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## Local Government Committee

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### HB 1401

**Brief Description:** Addressing the timing of penalties under the growth management act.

**Sponsors:** Representatives Fitzgibbon, Dahlquist, Takko, Fey, Wilcox, Kochmar, Magendanz, O'Ban, Morrell and Jinkins.

#### Brief Summary of Bill

- Prohibits state agencies, commissions, or governing boards from penalizing jurisdictions during: (1) a period of remand following a finding of noncompliance by the Growth Management Hearings Board (Board) unless a determination of invalidity has been issued; and (2) the pendency of an appeal before the Board or subsequent judicial appeals.
- Makes counties, cities, and towns that have comprehensive plans or development regulations on appeal to the Board and that meet other requirements eligible for state agency grants and loans during the pendency of an appeal to the Board or subsequent judicial appeals.
- Modifies grant and loan qualifications for counties, cities, and towns seeking financial assistance from the Public Works Assistance Account and for water pollution control facilities.

**Hearing Date:** 2/7/13

**Staff:** Ethan Moreno (786-7386).

#### **Background:**

##### Growth Management Act - Introduction.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The GMA directs jurisdictions that fully plan under the act (planning jurisdictions) to adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans, which are the frameworks of county and city planning actions, are implemented through locally-adopted development regulations.

#### Enforcement and Penalty Provisions.

The GMA includes enforcement and penalty provisions for public entities. A seven-member Growth Management Hearings Board (Board) established in the GMA is charged with hearing and determining petitions alleging noncompliance with the GMA and related statutory provisions by state agencies, counties, or cities. The Board must make findings of fact and prepare a written decision in each case decided by it. Final decisions and orders of the Board may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

In issuing final decisions and orders, the Board must find the state agency, county, or city identified in the petition to be either in compliance or not in compliance with the GMA and any related and applicable statutory provisions. If the agency or local government is found to be not in compliance, the Board must generally remand the matter to the agency or local government for 180 days, within which it must comply with applicable requirements. If, following a hearing to determine whether the agency or local government has satisfied the requirements of the remand, the Board may find that that the agency, county, or city is in compliance or that it remains not in compliance. The Board may issue a determination of invalidity for all or part of a comprehensive plan or development regulation it determines is invalid. Additionally, the Governor may impose financial penalties in the form of reducing or withholding appropriations or revenues to which the noncompliant agency or local government would otherwise be entitled.

#### Grant and Loan Funds - Eligibility Provisions.

Compliance with requirements of the GMA is a criteria state agencies consider when making determinations for financial awards to local governments. For example, when state agencies are considering awarding grants or loans to planning jurisdictions for financing public facilities, they must consider whether the local government has adopted a comprehensive plan and development regulations mandated by the GMA. For purposes of these public facility grants and loans and associated preferences, a local government is deemed to have satisfied its adoption requirements if meets one of several conditions, including if the local government adopts or has adopted a comprehensive plan and development regulations before submitting a request for a grant or loan.

With limited exceptions, a planning jurisdiction wanting to qualify for loans or pledges from the Public Works Assistance Account (PWAA), an account established by the Legislature for loans and financial guarantees to local governments for public works projects, must have adopted a comprehensive plan and required development regulations. In limited time-specific circumstances, local governments could have requested and received a loan or loan guarantee from the PWAA before adopting a required comprehensive plan or development regulations.

Similarly, planning jurisdictions wanting to qualify for a Department of Ecology grant or loan for a water pollution control facility must generally have adopted a comprehensive plan and development regulations. In limited time-specific circumstances, local governments could have

requested and received a water pollution control facility grant or loan before adopting a required comprehensive plan or development regulations.

**Summary of Bill:**

Enforcement and Penalty Provisions - Growth Management Hearings Board.

State agencies, commissions, and governing boards may not penalize jurisdictions during: (1) the period of remand following a finding of noncompliance by the Growth Management Hearings Board (Board) unless a determination of invalidity has been issued; and (2) the pendency of an appeal before the Board or subsequent judicial appeals.

Grant and Loan Funds - Eligibility Provisions.

If a comprehensive plan, development regulation, or associated amendment, has been appealed to the Board and has not yet taken effect, the local jurisdiction may not be deemed ineligible, or otherwise penalized, in the award of a state agency grant or loan during the pendency of the appeal before the board or during any subsequent judicial appeals. During these appeals, state agencies must accept an otherwise eligible application for a state grant or loan. Whenever a state agency is considering awarding grants or loans for public facilities to a special district requesting funding for a proposed facility located in a jurisdiction that fully plans under the Growth Management Act (planning jurisdiction), it must apply these non-penalty provisions.

For purposes of public facility grants and loans awarded by state agencies, and associated preferences for local governments that have adopted required comprehensive plans and development regulations, a local government is deemed to have satisfied its adoption requirements if the local government adopts or has adopted a comprehensive plan and development regulation before the state agency makes a decision regarding award recipients of the grant and loan, and if other conditions are met.

A planning jurisdiction that has adopted a comprehensive plan and development regulations may request a grant or loan for public works projects. Planning jurisdictions are not required to adopt a comprehensive plan or development regulations before requesting a loan or loan guarantee from the Public Works Assistance Account (PWAA). Additionally, a planning jurisdiction that has not adopted a comprehensive plan and development regulations within specified time periods is not prohibited from receiving a loan or loan guarantee from the PWAA if the comprehensive plan and development regulations are adopted before the Public Works Board disburses the funds or guarantees the loan.

A planning jurisdiction that has adopted a comprehensive plan and development regulations may request a grant or loan for water pollution control facilities. A planning jurisdiction that has not adopted a comprehensive plan and development regulations within specified time periods is not prohibited from receiving a grant or loan for water pollution control facilities if the comprehensive plan and development regulations are adopted before the Department of Ecology disburses funds for the grant or loan.

**Appropriation:** None.

**Fiscal Note:** Requested on February 4, 2013.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.