

HOUSE BILL REPORT

SSB 5399

As Passed House - Amended:
April 15, 2013

Title: An act relating to the timing of penalties under the growth management act.

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

Sponsors: Senate Committee on Governmental Operations (originally sponsored by Senators Dammeier, Becker, Conway, Fraser, Rivers and Nelson).

Brief History:

Committee Activity:

Local Government: 3/15/13, 3/28/13 [DP].

Floor Activity:

Passed House - Amended: 4/15/13, 78-19.

**Brief Summary of Substitute Bill
(As Amended by House)**

- Prohibits state entities from determining counties, cities, and towns meeting specified criteria to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants during a period of remand following a finding of noncompliance by the Growth Management Hearings Board (Board), or during the pendency of an appeal before the Board or a subsequent judicial appeal.
- 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 during 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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: Do pass. Signed by 7 members: Representatives Takko, Chair; Taylor, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Buys, Liias, Springer and Upthegrove.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a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.

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 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 it 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.

Unless the Growth Management Hearings Board (Board) makes a determination of invalidity, state agencies, commissions, and governing boards may not determine a county, city, or town (local government) to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants during a period of remand or during the pendency of an appeal before the Board or a court. This determination requirement applies only to local governments that have:

- delayed the initial effective date of the action subject to the petition before the Board until after the Board issues a final determination; or
- within 30 days of receiving notice of a petition for review by the Board, delayed or suspended the effective date of the action subject to the petition before the Board until after the Board issues a final determination.

Grant and Loan Funds – Eligibility Provisions.

If a comprehensive plan, development regulation, or associated amendment has been appealed to the Board, and a determination of invalidity has not been issued, the local government may not be determined to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the pendency of the appeal before the Board or subsequent judicial appeals. This determination requirement applies only to local governments that have:

- delayed the initial effective date of the action subject to the petition before the Board until after the Board issues a final determination; or
- within 30 days of receiving notice of a petition for review by the Board, delayed or suspended the effective date of the action subject to the petition before the Board until after the Board issues a final determination.

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), the state agency must apply these eligibility and nonpenalty 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.

With limited exceptions, planning jurisdiction may not receive financial assistance for public works projects from the Public Works Assistance Account (PWAA) unless they have adopted a comprehensive plan required by the Growth Management Act. Planning jurisdictions that have not adopted a comprehensive plan and development regulations within specified time periods may apply for and receive financial assistance from the PWAA if the comprehensive plan and development regulations are adopted before executing a contractual agreement for financial assistance with the Public Works Board.

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 executes a contractual agreement for the grant or loan.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill passed unanimously from the Senate. The language of the Senate bill is nearly identical to the House of Representatives' (House) version of the bill. This is a good governance and fairness bill. The bill includes due process provisions and corrects inequities resulting from current eligibility provisions affecting jurisdictions that are subject to a remand of the Growth Management Hearings Board (Board).

The original Board provisions included a sanctions process for noncompliant jurisdictions. With the passage of time, state agencies began imposing their own penalties. Typically, it is easier for a jurisdiction to comply with a Board ruling than to risk financial penalties, but the situation changed for Pierce County when recent county amendments were adopted. The amendments, which had a delayed effective date and involved 242 acres, were found to be

noncompliant. Before the county had even decided whether to appeal the decision, it discovered that it faced up to \$31 million penalties resulting from the finding of noncompliance. Among other items, the finding meant the county was precluded from receiving waste treatment and salmon restoration funds. Counties want to avoid being penalized until all legal matters associated with Board decisions have been resolved.

This bill will correct timing provisions for penalties for counties that are attempting to comply with the Growth Management Act. Proponents of the bill are grateful to see both House and Senate versions of the bill moving forward, and would like see one of the two active companion bills continue to move forward.

Concerns about the companion bill have been addressed in the Senate version. In a time of limited funds, compliant jurisdictions should receive priority for funding. The current Senate version of the bill has corrected concerns about vesting that were in the original House version of the bill.

(With concerns) The bill may need technical change. Snohomish County received a determination of noncompliance in 2012 and was not in compliance with Public Works Board requirements when applying for funds. The county attempted to comply as quickly as possible, and now is in compliance, but corrections take time. There may be internal conflicts between section 1 and 2, and section 3. Snohomish County has some concerns, and would like to have a clarification of understanding or clarifying language, but the county is supportive of the overall concept of the bill.

(Opposed) None.

Persons Testifying: (In support) Senator Dammeier, prime sponsor; Pete Philley, Pierce County Prosecutor's Office; Laura Merrill, Washington State Association of Counties; Brynn Brady, Pierce County; and April Putney, Futurewise.

(With concerns) Briahna Taylor, Snohomish County.

Persons Signed In To Testify But Not Testifying: None.