

SSB 5399 - H AMD 354

By Representative Fitzgibbon

ADOPTED 04/15/2013

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

3 "Sec. 1. RCW 36.70A.300 and 1997 c 429 s 14 are each amended to  
4 read as follows:

5 (1) The board shall issue a final order that shall be based  
6 exclusively on whether or not a state agency, county, or city is in  
7 compliance with the requirements of this chapter, chapter 90.58 RCW as  
8 it relates to adoption or amendment of shoreline master programs, or  
9 chapter 43.21C RCW as it relates to adoption of plans, development  
10 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
11 90.58 RCW.

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

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

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

28 (a) Find that the state agency, county, or city is in compliance  
29 with the requirements of this chapter, chapter 90.58 RCW as it relates

1 to the adoption or amendment of shoreline master programs, or chapter  
2 43.21C RCW as it relates to adoption of plans, development regulations,  
3 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

4 (b) Find that the state agency, county, or city is not in  
5 compliance with the requirements of this chapter, chapter 90.58 RCW as  
6 it relates to the adoption or amendment of shoreline master programs,  
7 or chapter 43.21C RCW as it relates to adoption of plans, development  
8 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
9 90.58 RCW, in which case the board shall remand the matter to the  
10 affected state agency, county, or city. The board shall specify a  
11 reasonable time not in excess of one hundred eighty days, or such  
12 longer period as determined by the board in cases of unusual scope or  
13 complexity, within which the state agency, county, or city shall comply  
14 with the requirements of this chapter. The board may require periodic  
15 reports to the board on the progress the jurisdiction is making towards  
16 compliance.

17 (4)(a) Unless the board makes a determination of invalidity (~~as~~  
18 ~~provided in~~) under RCW 36.70A.302, a finding of noncompliance and an  
19 order of remand shall not affect the validity of comprehensive plans  
20 and development regulations during the period of remand.

21 (b) Unless the board makes a determination of invalidity, state  
22 agencies, commissions, and governing boards may not determine a county,  
23 city, or town to be ineligible or otherwise penalized in the acceptance  
24 of applications or the awarding of state agency grants or loans during  
25 the period of remand. This subsection (4)(b) applies only to counties,  
26 cities, and towns that have: (i) Delayed the initial effective date of  
27 the action subject to the petition before the board until after the  
28 board issues a final determination; or (ii) within thirty days of  
29 receiving notice of a petition for review by the board, delayed or  
30 suspended the effective date of the action subject to the petition  
31 before the board until after the board issues a final determination.

32 (5) Any party aggrieved by a final decision of the hearings board  
33 may appeal the decision to superior court as provided in RCW 34.05.514  
34 or 36.01.050 within thirty days of the final order of the board.  
35 Unless the board makes a determination of invalidity under RCW  
36 36.70A.302, state agencies, commissions, or governing boards shall not  
37 penalize counties, cities, or towns during the pendency of an appeal as  
38 provided in RCW 43.17.250.

1           **Sec. 2.** RCW 43.17.250 and 1999 c 164 s 601 are each amended to  
2 read as follows:

3           (1) Whenever a state agency is considering awarding grants or loans  
4 for a county, city, or town planning under RCW 36.70A.040 to finance  
5 public facilities, it shall consider whether the county, city, or town  
6 requesting the grant or loan has adopted a comprehensive plan and  
7 development regulations as required by RCW 36.70A.040.

8           (2) If a comprehensive plan, development regulation, or amendment  
9 thereto adopted by a county, city, or town has been appealed to the  
10 growth management hearings board under RCW 36.70A.280, the county,  
11 city, or town may not be determined to be ineligible or otherwise  
12 penalized in the acceptance of applications or the awarding of state  
13 agency grants or loans during the pendency of the appeal before the  
14 board or subsequent judicial appeals. This subsection (2) applies only  
15 to counties, cities, and towns that have: (a) Delayed the initial  
16 effective date of the action subject to the petition before the board  
17 until after the board issues a final determination; or (b) within  
18 thirty days of receiving notice of a petition for review by the board,  
19 delayed or suspended the effective date of the action subject to the  
20 petition before the board until after the board issues a final  
21 determination.

22           (3) When reviewing competing requests from counties, cities, or  
23 towns planning under RCW 36.70A.040, a state agency considering  
24 awarding grants or loans for public facilities shall accord additional  
25 preference to those counties, cities, or towns that have adopted a  
26 comprehensive plan and development regulations as required by RCW  
27 36.70A.040. For the purposes of the preference accorded in this  
28 section, a county, city, or town planning under RCW 36.70A.040 is  
29 deemed to have satisfied the requirements for adopting a comprehensive  
30 plan and development regulations specified in RCW 36.70A.040 if the  
31 county, city, or town:

32           (a) Adopts or has adopted a comprehensive plan and development  
33 regulations within the time periods specified in RCW 36.70A.040;

34           (b) Adopts or has adopted a comprehensive plan and development  
35 regulations before (~~submitting a request for a grant or loan~~) the  
36 state agency makes a decision regarding award recipients of the grants  
37 or loans if the county, city, or town failed to adopt a comprehensive

1 plan and/or development regulations within the time periods specified  
2 in RCW 36.70A.040; or

3 (c) Demonstrates substantial progress toward adopting a  
4 comprehensive plan or development regulations within the time periods  
5 specified in RCW 36.70A.040. A county, city, or town that is more than  
6 six months out of compliance with the time periods specified in RCW  
7 36.70A.040 shall not be deemed to demonstrate substantial progress for  
8 purposes of this section.

9 ((+3)) (4) The preference specified in subsection ((+2)) (3) of  
10 this section applies only to competing requests for grants or loans  
11 from counties, cities, or towns planning under RCW 36.70A.040. A  
12 request from a county, city, or town planning under RCW 36.70A.040  
13 shall be accorded no additional preference based on subsection ((+2))  
14 (3) of this section over a request from a county, city, or town not  
15 planning under RCW 36.70A.040.

16 ((+4)) (5) Whenever a state agency is considering awarding grants  
17 or loans for public facilities to a special district requesting funding  
18 for a proposed facility located in a county, city, or town planning  
19 under RCW 36.70A.040, it shall consider whether the county, city, or  
20 town in whose planning jurisdiction the proposed facility is located  
21 has adopted a comprehensive plan and development regulations as  
22 required by RCW 36.70A.040 and shall apply the standards in subsection  
23 (2) of this section and the preference specified in subsection ((+2))  
24 (3) of this section and restricted in subsection ((+3)) (4) of this  
25 section.

26 **Sec. 3.** RCW 43.155.070 and 2012 c 196 s 9 are each amended to read  
27 as follows:

28 (1) To qualify for ~~((loans or pledges))~~ financial assistance under  
29 this chapter the board must determine that a local government meets all  
30 of the following 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 capital facility  
34 plan; and

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.

1           (2) Except where necessary to address a public health need or  
2 substantial environmental degradation, a county, city, or town planning  
3 under RCW 36.70A.040 (~~((must have))~~) may not receive financial assistance  
4 under this chapter unless it has adopted a comprehensive plan,  
5 including a capital facilities plan element, and development  
6 regulations as required by RCW 36.70A.040. This subsection does not  
7 require any county, city, or town planning under RCW 36.70A.040 to  
8 adopt a comprehensive plan or development regulations before requesting  
9 or receiving (~~((a loan or loan guarantee))~~) financial assistance under  
10 this chapter if such request is made before the expiration of the time  
11 periods specified in RCW 36.70A.040. A county, city, or town planning  
12 under RCW 36.70A.040 (~~((which))~~) that has not adopted a comprehensive  
13 plan and development regulations within the time periods specified in  
14 RCW 36.70A.040 (~~((is not prohibited from receiving a loan or loan~~  
15 ~~guarantee))~~) may apply for and receive financial assistance under this  
16 chapter if the comprehensive plan and development regulations are  
17 adopted as required by RCW 36.70A.040 before (~~((submitting a request for~~  
18 ~~a loan or loan guarantee))~~) executing a contractual agreement for  
19 financial assistance with the board.

20           (3) In considering awarding (~~((loans))~~) financial assistance for  
21 public facilities to special districts requesting funding for a  
22 proposed facility located in a county, city, or town planning under RCW  
23 36.70A.040, the board must consider whether the county, city, or town  
24 planning under RCW 36.70A.040 in whose planning jurisdiction the  
25 proposed facility is located has adopted a comprehensive plan and  
26 development regulations as required by RCW 36.70A.040.

27           (4) The board must develop a priority process for public works  
28 projects as provided in this section. The intent of the priority  
29 process is to maximize the value of public works projects accomplished  
30 with assistance under this chapter. The board must attempt to assure  
31 a geographical balance in assigning priorities to projects. The board  
32 must consider at least the following factors in assigning a priority to  
33 a project:

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

37           (b) Except as otherwise conditioned by RCW 43.155.110, whether the

1 entity receiving assistance is a Puget Sound partner, as defined in RCW  
2 90.71.010;

3 (c) Whether the project is referenced in the action agenda  
4 developed by the Puget Sound partnership under RCW 90.71.310;

5 (d) Whether the project is critical in nature and would affect the  
6 health and safety of a great number of citizens;

7 (e) Whether the applicant's permitting process has been certified  
8 as streamlined by the office of regulatory assistance;

9 (f) Whether the applicant has developed and adhered to guidelines  
10 regarding its permitting process for those applying for development  
11 permits consistent with section 1(2), chapter 231, Laws of 2007;

12 (g) The cost of the project compared to the size of the local  
13 government and amount of loan money available;

14 (h) The number of communities served by or funding the project;

15 (i) Whether the project is located in an area of high unemployment,  
16 compared to the average state unemployment;

17 (j) Whether the project is the acquisition, expansion, improvement,  
18 or renovation by a local government of a public water system that is in  
19 violation of health and safety standards, including the cost of  
20 extending existing service to such a system;

21 (k) Except as otherwise conditioned by RCW 43.155.120, and  
22 effective one calendar year following the development of model  
23 evergreen community management plans and ordinances under RCW  
24 35.105.050, whether the entity receiving assistance has been  
25 recognized, and what gradation of recognition was received, in the  
26 evergreen community recognition program created in RCW 35.105.030;

27 (l) The relative benefit of the project to the community,  
28 considering the present level of economic activity in the community and  
29 the existing local capacity to increase local economic activity in  
30 communities that have low economic growth; and

31 (m) Other criteria that the board considers advisable.

32 (5) Existing debt or financial obligations of local governments may  
33 not be refinanced under this chapter. Each local government applicant  
34 must provide documentation of attempts to secure additional local or  
35 other sources of funding for each public works project for which  
36 financial assistance is sought under this chapter.

37 (6) Before November 1st of each even-numbered year, the board must  
38 develop and submit to the appropriate fiscal committees of the senate

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

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

22 (8) Subsection (7) of this section does not apply to loans made  
23 under RCW 43.155.065, 43.155.068, and subsection (9) of this section.

24 (9) Loans made for the purpose of capital facilities plans are  
25 exempted from subsection (7) of this section.

26 (10) To qualify for loans or pledges for solid waste or recycling  
27 facilities under this chapter, a city or county must demonstrate that  
28 the solid waste or recycling facility is consistent with and necessary  
29 to implement the comprehensive solid waste management plan adopted by  
30 the city or county under chapter 70.95 RCW.

31 (11) After January 1, 2010, any project designed to address the  
32 effects of storm water or wastewater on Puget Sound may be funded under  
33 this section only if the project is not in conflict with the action  
34 agenda developed by the Puget Sound partnership under RCW 90.71.310.

35 **Sec. 4.** RCW 70.146.070 and 2008 c 299 s 26 are each amended to  
36 read as follows:

1 (1) When making grants or loans for water pollution control  
2 facilities, the department shall consider the following:

3 (a) The protection of water quality and public health;

4 (b) The cost to residential ratepayers if they had to finance water  
5 pollution control facilities without state assistance;

6 (c) Actions required under federal and state permits and compliance  
7 orders;

8 (d) The level of local fiscal effort by residential ratepayers  
9 since 1972 in financing water pollution control facilities;

10 (e) Except as otherwise conditioned by RCW 70.146.110, whether the  
11 entity receiving assistance is a Puget Sound partner, as defined in RCW  
12 90.71.010;

13 (f) Whether the project is referenced in the action agenda  
14 developed by the Puget Sound partnership under RCW 90.71.310;

15 (g) Except as otherwise provided in RCW 70.146.120, and effective  
16 one calendar year following the development and statewide availability  
17 of model evergreen community management plans and ordinances under RCW  
18 35.105.050, whether the project is sponsored by an entity that has been  
19 recognized, and what gradation of recognition was received, in the  
20 evergreen community recognition program created in RCW 35.105.030;

21 (h) The extent to which the applicant county or city, or if the  
22 applicant is another public body, the extent to which the county or  
23 city in which the applicant public body is located, has established  
24 programs to mitigate nonpoint pollution of the surface or subterranean  
25 water sought to be protected by the water pollution control facility  
26 named in the application for state assistance; and

27 (i) The recommendations of the Puget Sound partnership, created in  
28 RCW 90.71.210, and any other board, council, commission, or group  
29 established by the legislature or a state agency to study water  
30 pollution control issues in the state.

31 (2) Except where necessary to address a public health need or  
32 substantial environmental degradation, a county, city, or town planning  
33 under RCW 36.70A.040 may not receive a grant or loan for water  
34 pollution control facilities unless it has adopted a comprehensive  
35 plan, including a capital facilities plan element, and development  
36 regulations as required by RCW 36.70A.040. A county, city, or town  
37 that has adopted a comprehensive plan and development regulations as  
38 provided in RCW 36.70A.040 may request a grant or loan for water



1 pollution control facilities. This subsection does not require any  
2 county, city, or town planning under RCW 36.70A.040 to adopt a  
3 comprehensive plan or development regulations before requesting (~~or~~  
4 ~~receiving~~) a grant or loan under this chapter if such request is made  
5 before the expiration of the time periods specified in RCW 36.70A.040.  
6 A county, city, or town planning under RCW 36.70A.040 (~~which~~) that  
7 has not adopted a comprehensive plan and development regulations within  
8 the time periods specified in RCW 36.70A.040 is not prohibited from  
9 receiving a grant or loan under this chapter if the comprehensive plan  
10 and development regulations are adopted as required by RCW 36.70A.040  
11 before (~~submitting a request for a~~) the department executes a  
12 contractual agreement for the grant or loan.

13 (3) Whenever the department is considering awarding grants or loans  
14 for public facilities to special districts requesting funding for a  
15 proposed facility located in a county, city, or town planning under RCW  
16 36.70A.040, it shall consider whether the county, city, or town  
17 planning under RCW 36.70A.040 in whose planning jurisdiction the  
18 proposed facility is located has adopted a comprehensive plan and  
19 development regulations as required by RCW 36.70A.040.

20 (4) After January 1, 2010, any project designed to address the  
21 effects of water pollution on Puget Sound may be funded under this  
22 chapter only if the project is not in conflict with the action agenda  
23 developed by the Puget Sound partnership under RCW 90.71.310.

24 **Sec. 5.** RCW 36.70A.200 and 2011 c 60 s 17 are each amended to read  
25 as follows:

26 (1) The comprehensive plan of each county and city that is planning  
27 under RCW 36.70A.040 shall include a process for identifying and siting  
28 essential public facilities. Essential public facilities include those  
29 facilities that are typically difficult to site, such as airports,  
30 state education facilities and state or regional transportation  
31 facilities as defined in RCW 47.06.140, regional transit authority  
32 facilities as defined in RCW 81.112.020, state and local correctional  
33 facilities, solid waste handling facilities, and inpatient facilities  
34 including substance abuse facilities, mental health facilities, group  
35 homes, and secure community transition facilities as defined in RCW  
36 71.09.020.

1 (2) Each county and city planning under RCW 36.70A.040 shall, not  
2 later than September 1, 2002, establish a process, or amend its  
3 existing process, for identifying and siting essential public  
4 facilities and adopt or amend its development regulations as necessary  
5 to provide for the siting of secure community transition facilities  
6 consistent with statutory requirements applicable to these facilities.

7 (3) Any city or county not planning under RCW 36.70A.040 shall, not  
8 later than September 1, 2002, establish a process for siting secure  
9 community transition facilities and adopt or amend its development  
10 regulations as necessary to provide for the siting of such facilities  
11 consistent with statutory requirements applicable to these facilities.

12 (4) The office of financial management shall maintain a list of  
13 those essential state public facilities that are required or likely to  
14 be built within the next six years. The office of financial management  
15 may at any time add facilities to the list.

16 (5) No local comprehensive plan or development regulation may  
17 preclude the siting of essential public facilities.

18 (6) No person may bring a cause of action for civil damages based  
19 on the good faith actions of any county or city to provide for the  
20 siting of secure community transition facilities in accordance with  
21 this section and with the requirements of chapter 12, Laws of 2001 2nd  
22 sp. sess. For purposes of this subsection, "person" includes, but is  
23 not limited to, any individual, agency as defined in RCW 42.17A.005,  
24 corporation, partnership, association, and limited liability entity.

25 (7) Counties or cities siting facilities pursuant to subsection (2)  
26 or (3) of this section shall comply with RCW 71.09.341.

27 (8) The failure of a county or city to act by the deadlines  
28 established in subsections (2) and (3) of this section is not:

29 (a) A condition that would disqualify the county or city for  
30 grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

31 (b) A consideration for grants or loans provided under RCW  
32 43.17.250(~~(+2)~~) (3); or

33 (c) A basis for any petition under RCW 36.70A.280 or for any  
34 private cause of action."

35 Correct the title.

EFFECT: In comparison to the underlying bill, the striking

amendment: (1) Deletes an amendatory provision specifying that local governments that have adopted comprehensive plans and development regulations under the Growth Management Act (GMA) may request a grant or loan for public works projects funded by the Public Works Board (Board); (2) specifies that a county or city that fully plans under the GMA may apply for and receive financial assistance for public works projects funded by the Board (rather than is not prohibited from receiving a loan or loan guarantee for projects funded by the Board) if required comprehensive plans and development regulations are adopted before executing a contractual agreement for the assistance with the Board; (3) changes public works funding-related references from "loans," "loan guarantees," and "pledges" to "financial assistance"; and (4) makes technical changes.

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