

SENATE BILL REPORT

SB 5406

As of February 13, 2013

Title: An act relating to local government compliance with the growth management act.

Brief Description: Concerning local government compliance with the growth management act.

Sponsors: Senator Ericksen.

Brief History:

Committee Activity: Governmental Operations: 2/12/13.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

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. 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.

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

- 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;

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- 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 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 the 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 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, 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: State agencies, commissions, and governing boards may not penalize jurisdictions that are working towards compliance with the requirements of GMA. Counties and cities, with a showing that they are working toward compliance, may be eligible for grants and loans. The Governor may only impose sanctions against a county or a city if the county or city cannot show it is working toward compliance with the provisions of the GMA.

If a local jurisdiction is working toward compliance with the GMA on its comprehensive plan, development regulation, or an amendment, the local jurisdiction may not be deemed ineligible, or otherwise penalized, in the award of a state agency grant or loan. 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 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 regulation or if the local government can show it is working toward compliance before the state agency makes a decision regarding award recipients of the grant or 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 or if the planning jurisdiction can show it is working toward compliance 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 or if the planning jurisdiction can show it is working toward compliance before the DOE disburses funds for the grant or loan.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: CON: This bill is similar to SB 5399. There is confusion in this bill about what it would mean to be working toward compliance. This appears to be subjective and it is unclear who would make that determination.

Persons Testifying: CON: April Putney, Futurewise.