local governments
36 shall not be refinanced under this chapter. Each local government
37 applicant shall provide documentation of attempts to secure additional
38 local or other sources of funding for each public works project for
39 which financial assistance is sought under this chapter.

1 (4) Before November 1 of each year, the board shall develop and
2 submit to the appropriate fiscal committees of the senate and house of
3 representatives a description of the loans made under RCW 43.155.065,
4 43.155.068, and subsection (7) of this section during the preceding
5 fiscal year and a prioritized list of projects which are recommended
6 for funding by the legislature, including one copy to the staff of each
7 of the committees. The list shall include, but not be limited to, a
8 description of each project and recommended financing, the terms and
9 conditions of the loan or financial guarantee, the local government
10 jurisdiction and unemployment rate, demonstration of the jurisdiction's
11 critical need for the project and documentation of local funds being
12 used to finance the public works project. The list shall also include
13 measures of fiscal capacity for each jurisdiction recommended for
14 financial assistance, compared to authorized limits and state averages,
15 including local government sales taxes; real estate excise taxes;
16 property taxes; and charges for or taxes on sewerage, water, garbage,
17 and other utilities.

18 (5) The board shall not sign contracts or otherwise financially
19 obligate funds from the public works assistance account before the
20 legislature has appropriated funds for a specific list of public works
21 projects. The legislature may remove projects from the list
22 recommended by the board. The legislature shall not change the order
23 of the priorities recommended for funding by the board.

24 (6) Subsection (5) of this section does not apply to loans made
25 under RCW 43.155.065, 43.155.068, and subsection (7) of this section.

26 (7) (a) Loans made for the purpose of capital facilities plans shall
27 be exempted from subsection (5) of this section. In no case shall the
28 total amount of funds utilized for capital facilities plans and
29 emergency loans exceed the limitation in RCW 43.155.065.

30 (b) For the purposes of this section "capital facilities plans"
31 means those plans required by the growth management act, chapter 36.70A
32 RCW, and plans required by the public works board for local governments
33 not subject to the growth management act.

34 (8) To qualify for loans or pledges for solid waste or recycling
35 facilities under this chapter, a city or county must demonstrate that
36 the solid waste or recycling facility is consistent with and necessary
37 to implement the comprehensive solid waste management plan adopted by
38 the city or county under chapter 70.95 RCW.

1 **Sec. 30.** RCW 70.146.070 and 1991 sp.s. c 32 s 24 are each amended
2 to read as follows:

3 When making grants or loans for water pollution control facilities,
4 the department shall consider the following:

5 (1) The protection of water quality and public health;

6 (2) The cost to residential ratepayers if they had to finance water
7 pollution control facilities without state assistance;

8 (3) Actions required under federal and state permits and compliance
9 orders;

10 (4) The level of local fiscal effort by residential ratepayers
11 since 1972 in financing water pollution control facilities;

12 (5) The extent to which the applicant county or city, or if the
13 applicant is another public body, the extent to which the county or
14 city in which the applicant public body is located, has established
15 programs to mitigate nonpoint pollution of the surface or subterranean
16 water sought to be protected by the water pollution control facility
17 named in the application for state assistance; and

18 (6) The recommendations of the Puget Sound (~~water quality~~
19 ~~authority~~) action team and any other board, council, commission, or
20 group established by the legislature or a state agency to study water
21 pollution control issues in the state.

22 Except where necessary to address a public health need or
23 substantial environmental degradation, a county, city, or town that is
24 required or chooses to plan under RCW 36.70A.040 may not receive a
25 grant or loan for water pollution control facilities unless it has
26 adopted a comprehensive plan in conformance with the requirements of
27 chapter 36.70A RCW, after it is required that the comprehensive plan be
28 adopted, or unless it has adopted development regulations in
29 conformance with the requirements of chapter 36.70A RCW, after it is
30 required that development regulations be adopted.

31 **Sec. 31.** RCW 84.34.020 and 1992 c 69 s 4 are each amended to read
32 as follows:

33 As used in this chapter, unless a different meaning is required by
34 the context:

35 (1) "Open space land" means (a) any land area so designated by an
36 official comprehensive land use plan adopted by any city or county and
37 zoned accordingly(~~(+)~~), or (b) any land area, the preservation of
38 which in its present use would (i) conserve and enhance natural or

1 scenic resources, or (ii) protect streams or water supply, or (iii)
2 promote conservation of soils, wetlands, beaches or tidal marshes, or
3 (iv) enhance the value to the public of abutting or neighboring parks,
4 forests, wildlife preserves, nature reservations or sanctuaries or
5 other open space, or (v) enhance recreation opportunities, or (vi)
6 preserve historic sites, or (vii) preserve visual quality along
7 highway, road, and street corridors or scenic vistas, or (viii) retain
8 in its natural state tracts of land not less than one acre situated in
9 an urban area and open to public use on such conditions as may be
10 reasonably required by the legislative body granting the open space
11 classification, or (c) any land meeting the definition of farm and
12 agricultural conservation land under subsection (8) of this section.
13 As a condition of granting open space classification, the legislative
14 body may not require public access on land classified under (b)(iii) of
15 this subsection for the purpose of promoting conservation of wetlands.

16 (2) "Farm and agricultural land" means (~~either~~);

17 (a) Any parcel of land that is twenty or more acres or multiple
18 parcels of land that are contiguous and total twenty or more acres;

19 (i) Devoted primarily to the production of livestock or
20 agricultural commodities for commercial purposes(~~(7)~~);

21 (ii) Enrolled in the federal conservation reserve program or its
22 successor administered by the United States department of
23 agriculture(~~(7)~~); or

24 (iii) Other similar commercial activities as may be established by
25 rule (~~following consultation with the advisory committee established~~
26 ~~in section 19 of this act~~);

27 (b) Any parcel of land that is five acres or more but less than
28 twenty acres devoted primarily to agricultural uses, which has produced
29 a gross income from agricultural uses equivalent to, as of January 1,
30 1993(~~(7)~~);

31 (i) One hundred dollars or more per acre per year for three of the
32 five calendar years preceding the date of application for
33 classification under this chapter for all parcels of land that are
34 classified under this subsection or all parcels of land for which an
35 application for classification under this subsection is made with the
36 granting authority prior to January 1, 1993(~~(7)~~); and

37 (ii) On or after January 1, 1993, two hundred dollars or more per
38 acre per year for three of the five calendar years preceding the date
39 of application for classification under this chapter;

1 (c) Any parcel of land of less than five acres devoted primarily to
2 agricultural uses which has produced a gross income as of January 1,
3 1993, of:

4 (i) One thousand dollars or more per year for three of the five
5 calendar years preceding the date of application for classification
6 under this chapter for all parcels of land that are classified under
7 this subsection or all parcels of land for which an application for
8 classification under this subsection is made with the granting
9 authority prior to January 1, 1993(~~(7)~~); and

10 (ii) On or after January 1, 1993, fifteen hundred dollars or more
11 per year for three of the five calendar years preceding the date of
12 application for classification under this chapter.

13 Parcels of land described in (b)(i) and (c)(i) of this subsection
14 shall, upon any transfer of the property excluding a transfer to a
15 surviving spouse, be subject to the limits of (b)(ii) and (c)(ii) of
16 this subsection.

17 Agricultural lands shall also include such incidental uses as are
18 compatible with agricultural purposes, including wetlands preservation,
19 provided such incidental use does not exceed twenty percent of the
20 classified land and the land on which appurtenances necessary to the
21 production, preparation, or sale of the agricultural products exist in
22 conjunction with the lands producing such products. Agricultural lands
23 shall also include any parcel of land of one to five acres, which is
24 not contiguous, but which otherwise constitutes an integral part of
25 farming operations being conducted on land qualifying under this
26 section as "farm and agricultural lands"; (~~(e)~~)

27 (d) The land on which housing for employees and the principal place
28 of residence of the farm operator or owner of land classified pursuant
29 to (a) of this subsection is sited if: The housing or residence is on
30 or contiguous to the classified parcel; and the use of the housing or
31 the residence is integral to the use of the classified land for
32 agricultural purposes;

33 (e) Any parcel of land designated as agricultural land under RCW
34 36.70A.170; or

35 (f) Any parcel of land not within an urban growth area zoned as
36 agricultural land under a comprehensive plan adopted under chapter
37 36.70A RCW.

38 (3) "Timber land" means any parcel of land that is five or more
39 acres or multiple parcels of land that are contiguous and total five or

1 more acres which is or are devoted primarily to the growth and harvest
2 of forest crops for commercial purposes. A timber management plan
3 shall be filed with the county legislative authority at the time (a) an
4 application is made for classification as timber land pursuant to this
5 chapter or (b) when a sale or transfer of timber land occurs and a
6 notice of classification continuance is signed. Timber land means the
7 land only.

8 (4) "Current" or "currently" means as of the date on which property
9 is to be listed and valued by the assessor.

10 (5) "Owner" means the party or parties having the fee interest in
11 land, except that where land is subject to real estate contract "owner"
12 shall mean the contract vendee.

13 (6) "Contiguous" means land adjoining and touching other property
14 held by the same ownership. Land divided by a public road, but
15 otherwise an integral part of a farming operation, shall be considered
16 contiguous.

17 (7) "Granting authority" means the appropriate agency or official
18 who acts on an application for classification of land pursuant to this
19 chapter.

20 (8) "Farm and agricultural conservation land" means either:

21 (a) Land that was previously classified under subsection (2) of
22 this section, that no longer meets the criteria of subsection (2) of
23 this section, and that is reclassified under subsection (1) of this
24 section; or

25 (b) Land that is traditional farmland that is not classified under
26 chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a
27 use inconsistent with agricultural uses, and that has a high potential
28 for returning to commercial agriculture.

29 **Sec. 32.** RCW 84.34.060 and 1992 c 69 s 8 are each amended to read
30 as follows:

31 In determining the true and fair value of open space land and
32 timber land, which has been classified as such under the provisions of
33 this chapter, the assessor shall consider only the use to which such
34 property and improvements is currently applied and shall not consider
35 potential uses of such property. The assessed valuation of open space
36 land shall not be less than the minimum value per acre of classified
37 farm and agricultural land except that the assessed valuation of open
38 space land may be valued based on the public benefit rating system

1 adopted under RCW 84.34.055: PROVIDED FURTHER, That timber land shall
2 be valued according to chapter 84.33 RCW. In valuing any tract or
3 parcel of real property designated and zoned under a comprehensive plan
4 adopted under chapter 36.70A RCW as agricultural, forest, or open space
5 land, the appraisal shall not be based on similar sales of parcels that
6 have been converted to nonagricultural, nonforest, or nonopen-space
7 uses within five years after the sale.

8 **Sec. 33.** RCW 84.34.065 and 1992 c 69 s 9 are each amended to read
9 as follows:

10 The true and fair value of farm and agricultural land shall be
11 determined by consideration of the earning or productive capacity of
12 comparable lands from crops grown most typically in the area averaged
13 over not less than five years, capitalized at indicative rates. The
14 earning or productive capacity of farm and agricultural lands shall be
15 the "net cash rental", capitalized at a "rate of interest" charged on
16 long term loans secured by a mortgage on farm or agricultural land plus
17 a component for property taxes. The current use value of land under
18 RCW 84.34.020(2)(d) shall be established as: The prior year's average
19 value of open space farm and agricultural land used in the county plus
20 the value of land improvements such as septic, water, and power used to
21 serve the residence. This shall not be interpreted to require the
22 assessor to list improvements to the land with the value of the land.

23 In valuing any tract or parcel of real property designated and
24 zoned under a comprehensive plan adopted under chapter 36.70A RCW as
25 agricultural, forest, or open space land, the appraisal shall not be
26 based on similar sales of parcels that have been converted to
27 nonagricultural, nonforest, or nonopen-space uses within five years
28 after the sale.

29 For the purposes of the above computation:

30 (1) The term "net cash rental" shall mean the average rental paid
31 on an annual basis, in cash, for the land being appraised and other
32 farm and agricultural land of similar quality and similarly situated
33 that is available for lease for a period of at least three years to any
34 reliable person without unreasonable restrictions on its use for
35 production of agricultural crops. There shall be allowed as a
36 deduction from the rental received or computed any costs of crop
37 production charged against the landlord if the costs are such as are
38 customarily paid by a landlord. If "net cash rental" data is not

1 available, the earning or productive capacity of farm and agricultural
2 lands shall be determined by the cash value of typical or usual crops
3 grown on land of similar quality and similarly situated averaged over
4 not less than five years. Standard costs of production shall be
5 allowed as a deduction from the cash value of the crops.

6 The current "net cash rental" or "earning capacity" shall be
7 determined by the assessor with the advice of the advisory committee as
8 provided in RCW 84.34.145, and through a continuing internal study,
9 assisted by studies of the department of revenue. This net cash rental
10 figure as it applies to any farm and agricultural land may be
11 challenged before the same boards or authorities as would be the case
12 with regard to assessed values on general property.

13 (2) The term "rate of interest" shall mean the rate of interest
14 charged by the farm credit administration and other large financial
15 institutions regularly making loans secured by farm and agricultural
16 lands through mortgages or similar legal instruments, averaged over the
17 immediate past five years.

18 The "rate of interest" shall be determined annually by a rule
19 adopted by the department of revenue and such rule shall be published
20 in the state register not later than January 1 of each year for use in
21 that assessment year. The department of revenue determination may be
22 appealed to the state board of tax appeals within thirty days after the
23 date of publication by any owner of farm or agricultural land or the
24 assessor of any county containing farm and agricultural land.

25 (3) The "component for property taxes" shall be a figure obtained
26 by dividing the assessed value of all property in the county into the
27 property taxes levied within the county in the year preceding the
28 assessment and multiplying the quotient obtained by one hundred.

29 **Sec. 34.** RCW 84.40.030 and 1994 c 124 s 20 are each amended to
30 read as follows:

31 All property shall be valued at one hundred percent of its true and
32 fair value in money and assessed on the same basis unless specifically
33 provided otherwise by law.

34 Taxable leasehold estates shall be valued at such price as they
35 would bring at a fair, voluntary sale for cash without any deductions
36 for any indebtedness owed including rentals to be paid.

1 The true and fair value of real property for taxation purposes
2 (including property upon which there is a coal or other mine, or stone
3 or other quarry) shall be based upon the following criteria:

4 (1) Any sales of the property being appraised or similar properties
5 with respect to sales made within the past five years. The appraisal
6 shall be consistent with the comprehensive land use plan, development
7 regulations under chapter 36.70A RCW, zoning, and any other
8 governmental policies or practices in effect at the time of appraisal
9 that affect the use of property, as well as physical and environmental
10 influences. The appraisal shall also take into account: (a) In the
11 use of sales by real estate contract as similar sales, the extent, if
12 any, to which the stated selling price has been increased by reason of
13 the down payment, interest rate, or other financing terms; and (b) the
14 extent to which the sale of a similar property actually represents the
15 general effective market demand for property of such type, in the
16 geographical area in which such property is located. Sales involving
17 deed releases or similar seller-developer financing arrangements shall
18 not be used as sales of similar property.

19 (2) In addition to sales as defined in subsection (1),
20 consideration may be given to cost, cost less depreciation,
21 reconstruction cost less depreciation, or capitalization of income that
22 would be derived from prudent use of the property. In the case of
23 property of a complex nature, or being used under terms of a franchise
24 from a public agency, or operating as a public utility, or property not
25 having a record of sale within five years and not having a significant
26 number of sales of similar property in the general area, the provisions
27 of this subsection (2) shall be the dominant factors in valuation.
28 When provisions of this subsection (2) are relied upon for establishing
29 values the property owner shall be advised upon request of the factors
30 used in arriving at such value.

31 (3) In valuing any tract or parcel of real property, the value of
32 the land, exclusive of structures thereon shall be determined; also the
33 value of structures thereon, but the valuation shall not exceed the
34 value of the total property as it exists. In valuing agricultural
35 land, growing crops shall be excluded.

36 (4) In valuing any tract or parcel of real property designated and
37 zoned under a comprehensive plan adopted under chapter 36.70A RCW as
38 agricultural, forest, or open space land, the appraisal shall not be
39 based on similar sales of parcels that have been converted to

1 nonagricultural, nonforest, or nonopen-space uses within five years
2 after the sale.

3 **Sec. 35.** RCW 90.60.030 and 1995 c 347 s 603 are each amended to
4 read as follows:

5 The permit assistance center is established within the department.
6 The center shall:

7 (1) Publish and keep current one or more handbooks containing lists
8 and explanations of all permit laws. ~~((The center shall coordinate~~
9 ~~with the business assistance center in providing and maintaining this~~
10 ~~information to applicants and others.))~~ To the extent possible, the
11 handbook shall include relevant federal and tribal laws. A state
12 agency or local government shall provide a reasonable number of copies
13 of application forms, statutes, ordinances, rules, handbooks, and other
14 informational material requested by the center and shall otherwise
15 fully cooperate with the center. The center shall seek the cooperation
16 of relevant federal agencies and tribal governments;

17 (2) Establish, and make known, a point of contact for distribution
18 of the handbook and advice to the public as to its interpretation in
19 any given case;

20 (3) Work closely and cooperatively with the business license center
21 ~~((and the business assistance center))~~ in providing efficient and
22 nonduplicative service to the public;

23 (4) Seek the assignment of employees from the permit agencies
24 listed under RCW 90.60.020(6)(a) to serve on a rotating basis in
25 staffing the center; ~~((and))~~

26 (5) Collect and disseminate information to public and private
27 entities on federal, state, local, and tribal government programs that
28 rely on private professional expertise to assist governmental agencies
29 in project permit review; and

30 (6) Provide an annual report to the legislature on potential
31 conflicts and perceived inconsistencies among existing statutes. The
32 first report shall be submitted to the appropriate standing committees
33 of the house of representatives and senate by December 1, 1996.

34 **Sec. 36.** RCW 35A.14.295 and 1967 ex.s. c 119 s 35A.14.295 are each
35 amended to read as follows:

1 (~~When there is, within~~) (1) The legislative body of a code city
2 may resolve to annex territory containing residential property owners
3 to the city if there is within the city, unincorporated territory;

4 (a) Containing less than one hundred acres and having at least
5 eighty percent of the boundaries of such area contiguous to the code
6 city(~~, the legislative body may resolve to annex such territory to the~~
7 code city)); or

8 (b) Of any size and having at least eighty percent of the
9 boundaries of such area contiguous to the city if such area existed
10 before June 30, 1994, and is within the same county and within the same
11 urban growth area designated under RCW 36.70A.110, and the city was
12 planning under chapter 36.70A RCW as of June 30, 1994.

13 (2) The resolution shall describe the boundaries of the area to be
14 annexed, state the number of voters residing therein as nearly as may
15 be, and set a date for a public hearing on such resolution for
16 annexation. Notice of the hearing shall be given by publication of the
17 resolution at least once a week for two weeks prior to the date of the
18 hearing, in one or more newspapers of general circulation within the
19 code city and one or more newspapers of general circulation within the
20 area to be annexed.

21 (3) For purposes of subsection (1)(b) of this section, territory
22 bounded by a river, lake, or other body of water is considered
23 contiguous to a city that is also bounded by the same river, lake, or
24 other body of water.

25 NEW SECTION. Sec. 37. A new section is added to chapter 35.13 RCW
26 to read as follows:

27 (1) The legislative body of a city or town planning under chapter
28 36.70A RCW as of June 30, 1994, may resolve to annex territory to the
29 city or town if there is, within the city or town, unincorporated
30 territory containing residential property owners within the same county
31 and within the same urban growth area designated under RCW 36.70A.110
32 as the city or town:

33 (a) Containing less than one hundred acres and having at least
34 eighty percent of the boundaries of such area contiguous to the city or
35 town if such area existed before June 30, 1994; or

36 (b) Of any size and having at least eighty percent of the
37 boundaries of the area contiguous to the city if the area existed
38 before June 30, 1994.

1 (2) The resolution shall describe the boundaries of the area to be
2 annexed, state the number of voters residing in the area as nearly as
3 may be, and set a date for a public hearing on the resolution for
4 annexation. Notice of the hearing shall be given by publication of the
5 resolution at least once a week for two weeks before the date of the
6 hearing in one or more newspapers of general circulation within the
7 city or town and one or more newspapers of general circulation within
8 the area to be annexed.

9 (3) For purposes of subsection (1)(b) of this section, territory
10 bounded by a river, lake, or other body of water is considered
11 contiguous to a city that is also bounded by the same river, lake, or
12 other body of water.

13 **Sec. 38.** RCW 35.13.174 and 1973 1st ex.s. c 164 s 17 are each
14 amended to read as follows:

15 Upon receipt by the board of county commissioners of a
16 determination by a majority of the review board favoring annexation of
17 the proposed area that has been initiated by resolution pursuant to RCW
18 35.13.015 by the city or town legislative body, the board of county
19 commissioners, or the city or town legislative body for any city or
20 town within an urban growth area designated under RCW 36.70A.110, shall
21 fix a date on which an annexation election shall be held, which date
22 will be not less than thirty days nor more than sixty days thereafter.

23 **Sec. 39.** RCW 36.93.170 and 1989 c 84 s 5 are each amended to read
24 as follows:

25 In reaching a decision on a proposal or an alternative, the board
26 shall consider the factors affecting such proposal, which shall
27 include, but not be limited to the following:

28 (1) Population and territory; population density; land area and
29 land uses; comprehensive plans and zoning, as adopted under chapter
30 35.63, 35A.63, or 36.70 RCW; comprehensive plans and development
31 regulations adopted under chapter 36.70A RCW; applicable service
32 agreements entered into under chapter 36.115 or 39.34 RCW; applicable
33 interlocal annexation agreements between a county and its cities; per
34 capita assessed valuation; topography, natural boundaries and drainage
35 basins, proximity to other populated areas; the existence and
36 preservation of prime agricultural soils and productive agricultural
37 uses; the likelihood of significant growth in the area and in adjacent

1 incorporated and unincorporated areas during the next ten years;
2 location and most desirable future location of community facilities;

3 (2) Municipal services; need for municipal services; effect of
4 ordinances, governmental codes, regulations and resolutions on existing
5 uses; present cost and adequacy of governmental services and controls
6 in area; prospects of governmental services from other sources;
7 probable future needs for such services and controls; probable effect
8 of proposal or alternative on cost and adequacy of services and
9 controls in area and adjacent area; the effect on the finances, debt
10 structure, and contractual obligations and rights of all affected
11 governmental units; and

12 (3) The effect of the proposal or alternative on adjacent areas, on
13 mutual economic and social interests, and on the local governmental
14 structure of the county.

15 The provisions of chapter 43.21C RCW, State Environmental Policy,
16 shall not apply to incorporation proceedings covered by chapter 35.02
17 RCW.

18 **Sec. 40.** RCW 84.14.010 and 1995 c 375 s 3 are each amended to read
19 as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "City" means either (a) a city or town with a population of at
23 least one hundred ((fifty)) thousand or (b) the largest city or town,
24 if there is no city or town with a population of at least one hundred
25 thousand, located in a county planning under the growth management act.

26 (2) "Governing authority" means the local legislative authority of
27 a city having jurisdiction over the property for which an exemption may
28 be applied for under this chapter.

29 (3) "Growth management act" means chapter 36.70A RCW.

30 (4) "Multiple-unit housing" means a building having four or more
31 dwelling units not designed or used as transient accommodations and not
32 including hotels and motels. Multifamily units may result from new
33 construction or rehabilitated or conversion of vacant, underutilized,
34 or substandard buildings to multifamily housing.

35 (5) "Owner" means the property owner of record.

36 (6) "Permanent residential occupancy" means multiunit housing that
37 provides either rental or owner occupancy on a nontransient basis.
38 This includes owner-occupied or rental accommodation that is leased for

1 a period of at least one month. This excludes hotels and motels that
2 predominately offer rental accommodation on a daily or weekly basis.

3 (7) "Rehabilitation improvements" means modifications to existing
4 structures, that are vacant for twelve months or longer, that are made
5 to achieve a condition of substantial compliance with existing building
6 codes or modification to existing occupied structures which increase
7 the number of multifamily housing units.

8 (8) "Residential targeted area" means an area within an urban
9 center that has been designated by the governing authority as a
10 residential targeted area in accordance with this chapter.

11 (9) "Substantial compliance" means compliance with local building
12 or housing code requirements that are typically required for
13 rehabilitation as opposed to new construction.

14 (10) "Urban center" means a compact identifiable district where
15 urban residents may obtain a variety of products and services. An
16 urban center must contain:

17 (a) Several existing or previous, or both, business establishments
18 that may include but are not limited to shops, offices, banks,
19 restaurants, governmental agencies;

20 (b) Adequate public facilities including streets, sidewalks,
21 lighting, transit, domestic water, and sanitary sewer systems; and

22 (c) A mixture of uses and activities that may include housing,
23 recreation, and cultural activities in association with either
24 commercial or office, or both, use.

25 NEW SECTION. **Sec. 41.** A new section is added to chapter 36.70A
26 RCW to read as follows:

27 The legislature recognizes that the preservation of urban
28 greenbelts is an integral part of comprehensive growth management in
29 Washington. The legislature further recognizes that certain greenbelts
30 are subject to adverse possession action which, if carried out,
31 threaten the comprehensive nature of this chapter. Therefore, a party
32 shall not acquire by adverse possession property that is designated as
33 a plat greenbelt or open space area or that is dedicated as open space
34 to a public agency or to a bona fide homeowner's association.

35 **Sec. 42.** RCW 84.14.030 and 1995 c 375 s 6 are each amended to read
36 as follows:

1 An owner of property making application under this chapter must
2 meet the following requirements:

3 (1) The new or rehabilitated multiple-unit housing must be located
4 in a residential targeted area as designated by the city;

5 (2) The multiple-unit housing must meet the guidelines as adopted
6 by the governing authority that may include height, density, public
7 benefit features, number and size of proposed development, parking,
8 low-income or moderate-income occupancy requirements, and other adopted
9 requirements indicated necessary by the city. The required amenities
10 should be relative to the size of the project and tax benefit to be
11 obtained;

12 (3) The new, converted, or rehabilitated multiple-unit housing must
13 provide for a minimum of fifty percent of the space for permanent
14 residential occupancy. In the case of existing occupied multifamily
15 development, the multifamily housing must also provide for a minimum of
16 four additional multifamily units. Existing multifamily vacant housing
17 that has been vacant for twelve months or more does not have to provide
18 additional multifamily units;

19 (4) New construction multifamily housing and rehabilitation
20 improvements must be completed within three years from the date of
21 approval of the application;

22 (5) Property proposed to be rehabilitated must be vacant at least
23 twelve months before submitting an application and fail to comply with
24 one or more standards of the applicable state or local building or
25 housing codes on or after July 23, 1995; and

26 (6) The applicant must enter into a contract with the city approved
27 by the governing body under which the applicant has agreed to the
28 implementation of the development on terms and conditions satisfactory
29 to the governing authority.

30 **Sec. 43.** RCW 84.14.050 and 1995 c 375 s 8 are each amended to read
31 as follows:

32 An owner of property seeking tax incentives under this chapter must
33 complete the following procedures:

34 (1) In the case of rehabilitation or where demolition or new
35 construction is required, the owner shall secure from the governing
36 authority or duly authorized agent, before commencement of
37 rehabilitation improvements or new construction, verification of
38 property noncompliance with applicable building and housing codes;

1 (2) In the case of new and rehabilitated multifamily housing, the
2 owner shall apply to the city on forms adopted by the governing
3 authority. The application must contain the following:

4 (a) Information setting forth the grounds supporting the requested
5 exemption including information indicated on the application form or in
6 the guidelines;

7 (b) A description of the project and site plan, including the floor
8 plan of units and other information requested;

9 (c) A statement that the applicant is aware of the potential tax
10 liability involved when the property ceases to be eligible for the
11 incentive provided under this chapter;

12 (3) The applicant must verify the application by oath or
13 affirmation; and

14 (4) The application must be made on or before April 1 of each year,
15 and must be accompanied by the application fee, if any, required under
16 RCW (~~(84.14.070)~~) 84.14.080. The governing authority may permit the
17 applicant to revise an application before final action by the governing
18 authority.

19 **Sec. 44. RCW 90.61.020 and 1995 c 347 s 802 are each amended to*
20 *read as follows:*

21 *The commission shall consist of not more than (~~fourteen~~) twenty-*
22 *two members. (~~Eleven~~) Fifteen members of the commission shall be*
23 *appointed by the governor. (~~Membership~~) The commission members*
24 *appointed by the governor shall reflect the interests of business,*
25 *(~~agriculture~~) operators of small businesses, owners of small property*
26 *holdings, livestock producers, irrigated agriculture, dryland farmers*
27 *or major crop commodity producers, labor, the environment, neighborhood*
28 *groups, other citizens, the legislature, cities, counties, and*
29 *federally recognized Indian tribes. (~~Members~~) The commission members*
30 *appointed by the governor shall have substantial experience in matters*
31 *relating to land use and environmental planning and regulation, and*
32 *shall have the ability to work toward cooperative solutions among*
33 *diverse interests. The director of the department of community, trade,*
34 *and economic development, or the director s designee, shall be a member*
35 *and shall serve as chair of the commission. The director of the*
36 *department of ecology, or the director s designee, and the secretary of*
37 *the department of transportation, or the secretary's designee, shall*
38 *also be members of the commission. Two members of the commission shall*

1 be members of the senate, one from each caucus appointed by the
2 president of the senate, and two members of the commission shall be
3 members of the house of representatives, one from each caucus appointed
4 by the speaker of the house of representatives. Staff for the
5 commission shall be provided by the department of community, trade, and
6 economic development, with additional staff to be provided by other
7 state agencies and the legislature, as may be required. State agencies
8 shall provide the commission with information and assistance as needed.

9 This section expires June 30, 1998.

10 *Sec. 44 was vetoed. See message at end of chapter.

11 *Sec. 45. RCW 90.61.040 and 1995 c 347 s 804 are each amended to
12 read as follows:

13 The commission shall:

14 (1) Consider the effectiveness of state and local government
15 efforts to consolidate and integrate the growth management act, the
16 state environmental policy act, the shoreline management act, and other
17 land use, planning, environmental, and permitting laws.

18 (2) Identify the revisions and modifications needed in state land
19 use, planning, and environmental law and practice to adequately plan
20 for growth and achieve economically and environmentally sustainable
21 development, to adequately assess environmental impacts of
22 comprehensive plans, development regulations, and growth, and to reduce
23 the time and cost of obtaining project permits.

24 (3) Draft a consolidated land use procedure, following these
25 guidelines:

26 (a) Conduct land use planning through the comprehensive planning
27 process under chapter 36.70A RCW rather than through review of
28 individual projects;

29 (b) Involve diverse sectors of the public in the planning process.
30 Early and informal environmental analysis should be incorporated into
31 planning and decision making;

32 (c) Recognize that different questions need to be answered and
33 different levels of detail applied at each planning phase, from the
34 initial development of plan concepts or plan elements to implementation
35 programs;

36 (d) Integrate and combine to the fullest extent possible the
37 processes, analysis, and documents currently required under chapters
38 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent

1 implementation will incorporate measures to promote the environmental,
2 economic, and other goals and to mitigate undesirable or unintended
3 adverse impacts on a community's quality of life;

4 (e) Focus environmental review and the level of detail needed for
5 different stages of plan and project decisions on the environmental
6 considerations most relevant to that stage of the process;

7 (f) Avoid duplicating review that has occurred for plan decisions
8 when specific projects are proposed;

9 (g) Use environmental review on projects to: (i) Review and
10 document consistency with comprehensive plans and development
11 regulations; (ii) provide prompt and coordinated review by agencies,
12 tribes, and the public on compliance with applicable environmental laws
13 and plans, including mitigation for site specific project impacts that
14 have not been considered and addressed at the plan or development
15 regulation level; and (iii) ensure accountability by local government
16 to applicants and the public for requiring and implementing mitigation
17 measures;

18 (h) Maintain or improve the quality of environmental analysis both
19 for plan and for project decisions, while integrating these analyses
20 with improved state and local planning and permitting processes;

21 (i) Examine existing land use and environmental permits for
22 necessity and utility. To the extent possible, existing permits should
23 be combined into fewer permits, assuring that the values and principles
24 intended to be protected by those permits remain protected; and

25 (j) Consolidate local government appeal processes to allow a single
26 appeal of permits at local government levels, a single state level
27 administrative appeal, and a final judicial appeal.

28 (4) Monitor instances state-wide of the vesting of project permit
29 applications during the period that an appeal is pending before a
30 growth management hearings board, as authorized under RCW 36.70A.300.
31 The commission shall also review the extent to which such vesting
32 results in the approval of projects that are inconsistent with a
33 comprehensive plan or development regulation provision ultimately found
34 to be in compliance with a board's order or remand. The commission
35 shall analyze the impact of such approvals on ensuring the attainment
36 of the goals and policies of chapter 36.70A RCW, and make
37 recommendations to the governor and the legislature on statutory
38 changes to address any adverse impacts from the provisions of RCW
39 36.70A.300. The commission shall provide an initial report on its

1 findings and recommendations by November 1, 1995, and submit its
2 further findings and recommendations subsequently in the reports
3 required under RCW 90.61.030.

4 (5) Monitor local government consolidated permit procedures and the
5 effectiveness of the timelines established by RCW 36.70B.090. The
6 commission shall include in its report submitted to the governor and
7 the legislature on November 1, 1997, its recommendation about what
8 timelines, if any, should be imposed on the local government
9 consolidated permit process required by chapter 36.70B RCW.

10 (6) Evaluate funding mechanisms that will enable local governments
11 to pay for and recover the costs of conducting integrated planning and
12 environmental analysis. The commission shall include its conclusions
13 in its first report to the legislature on November 1, 1995, and include
14 any recommended statutory changes.

15 (7) Study, in cooperation with the state board for registration of
16 professional engineers and the state building code council, ways in
17 which state agencies and local governments could authorize
18 professionals with appropriate qualifications to certify a project's
19 compliance with certain state and local land use and environmental
20 requirements. The commission shall report to the legislature on
21 measures necessary to implement such a system of professional
22 certification.

23 (8) Review long-term approaches for resolving disputes that arise
24 under the growth management act, chapter 36.70A RCW; the shoreline
25 management act, chapter 90.58 RCW; and other environmental laws. In
26 particular, in the commission's recommendations on a consolidated land
27 use procedure and integration and consolidation of Washington's land
28 use and environmental laws, identify needed changes to the structure of
29 the boards that hear environmental appeals as well as the extent to
30 which quasi-judicial bodies are needed to provide continued oversight
31 of matters currently brought before the growth management hearings
32 board and other boards that hear such appeals.

33 (9) If the commission finds that there is no longer a need for the
34 growth management hearings boards and recommends sunset of the boards,
35 include in its recommendations a plan for implementing the sunset
36 process. Alternatively, if the boards are to become advisory bodies
37 with the primary duty of mediating disputes and making advisory
38 decisions, the commission shall make recommendations as to how such a
39 change in the board's authority should be implemented. If the

1 commission makes other recommendations with respect to the boards, it
2 shall make recommendations to implement any needed changes.

3 (10) Evaluate the effect of the 1997 amendments to this chapter
4 that raise the standard of review of agency, county, and city actions
5 by the growth management hearings boards and make changes with respect
6 to board determinations of invalidity, and make recommendations as to
7 whether the latitude of the boards should be further curtailed and
8 greater deference given to local decisions by raising the standard of
9 review, limiting the authority of the board to make determinations of
10 invalidity, or making other changes.

11 *These guidelines are intended to guide the work of the commission,*
12 *without limiting its charge to integrate and consolidate Washington's*
13 *land use and environmental laws into a single, manageable statutory*
14 *framework.*

15 This section expires June 30, 1998.

16 *Sec. 45 was vetoed. See message at end of chapter.

17 **Sec. 46.** RCW 36.70B.040 and 1995 c 347 s 405 are each amended to
18 read as follows:

19 (1) A proposed project's consistency with a local government's
20 development regulations adopted under chapter 36.70A RCW, or, in the
21 absence of applicable development regulations, the appropriate elements
22 of the comprehensive plan (~~(or subarea plan)~~) adopted under chapter
23 36.70A RCW shall be (~~(determined)~~) decided by the local government
24 during project review by consideration of:

25 (a) The type of land use;

26 (b) The level of development, such as units per acre or other
27 measures of density;

28 (c) Infrastructure, including public facilities and services needed
29 to serve the development; and

30 (d) The (~~(character)~~) characteristics of the development, such as
31 development standards.

32 (2) In (~~(determining consistency)~~) deciding whether a project is
33 consistent, the determinations made pursuant to RCW 36.70B.030(2) shall
34 be controlling.

35 (3) For purposes of this section, the term "consistency" shall
36 include all terms used in this chapter and chapter 36.70A RCW to refer
37 to performance in accordance with this chapter and chapter 36.70A RCW,
38 including but not limited to compliance, conformity, and consistency.

1 (4) Nothing in this section requires documentation, dictates an
2 agency's procedures for considering consistency, or limits a (~~unit of~~
3 ~~government~~) city or county from asking more specific or related
4 questions with respect to any of the four main categories listed in
5 subsection (1)(a) through (d) of this section.

6 (5) The department of community, trade, and economic development is
7 authorized to develop and adopt by rule criteria to assist local
8 governments planning under RCW 36.70A.040 to analyze the consistency of
9 project actions. These criteria shall be jointly developed with the
10 department of ecology.

11 **Sec. 47.** RCW 43.21C.110 and 1995 c 347 s 206 are each amended to
12 read as follows:

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

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

29 (a) Categories of governmental actions which are not to be
30 considered as potential major actions significantly affecting the
31 quality of the environment, including categories pertaining to
32 applications for water right permits pursuant to chapters 90.03 and
33 90.44 RCW. The types of actions included as categorical exemptions in
34 the rules shall be limited to those types which are not major actions
35 significantly affecting the quality of the environment. The rules
36 shall provide for certain circumstances where actions which potentially
37 are categorically exempt require environmental review. An action that

1 is categorically exempt under the rules adopted by the department may
2 not be conditioned or denied under this chapter.

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

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

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

19 (e) Rules and procedures for public notification of actions taken
20 and documents prepared.

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

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

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

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

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

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

10 (l) Rules relating to the use of environmental documents in
11 planning and decision making and the implementation of the substantive
12 policies and requirements of this chapter, including procedures for
13 appeals under this chapter.

14 (m) Rules and procedures that provide for the integration of
15 environmental review with project review as provided in RCW 43.21C.240.
16 The rules and procedures shall be jointly developed with the department
17 of community, trade, and economic development and shall be applicable
18 to the preparation of environmental documents for actions in counties,
19 cities, and towns planning under RCW 36.70A.040. The rules and
20 procedures shall also include procedures and criteria to analyze ((the
21 consistency of project actions, including)) planned actions under RCW
22 43.21C.031(2) (~~((, with development regulations adopted under chapter~~
23 ~~36.70A RCW, or in the absence of applicable development regulations,~~
24 ~~the appropriate elements of a comprehensive plan or subarea plan~~
25 ~~adopted under chapter 36.70A RCW))~~ and revisions to the rules adopted
26 under this section to ensure that they are compatible with the
27 requirements and authorizations of chapter 347, Laws of 1995, as
28 amended by chapter . . . , Laws of 1997 (this act). Ordinances or
29 procedures adopted by a county, city, or town to implement the
30 provisions of (~~RCW 43.21C.240~~) chapter 347, Laws of 1995 prior to the
31 effective date of rules adopted under this subsection (1)(m) shall
32 continue to be effective until the adoption of any new or revised
33 ordinances or procedures that may be required. If any revisions are
34 required as a result of rules adopted under this subsection (1)(m),
35 those revisions shall be made within the time limits specified in RCW
36 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. 48.** RCW 36.70B.110 and 1995 c 347 s 415 are each amended to
14 read as follows:

15 (1) Not later than April 1, 1996, a local government planning under
16 RCW 36.70A.040 shall provide a notice of application to the public and
17 the departments and agencies with jurisdiction as provided in this
18 section. If a local government has made a determination of
19 significance under chapter 43.21C RCW concurrently with the notice of
20 application, the notice of application shall be combined with the
21 determination of significance and scoping notice. Nothing in this
22 section prevents a determination of significance and scoping notice
23 from being issued prior to the notice of application. Nothing in this
24 section or this chapter prevents a lead agency, when it is a project
25 proponent or is funding a project, from conducting its review under
26 chapter 43.21C RCW or from allowing appeals of procedural
27 determinations prior to submitting a project permit application.

28 (2) The notice of application shall be provided within fourteen
29 days after the determination of completeness as provided in RCW
30 36.70B.070 and, except as limited by the provisions of subsection
31 (4)(b) of this section, shall include the following in whatever
32 sequence or format the local government deems appropriate:

33 (a) The date of application, the date of the notice of completion
34 for the application, and the date of the notice of application;

35 (b) A description of the proposed project action and a list of the
36 project permits included in the application and, if applicable, a list
37 of any studies requested under RCW 36.70B.070 or 36.70B.090;

1 (c) The identification of other permits not included in the
2 application to the extent known by the local government;

3 (d) The identification of existing environmental documents that
4 evaluate the proposed project, and, if not otherwise stated on the
5 document providing the notice of application, such as a city land use
6 bulletin, the location where the application and any studies can be
7 reviewed;

8 (e) A statement of the public comment period, which shall be not
9 less than fourteen nor more than thirty days following the date of
10 notice of application, and statements of the right of any person to
11 comment on the application, receive notice of and participate in any
12 hearings, request a copy of the decision once made, and any appeal
13 rights. A local government may accept public comments at any time
14 prior to the closing of the record of an open record predecision
15 hearing, if any, or, if no open record predecision hearing is provided,
16 prior to the decision on the project permit;

17 (f) The date, time, place, and type of hearing, if applicable and
18 scheduled at the date of notice of the application;

19 (g) A statement of the preliminary determination, if one has been
20 made at the time of notice, of those development regulations that will
21 be used for project mitigation and of consistency as provided in RCW
22 (~~36.70B.040~~) 36.70B.030(2); and

23 (h) Any other information determined appropriate by the local
24 government.

25 (3) If an open record predecision hearing is required for the
26 requested project permits, the notice of application shall be provided
27 at least fifteen days prior to the open record hearing.

28 (4) A local government shall use reasonable methods to give the
29 notice of application to the public and agencies with jurisdiction and
30 may use its existing notice procedures. A local government may use
31 different types of notice for different categories of project permits
32 or types of project actions. If a local government by resolution or
33 ordinance does not specify its method of public notice, the local
34 government shall use the methods provided for in (a) and (b) of this
35 subsection. Examples of reasonable methods to inform the public are:

36 (a) Posting the property for site-specific proposals;

37 (b) Publishing notice, including at least the project location,
38 description, type of permit(s) required, comment period dates, and
39 location where the notice of application required by subsection (2) of

1 this section and the complete application may be reviewed, in the
2 newspaper of general circulation in the general area where the proposal
3 is located or in a local land use newsletter published by the local
4 government;

5 (c) Notifying public or private groups with known interest in a
6 certain proposal or in the type of proposal being considered;

7 (d) Notifying the news media;

8 (e) Placing notices in appropriate regional or neighborhood
9 newspapers or trade journals;

10 (f) Publishing notice in agency newsletters or sending notice to
11 agency mailing lists, either general lists or lists for specific
12 proposals or subject areas; and

13 (g) Mailing to neighboring property owners.

14 (5) A notice of application shall not be required for project
15 permits that are categorically exempt under chapter 43.21C RCW, unless
16 ~~((a public comment period or))~~ an open record predecision hearing is
17 required or an open record appeal hearing is allowed on the project
18 permit decision.

19 (6) A local government shall integrate the permit procedures in
20 this section with its environmental review under chapter 43.21C RCW as
21 follows:

22 (a) Except for a determination of significance and except as
23 otherwise expressly allowed in this section, the local government may
24 not issue its threshold determination(~~(, or issue a decision or a~~
25 ~~recommendation on a project permit)) until the expiration of the public
26 comment period on the notice of application.~~

27 (b) If an open record predecision hearing is required ~~((and the~~
28 ~~local government's threshold determination requires public notice under~~
29 ~~chapter 43.21C RCW)),~~ the local government shall issue its threshold
30 determination at least fifteen days prior to the open record
31 predecision hearing.

32 (c) Comments shall be as specific as possible.

33 (d) A local government is not required to provide for
34 administrative appeals of its threshold determination. If provided, an
35 administrative appeal shall be filed within fourteen days after notice
36 that the determination has been made and is appealable. Except as
37 otherwise expressly provided in this section, the appeal hearing on a
38 determination of nonsignificance shall be consolidated with any open
39 record hearing on the project permit.

1 (7) At the request of the applicant, a local government may combine
2 any hearing on a project permit with any hearing that may be held by
3 another local, state, regional, federal, or other agency (~~provided~~
4 ~~that~~), if:

5 (a) The hearing is held within the geographic boundary of the local
6 government (~~(. Hearings shall be combined if requested by an applicant,~~
7 as long as)); and

8 (b) The joint hearing can be held within the time periods specified
9 in RCW 36.70B.090 or the applicant agrees to the schedule in the event
10 that additional time is needed in order to combine the hearings. All
11 agencies of the state of Washington, including municipal corporations
12 and counties participating in a combined hearing, are hereby authorized
13 to issue joint hearing notices and develop a joint format, select a
14 mutually acceptable hearing body or officer, and take such other
15 actions as may be necessary to hold joint hearings consistent with each
16 of their respective statutory obligations.

17 (8) All state and local agencies shall cooperate to the fullest
18 extent possible with the local government in holding a joint hearing if
19 requested to do so, as long as:

20 (a) The agency is not expressly prohibited by statute from doing
21 so;

22 (b) Sufficient notice of the hearing is given to meet each of the
23 agencies' adopted notice requirements as set forth in statute,
24 ordinance, or rule; and

25 (c) The agency has received the necessary information about the
26 proposed project from the applicant to hold its hearing at the same
27 time as the local government hearing.

28 (9) A local government is not required to provide for
29 administrative appeals. If provided, an administrative appeal of the
30 project decision(~~(, combined with))~~ and of any environmental
31 determination(~~(s)~~) issued at the same time as the project decision,
32 shall be filed within fourteen days after the notice of the decision or
33 after other notice that the decision has been made and is appealable.
34 The local government shall extend the appeal period for an additional
35 seven days, if state or local rules adopted pursuant to chapter 43.21C
36 RCW allow public comment on a determination of nonsignificance issued
37 as part of the appealable project permit decision.

1 (10) The applicant for a project permit is deemed to be a
2 participant in any comment period, open record hearing, or closed
3 record appeal.

4 (11) Each local government planning under RCW 36.70A.040 shall
5 adopt procedures for administrative interpretation of its development
6 regulations.

7 **Sec. 49.** RCW 43.21C.075 and 1995 c 347 s 204 are each amended to
8 read as follows:

9 (1) Because a major purpose of this chapter is to combine
10 environmental considerations with public decisions, any appeal brought
11 under this chapter shall be linked to a specific governmental action.
12 The State Environmental Policy Act provides a basis for challenging
13 whether governmental action is in compliance with the substantive and
14 procedural provisions of this chapter. The State Environmental Policy
15 Act is not intended to create a cause of action unrelated to a specific
16 governmental action.

17 (2) Unless otherwise provided by this section:

18 (a) Appeals under this chapter shall be of the governmental action
19 together with its accompanying environmental determinations.

20 (b) Appeals of environmental determinations made (or lacking) under
21 this chapter shall be commenced within the time required to appeal the
22 governmental action which is subject to environmental review.

23 (3) If an agency has a procedure for appeals of agency
24 environmental determinations made under this chapter, such procedure:

25 (a) Shall ~~((not))~~ allow no more than one agency appeal proceeding
26 on ~~((a))~~ each procedural determination (the adequacy of a determination
27 of significance/nonsignificance or of a final environmental impact
28 statement) ~~((The appeal proceeding on a determination of significance
29 may occur before the agency's final decision on a proposed action. The
30 appeal proceeding on a determination of nonsignificance may occur
31 before the agency's final decision on a proposed action only if the
32 appeal is heard at a proceeding where the hearing body or officer will
33 render a final recommendation or decision on the proposed underlying
34 governmental action. Such appeals shall also be allowed for a
35 determination of significance/nonsignificance which may be issued by
36 the agency after supplemental review))~~);

37 (b) Shall consolidate an appeal of procedural issues and of
38 substantive determinations made under this chapter (such as a decision

1 to require particular mitigation measures or to deny a proposal) with
2 a hearing or appeal on the underlying governmental action by providing
3 for a single simultaneous hearing before one hearing officer or body to
4 consider the agency decision or recommendation on a proposal and any
5 environmental determinations made under this chapter, with the
6 exception of ~~((the))~~:

7 (i) An appeal~~((, if any,))~~ of a determination of significance ~~((as~~
8 ~~provided in (a) of this subsection))~~:

9 (ii) An appeal of a procedural determination made by an agency when
10 the agency is a project proponent, or is funding a project, and chooses
11 to conduct its review under this chapter, including any appeals of its
12 procedural determinations, prior to submitting an application for a
13 project permit;

14 (iii) An appeal of a procedural determination made by an agency on
15 a nonproject action; or

16 (iv) An appeal to the local legislative authority under RCW
17 43.21C.060 or other applicable state statutes;

18 (c) Shall provide for the preparation of a record for use in any
19 subsequent appeal proceedings, and shall provide for any subsequent
20 appeal proceedings to be conducted on the record, consistent with other
21 applicable law. An adequate record consists of findings and
22 conclusions, testimony under oath, and taped or written transcript. An
23 electronically recorded transcript will suffice for purposes of review
24 under this subsection; and

25 (d) Shall provide that procedural determinations made by the
26 responsible official shall be entitled to substantial weight.

27 (4) If a person aggrieved by an agency action has the right to
28 judicial appeal and if an agency has an administrative appeal
29 procedure, such person shall, prior to seeking any judicial review, use
30 such agency procedure if any such procedure is available, unless
31 expressly provided otherwise by state statute.

32 (5) Some statutes and ordinances contain time periods for
33 challenging governmental actions which are subject to review under this
34 chapter, such as various local land use approvals (the "underlying
35 governmental action"). RCW 43.21C.080 establishes an optional "notice
36 of action" procedure which, if used, imposes a time period for
37 appealing decisions under this chapter. This subsection does not
38 modify any such time periods. In this subsection, the term "appeal"
39 refers to a judicial appeal only.

1 (a) If there is a time period for appealing the underlying
2 governmental action, appeals under this chapter shall be commenced
3 within such time period. The agency shall give official notice stating
4 the date and place for commencing an appeal.

5 (b) If there is no time period for appealing the underlying
6 governmental action, and a notice of action under RCW 43.21C.080 is
7 used, appeals shall be commenced within the time period specified by
8 RCW 43.21C.080.

9 (6) (a) Judicial review under subsection (5) of this section of an
10 appeal decision made by an agency under subsection (3) of this section
11 shall be on the record, consistent with other applicable law.

12 (b) A taped or written transcript may be used. If a taped
13 transcript is to be reviewed, a record shall identify the location on
14 the taped transcript of testimony and evidence to be reviewed. Parties
15 are encouraged to designate only those portions of the testimony
16 necessary to present the issues raised on review, but if a party
17 alleges that a finding of fact is not supported by evidence, the party
18 should include in the record all evidence relevant to the disputed
19 finding. Any other party may designate additional portions of the
20 taped transcript relating to issues raised on review. A party may
21 provide a written transcript of portions of the testimony at the
22 party's own expense or apply to that court for an order requiring the
23 party seeking review to pay for additional portions of the written
24 transcript.

25 (c) Judicial review under this chapter shall without exception be
26 of the governmental action together with its accompanying environmental
27 determinations.

28 (7) Jurisdiction over the review of determinations under this
29 chapter in an appeal before an agency or superior court shall upon
30 consent of the parties be transferred in whole or part to the
31 shorelines hearings board. The shorelines hearings board shall hear
32 the matter and sign the final order expeditiously. The superior court
33 shall certify the final order of the shorelines hearings board and
34 (~~said~~) the certified final order may only be appealed to an appellate
35 court. In the case of an appeal under this chapter regarding a project
36 or other matter that is also the subject of an appeal to the shorelines
37 hearings board under chapter 90.58 RCW, the shorelines hearings board
38 shall have sole jurisdiction over both the appeal under this section
39 and the appeal under chapter 90.58 RCW, shall consider them together,

1 and shall issue a final order within one hundred eighty days as
2 provided in RCW 90.58.180.

3 (8) For purposes of this section and RCW 43.21C.080, the words
4 "action", "decision", and "determination" mean substantive agency
5 action including any accompanying procedural determinations under this
6 chapter (except where the word "action" means "appeal" in RCW
7 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080
8 does not mean a procedural determination by itself made under this
9 chapter. The word "determination" includes any environmental document
10 required by this chapter and state or local implementing rules. The
11 word "agency" refers to any state or local unit of government. Except
12 as provided in subsection (5) of this section, the word "appeal" refers
13 to administrative, legislative, or judicial appeals.

14 (9) The court in its discretion may award reasonable (~~(attorney's)~~)
15 attorneys' fees of up to one thousand dollars in the aggregate to the
16 prevailing party, including a governmental agency, on issues arising
17 out of this chapter if the court makes specific findings that the legal
18 position of a party is frivolous and without reasonable basis.

19 **Sec. 50.** RCW 90.58.090 and 1995 c 347 s 306 are each amended to
20 read as follows:

21 (1) A master program, segment of a master program, or an amendment
22 to a master program shall become effective when approved by the
23 department. Within the time period provided in RCW 90.58.080, each
24 local government shall have submitted a master program, either totally
25 or by segments, for all shorelines of the state within its jurisdiction
26 to the department for review and approval.

27 (2) Upon receipt of a proposed master program or amendment, the
28 department shall:

29 (a) Provide notice to and opportunity for written comment by all
30 interested parties of record as a part of the local government review
31 process for the proposal and to all persons, groups, and agencies that
32 have requested in writing notice of proposed master programs or
33 amendments generally or for a specific area, subject matter, or issue.
34 The comment period shall be at least thirty days, unless the department
35 determines that the level of complexity or controversy involved
36 supports a shorter period;

1 (b) In the department's discretion, conduct a public hearing during
2 the thirty-day comment period in the jurisdiction proposing the master
3 program or amendment;

4 (c) Within fifteen days after the close of public comment, request
5 the local government to review the issues identified by the public,
6 interested parties, groups, and agencies and provide a written response
7 as to how the proposal addresses the identified issues;

8 (d) Within thirty days after receipt of the local government
9 response pursuant to (c) of this subsection, make written findings and
10 conclusions regarding the consistency of the proposal with the policy
11 of RCW 90.58.020 and the applicable guidelines, provide a response to
12 the issues identified in (c) of this subsection, and either approve the
13 proposal as submitted, recommend specific changes necessary to make the
14 proposal approvable, or deny approval of the proposal in those
15 instances where no alteration of the proposal appears likely to be
16 consistent with the policy of RCW 90.58.020 and the applicable
17 guidelines. The written findings and conclusions shall be provided to
18 the local government, all interested persons, parties, groups, and
19 agencies of record on the proposal;

20 (e) If the department recommends changes to the proposed master
21 program or amendment, within thirty days after the department mails the
22 written findings and conclusions to the local government, the local
23 government may:

24 (i) Agree to the proposed changes. The receipt by the department
25 of the written notice of agreement constitutes final action by the
26 department approving the amendment; or

27 (ii) Submit an alternative proposal. If, in the opinion of the
28 department, the alternative is consistent with the purpose and intent
29 of the changes originally submitted by the department and with this
30 chapter it shall approve the changes and provide written notice to all
31 recipients of the written findings and conclusions. If the department
32 determines the proposal is not consistent with the purpose and intent
33 of the changes proposed by the department, the department may resubmit
34 the proposal for public and agency review pursuant to this section or
35 reject the proposal.

36 (3) The department shall approve the segment of a master program
37 relating to shorelines unless it determines that the submitted segments
38 are not consistent with the policy of RCW 90.58.020 and the applicable
39 guidelines.

1 (4) The department shall approve those segments of the master
2 program relating to shorelines of state-wide significance only after
3 determining the program provides the optimum implementation of the
4 policy of this chapter to satisfy the state-wide interest. If the
5 department does not approve a segment of a local government master
6 program relating to a shoreline of state-wide significance, the
7 department may develop and by rule adopt an alternative to the local
8 government s proposal.

9 (5) In the event a local government has not complied with the
10 requirements of RCW 90.58.070 it may thereafter upon written notice to
11 the department elect to adopt a master program for the shorelines
12 within its jurisdiction, in which event it shall comply with the
13 provisions established by this chapter for the adoption of a master
14 program for such shorelines.

15 Upon approval of such master program by the department it shall
16 supersede such master program as may have been adopted by the
17 department for such shorelines.

18 (6) A master program or amendment to a master program takes effect
19 when and in such form as approved or adopted by the department.
20 Shoreline master programs that were adopted by the department prior to
21 July 22, 1995, in accordance with the provisions of this section then
22 in effect, shall be deemed approved by the department in accordance
23 with the provisions of this section that became effective on that date.
24 The department shall maintain a record of each master program, the
25 action taken on any proposal for adoption or amendment of the master
26 program, and any appeal of the department's action. The department's
27 approved document of record constitutes the official master program.

28 **Sec. 51.** RCW 90.58.143 and 1996 c 62 s 1 are each amended to read
29 as follows:

30 (1) The time requirements of this section shall apply to all
31 substantial development permits and to any development authorized
32 pursuant to a variance or conditional use permit authorized under this
33 chapter. Upon a finding of good cause, based on the requirements and
34 circumstances of the project proposed and consistent with the policy
35 and provisions of the master program and this chapter, local government
36 may adopt different time limits from those set forth in subsections (2)
37 and (3) of this section as a part of action on a substantial
38 development permit.

1 (2) Construction activities shall be commenced or, where no
2 construction activities are involved, the use or activity shall be
3 commenced within two years of the effective date of a substantial
4 development permit. However, local government may authorize a single
5 extension for a period not to exceed one year based on reasonable
6 factors, if a request for extension has been filed before the
7 expiration date and notice of the proposed extension is given to
8 parties of record on the substantial development permit and to the
9 department.

10 (3) Authorization to conduct construction activities shall
11 terminate five years after the effective date of a substantial
12 development permit. However, local government may authorize a single
13 extension for a period not to exceed one year based on reasonable
14 factors, if a request for extension has been filed before the
15 expiration date and notice of the proposed extension is given to
16 parties of record and to the department.

17 (4) The effective date of a substantial development permit shall be
18 the date of (~~the last action required on the substantial development~~
19 ~~permit and all~~) filing as provided in RCW 90.58.140(6). The permit
20 time periods in subsections (2) and (3) of this section do not include
21 the time during which a use or activity was not actually pursued due to
22 the pendency of administrative appeals or legal actions or due to the
23 need to obtain any other government permits and approvals for the
24 development that authorize the development to proceed, including all
25 reasonably related administrative ((and)) or legal actions on any such
26 permits or approvals.

27 *Sec. 52. RCW 34.05.518 and 1995 c 382 s 5 are each amended to
28 read as follows:

29 (1) *The final decision of an administrative agency in an*
30 *adjudicative proceeding under this chapter may be directly reviewed by*
31 *the court of appeals either (a) upon certification by the superior*
32 *court pursuant to this section or (b) if the final decision is from an*
33 *environmental board as defined in subsection (3) of this section, upon*
34 *acceptance by the court of appeals after a certificate of appealability*
35 *has been filed by the environmental board that rendered the final*
36 *decision.*

37 (2) *For direct review upon certification by the superior court, an*
38 *application for direct review must be filed with the superior court*

1 within thirty days of the filing of the petition for review in superior
2 court. The superior court may certify a case for direct review only if
3 the judicial review is limited to the record of the agency proceeding
4 and the court finds that:

5 (a) Fundamental and urgent issues affecting the future
6 administrative process or the public interest are involved which
7 require a prompt determination;

8 (b) Delay in obtaining a final and prompt determination of such
9 issues would be detrimental to any party or the public interest;

10 (c) An appeal to the court of appeals would be likely regardless of
11 the determination in superior court; and

12 (d) The appellate court's determination in the proceeding would
13 have significant precedential value.

14 Procedures for certification shall be established by court rule.

15 (3)(a) For the purposes of direct review of final decisions of
16 environmental boards, environmental boards include those boards
17 identified in RCW 43.21B.005 (~~and growth management hearings boards as~~
18 ~~identified in RCW 36.70A.250~~)).

19 (b) An environmental board may issue a certificate of appealability
20 if it finds that delay in obtaining a final and prompt determination of
21 the issues would be detrimental to any party or the public interest and
22 either:

23 (i) Fundamental and urgent state-wide or regional issues are
24 raised; or

25 (ii) The proceeding is likely to have significant precedential
26 value.

27 (4) The environmental board shall state in the certificate of
28 appealability which criteria it applied, explain how that criteria was
29 met, and file with the certificate a copy of the final decision.

30 (5) For an appellate court to accept direct review of a final
31 decision of an environmental board, it shall consider the same criteria
32 outlined in subsection (3) of this section.

33 (6) The procedures for direct review of final decisions of
34 environmental boards include:

35 (a) Within thirty days after filing the petition for review with
36 the superior court, a party may file an application for direct review
37 with the superior court and serve the appropriate environmental board
38 and all parties of record. The application shall request the
39 environmental board to file a certificate of appealability.

1 (b) If an issue on review is the jurisdiction of the environmental
2 board, the board may file an application for direct review on that
3 issue.

4 (c) The environmental board shall have thirty days to grant or deny
5 the request for a certificate of appealability and its decision shall
6 be filed with the superior court and served on all parties of record.

7 (d) If a certificate of appealability is issued, the parties shall
8 have fifteen days from the date of service to file a notice of
9 discretionary review in the superior court, and the notice shall
10 include a copy of the certificate of appealability and a copy of the
11 final decision.

12 (e) If the appellate court accepts review, the certificate of
13 appealability shall be transmitted to the court of appeals as part of
14 the certified record.

15 (f) If a certificate of appealability is denied, review shall be by
16 the superior court. The superior court's decision may be appealed to
17 the court of appeals.

18 *Sec. 52 was vetoed. See message at end of chapter.

19 NEW SECTION. **Sec. 53.** Except as otherwise specifically provided
20 in section 22 of this act, sections 1 through 21, chapter . . . , Laws
21 of 1997 (sections 1 through 21 of this act) are prospective in effect
22 and shall not affect the validity of actions taken or decisions made
23 before the effective date of this section.

24 NEW SECTION. **Sec. 54.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 55.** Sections 29 and 30 of this act are
29 necessary for the immediate preservation of the public peace, health,
30 or safety, or support of the state government and its existing public
31 institutions, and take effect immediately.

Passed the Senate April 27, 1997.

Passed the House April 27, 1997.

Approved by the Governor May 19, 1997, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 19, 1997.

1 Note: Governor's explanation of partial veto is as follows:

1 "I am returning herewith, without my approval as to sections 1, 4,
2 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, Engrossed Senate Bill No. 6094
3 entitled:

4 "AN ACT Relating to growth management;"

5 This bill, enacting the recommendations of the Land Use Study
6 Commission, was introduced at my request. However, the bill was
7 amended significantly in the legislative process. Therefore, I have
8 listened to the input of a broad range of interests and conducted a
9 thorough review of all of the provisions of the bill as passed by the
10 Legislature.

11 I have maintained throughout the 1997 legislative session that the
12 consensus recommendations of the Land Use Study Commission, comprising
13 representatives of business, agricultural, local and state government,
14 neighborhood activists and environmentalists, should provide the
15 framework for the debate over how best to improve the state's Growth
16 Management Act. I thank the members of the commission for their
17 diligent work, developing a variety of issue papers, conducting hours
18 of public hearings, and developing a well-reasoned and well-crafted
19 legislative proposal.

20 As I reviewed this bill as passed by the legislature, I always kept
21 in mind the framework for the analysis provided by the Commission. I
22 believe that this bill will go a long way toward resolving many of the
23 specific concerns people have had with the way the Growth Management
24 Act has worked since it was first enacted. Among other things, this
25 bill provides greater deference to the decisions of local elected
26 officials throughout the state, improves public participation in the
27 growth management process, and gives the Growth Management Hearings
28 Boards the added direction they need in resolving some very difficult
29 land use issues. I have signed every section of this bill that
30 includes the language proposed by the Land Use Study Commission, as
31 well as some other sections. However, I was unable to sign the bill in
32 its entirety and have vetoed the following sections.

33 Section 1 changes the intent section recommended by the Land Use
34 Study Commission. The language of the recommended intent section
35 represented a fine balance of the interests represented on the
36 Commission and should not have been altered, thereby implying an intent
37 that was not agreed to by the Commission.

38 Section 4 provides that a county, after conferring with its cities,
39 may develop alternative methods of achieving the planning goals of the
40 Growth Management Act. This GMA-flex option was briefly discussed by
41 the Land Use Study Commission and dismissed without recommendation
42 because it is an issue that represents a major change in direction and
43 needs much more discussion and refinement before it is a viable
44 alternative.

45 Section 5 states that the goal of the state is to achieve no
46 overall net loss of wetland functions. This section also provides that
47 in adopting critical areas development regulations, counties and cities
48 should balance all of the goals of the GMA and that the legislature
49 intends that no goal takes precedence, but that counties and cities may
50 prioritize the goals in accordance with local history, conditions,
51 circumstances, and choice. This issue was not addressed by the Land

1 Use Study Commission and seems to me to be inconsistent with the tenor
2 of the Commission's recommendations.

3 Section 6 allows for exemptions from critical area development
4 regulations for emergency activities and activities with minor impacts
5 on critical areas. This idea was not considered by the Land Use Study
6 Commission. This change in policy would have to be fully explored
7 before I could be comfortable signing it into law.

8 Section 8 provides that in certain counties, developments in rural
9 areas shall not require urban services and shall be principally
10 designed to serve and provide jobs for the local rural population.
11 This section creates confusion because it states a rule that currently
12 applies in all counties planning under the Growth Management Act, but
13 implies that the rule applies only to specific counties. Section 7 of
14 this bill provides all the direction needed by counties to plan for the
15 rural element, including guidelines for rural development.

16 Section 7 provides that the rural element shall permit rural
17 development providing for a variety of rural densities, uses, essential
18 public facilities, and rural governmental services to serve the
19 permitted densities and uses in the rural element. There are three
20 exceptions in which businesses in the rural element are not required to
21 be principally designed to serve the existing and projected rural
22 population. These exceptions are: (1) infill of existing development;
23 (2) small-scale recreational or tourist uses; and (3) development of
24 cottage industries and small-scale businesses. Therefore, section 8 is
25 unnecessary, confusing, and potentially more restrictive in certain
26 counties than are the recommendations of the Land Use Study Commission
27 embodied in section 7.

28 Section 15 provides that all appeals of Growth Management Hearings
29 Board decisions shall be filed directly in the Court of Appeals. This
30 is not a recommendation of the Land Use Study Commission and I am not
31 certain that it would be in the best interest of the parties who appear
32 before the boards. Most parties believe that Superior Court review of
33 board decisions is appropriate and is working well.

34 Section 17 establishes a new and higher standard for findings of
35 invalidity - the "arbitrary and capricious" standard. I believe this
36 would strip too much authority from the Growth Management Hearings
37 Boards and severely weaken the important state role in the Growth
38 Management Act.

39 Section 18 adds language to the Land Use Study Commission
40 recommendation which clarifies the current expedited review provision
41 relating to orders of invalidity. The new language creates a burden on
42 those who challenge land use decisions that in many instances would be
43 impossible to meet, because the plan or regulation has not been in
44 effect long enough to have caused actual harm. In some instances there
45 is no prudent policy justification for waiting until actual harm can be
46 proven before allowing the invalidation of a comprehensive plan or
47 development regulation.

48 Section 19 would allow the Superior Court, when reviewing an order
49 of invalidity, to: affirm, set aside, enjoin, or remand orders of the
50 Growth Management Hearings Boards; or enter a declaratory judgment of
51 compliance or noncompliance, which may include an order of invalidity
52 setting out the particular part or parts of the plan or regulation that

1 are invalid. This was not a recommendation of the Land Use Study
2 Commission and was not the subject of any other bills introduced this
3 session. The concept received no public scrutiny or debate. This
4 provision could have the unintended effect of providing for review of
5 a comprehensive plan without the court having the benefit of the entire
6 record.

7 I recognize that there is not enough money provided in the
8 operating budget (ESHB 2259) to accomplish the full purpose of section
9 25. However, by approving section 25 of this bill and section 103(4)
10 of the operating budget, I am indicating my commitment to beginning the
11 work of reviewing and evaluating the effectiveness of the growth
12 management act in achieving the desired densities in urban growth
13 areas. To accomplish this, I will work with the legislature to
14 identify additional resources, a cost recovery program, or other means
15 to assure sufficient funding to allow the first evaluations to be
16 completed by the September 1, 2002 deadline.

17 By approving sections 29 and 30, I have approved the use of the
18 Public Works Trust Fund and the Centennial Clean Water Fund to address
19 critical or emergent public health and existing environmental problems
20 related to infrastructure in jurisdictions that are not currently in
21 compliance with the Growth Management Act. I am very concerned that
22 this legislation not be used as a method to provide unrestricted access
23 to these accounts for local governments that are not in compliance with
24 the law. For this reason, I have directed the Department of Health,
25 the Department of Ecology, the Department of Community, Trade and
26 Economic Development, and the Public Works Board to interpret this new
27 authority conservatively.

28 Section 44 would add new members to the Land Use Study Commission.
29 I am concerned that the Commission may already be unable to meet its
30 time schedule for completing its ambitious work plan. The selection
31 and appointment of new members to the Commission is likely to cause
32 delay in the Commission's process. Furthermore, I believe the
33 Commission is currently well-balanced in its composition. I would like
34 to see that same balance maintained for the last year of the
35 Commission's work. However, I do encourage interested legislators to
36 attend the meetings of the Commission and to provide input when
37 appropriate.

38 Section 45 amends the charge given to the Land Use Study Commission
39 by adding the following requirements: (1) Review long-term approaches
40 for resolving disputes that arise under the Growth Management Act, the
41 Shoreline Management Act, and other environmental laws, including
42 identifying needed changes to the structure of the boards that hear
43 environmental appeals; (2) If the LUSC determines that there is no
44 longer a need for the Growth Management Hearings Boards, recommend a
45 plan for sunseting the boards; and (3) Evaluate the effect of the
46 changes to the standard of review and make recommendations raising the
47 standard of review, limiting the authority of the boards to make
48 determinations of invalidity, or making other changes.

49 The ambitious Land Use Study Commission work plan for 1997-98
50 already includes much of the work proposed in section 45. However, I
51 am concerned that the language of this section has the unintended
52 effect of predetermining a result or, at least, a range of results. I
53 encourage the Land Use Study Commission to review as many of these

1 issues as it can reasonably fit within its crowded work plan and narrow
2 time constraints.

3 Section 52 makes a technical change to effectuate the purpose of
4 section 15, which I have vetoed.

5 For the reasons stated above, I have vetoed sections 1, 4, 5, 6, 8,
6 15, 17, 18, 19, 44, 45, and 52 of Engrossed Senate Bill No. 6094.

7 With the exception of sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44,
8 45, and 52, Engrossed Senate Bill No. 6094 is approved."