

SENATE BILL REPORT

SB 5399

As Reported by Senate Committee On:
Governmental Operations, February 18, 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: Senators Dammeier, Becker, Conway, Fraser, Rivers and Nelson.

Brief History:

Committee Activity: Governmental Operations: 2/12/13, 2/18/13 [DPS].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: That Substitute Senate Bill No. 5399 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Braun, Conway, Fraser, Hasegawa, Ranking Member; Rivers.

Staff: Karen Epps (786-7424)

Background: The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under GMA. It also establishes a reduced number of directives for all other counties and cities. 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.

GMA establishes the Growth Management Hearings Board (GMHB). GMHB is comprised of three panels for the purposes of hearing and deciding cases within the following regions: central Puget Sound; eastern Washington; and western Washington. GMHB consists of seven members who are appointed for six-year terms, with at least two each residing in the geographic regions of the panels. Each regional panel selected to hear and decide cases must consist of three board members, at least a majority of whom must reside within the region.

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.

GMHBs have limited jurisdiction and may only hear and determine petitions alleging the following:

- that a state agency or planning jurisdiction is noncompliant with GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments;
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted;
- that the approval of a watershed work plan is not in compliance with the requirements of the voluntary stewardship program;
- that development regulations to protect critical areas as part of the voluntary stewardship program are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or
- that the Department of Commerce's (COM's) certification of development regulations as part of the voluntary stewardship program is erroneous.

GMHB may find compliance or remand for plans or regulations to be brought into compliance. If the agency or local government is found to be not in compliance, GMHB must generally remand the matter to the agency or local government for 180 days, within which it must comply with applicable requirements. Following a hearing to determine whether the agency or local government has satisfied the requirements of the remand, GMHB may find that the agency, county, or city is in compliance or that it remains not in compliance. GMHB may also invalidate plans or regulations that substantially interfere with the goals and requirements of GMA. Final decisions and orders of GMHB may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with GMHB. Upon receipt of GMHB's finding that a state agency or planning jurisdiction remains noncompliant after a period of remand, the Governor may impose financial penalties in the form of reducing or withholding appropriations or revenues to which the agency or local government is otherwise entitled.

Compliance with requirements of 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 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, in order for planning jurisdictions to qualify for loans or pledges from the Public Works Assistance Account (Account), the planning jurisdiction must have adopted a comprehensive plan and required development regulations. The Account, commonly known as the Public Works Trust Fund, was created by the Legislature in 1985 to provide a source of loan funds to assist local governments and special purpose districts with infrastructure projects. In certain circumstances, local governments could have requested and received a loan or loan guarantee from the Account before adopting a required comprehensive plan or development regulations.

Similarly, in order for planning jurisdictions to qualify for a Department of Ecology (DOE) grant or loan for a water pollution control facility, the planning jurisdiction 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 (Recommended Substitute): Unless GMHB makes a determination of invalidity, state agencies, commissions, and governing boards may not penalize jurisdictions during the period of remand following a finding of noncompliance by GMHB and the pendency of an appeal before GMHB or subsequent judicial appeals. In order to not be penalized, jurisdictions must:

- have delayed the effective date of the action subject to the petition until after GMHB issues a final determination; or
- within 30 days of receiving notice of a petition for review by GMHB, delay or suspend the effective date of the action until after GMHB issues a final determination.

If a comprehensive plan, development regulation, or an amendment has been appealed to GMHB 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 GMHB or during any subsequent judicial appeals. During these appeals, state agencies must accept an otherwise eligible application for a state grant or loan. In order to not be penalized, jurisdictions must:

- have delayed the effective date of the action subject to the petition until after GMHB issues a final determination; or
- within 30 days of receiving notice of a petition for review by GMHB, delay or suspend the effective date of the action until after GMHB 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 planning jurisdiction, the agency must apply these 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 regulations before the state agency makes a decision regarding award recipients of the grant and loan.

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 Account. 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 Account 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 DOE disburses funds for the grant or loan.

EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS COMMITTEE (Recommended Substitute): Clarifies that if GMHB determines that the action by a local jurisdiction is invalid, the jurisdiction is not eligible to receive state loans and grants. Clarifies the conditions that the jurisdiction must meet to be eligible for the state loans and grants. Establishes that the jurisdiction must, within 30 days of GMHB's decision, delay the effective date of the petitioned action. Makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill is designed to provide good faith and fair play. There were two occasions in Pierce County in which the local city and the local school district worked hard to negotiate a good solution for their communities that Pierce County also thought was a good solution. Pierce County enacted the changes to their comprehensive plan. Those changes were appealed to GMHB and overturned by GMHB. The issue surrounding this bill is the punitive actions that the state took in response to the actions by GMHB. Pierce County is making a good faith appeal of the GMHB decision. When counties apply for loans and grants, they are penalized from applying when they are considered not in compliance with GMA. The current list at COM includes 13 counties that are not in compliance with GMA, a third of the counties that plan under GMA. The funds that a county is applying for can sometimes be used to assist the county in coming into compliance with GMA. The original reason for penalties was to encourage counties to do the original planning. State agencies are prematurely penalizing the county before the county had a chance to consider what to do. Three of 19 amendments proposed by Pierce County were found not to be in compliance. These penalties could total up to \$31 million of potential lost grants and loans for Pierce County. The grants and loans that are being withheld are often helping to fund GMA principles.

CON: The concern around this bill is that in times of limited state funds, it is important to prioritize how the money is distributed. The state's policy is to prioritize giving the funds to cities and counties that are complying with state law. This bill would weaken that priority. There are amendments being proposed that will lessen that harm and get at the good faith efforts that counties and cities are making in order to comply with GMA.

OTHER: Clarification of GMA compliance requirements is needed. The current language has some unintended consequences.

Persons Testifying: PRO: Senator Dammeier, prime sponsor; Laura Merrill, WA Assn. of Counties; Pete Philley, Brynn Brady, Pierce County.

CON: April Putney, Futurewise.

OTHER: Don Seeberger, DOE.