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**SUBSTITUTE HOUSE BILL 1401**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Local Government (originally sponsored by Representatives Fitzgibbon, Dahlquist, Takko, Fey, Wilcox, Kochmar, Magendanz, O'Ban, Morrell, and Jenkins)

READ FIRST TIME 02/22/13.

1       AN ACT Relating to the timing of penalties under the growth  
2 management act; and amending RCW 36.70A.300, 43.17.250, 43.155.070,  
3 70.146.070, and 36.70A.200.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to  
6 read as follows:

7       (1) The board shall issue a final order that shall be based  
8 exclusively on whether or not a state agency, county, or city is in  
9 compliance with the requirements of this chapter, chapter 90.58 RCW as  
10 it relates to adoption or amendment of shoreline master programs, or  
11 chapter 43.21C RCW as it relates to adoption of plans, development  
12 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
13 90.58 RCW.

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

1 (b) The board may extend the period of time for issuing a decision  
2 to enable the parties to settle the dispute if additional time is  
3 necessary to achieve a settlement, and (i) an extension is requested by  
4 all parties, or (ii) an extension is requested by the petitioner and  
5 respondent and the board determines that a negotiated settlement  
6 between the remaining parties could resolve significant issues in  
7 dispute. The request must be filed with the board not later than seven  
8 days before the date scheduled for the hearing on the merits of the  
9 petition. The board may authorize one or more extensions for up to  
10 ninety days each, subject to the requirements of this section.

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

12 (a) Find that the state agency, county, or city is in compliance  
13 with the requirements of this chapter, chapter 90.58 RCW as it relates  
14 to the adoption or amendment of shoreline master programs, or chapter  
15 43.21C RCW as it relates to adoption of plans, development regulations,  
16 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

17 (b) Find that the state agency, county, or city is not in  
18 compliance with the requirements of this chapter, chapter 90.58 RCW as  
19 it relates to the adoption or amendment of shoreline master programs,  
20 or chapter 43.21C RCW as it relates to adoption of plans, development  
21 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
22 90.58 RCW, in which case the board shall remand the matter to the  
23 affected state agency, county, or city. The board shall specify a  
24 reasonable time not in excess of one hundred eighty days, or such  
25 longer period as determined by the board in cases of unusual scope or  
26 complexity, within which the state agency, county, or city shall comply  
27 with the requirements of this chapter. The board may require periodic  
28 reports to the board on the progress the jurisdiction is making towards  
29 compliance.

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

34 (b) Unless the board makes a determination of invalidity, state  
35 agencies, commissions, and governing boards may not determine a county,  
36 city, or town to be ineligible or otherwise penalized in the acceptance  
37 of applications or the awarding of state agency grants or loans during  
38 the period of remand. This subsection (4)(b) applies only to counties,

1 cities, and towns that have: (i) Delayed the initial effective date of  
2 the action subject to the petition before the board until after the  
3 board issues a final determination; or (ii) within twenty-one days of  
4 receiving notice of a petition for review by the board, delayed or  
5 suspended the effective date of the action subject to the petition  
6 before the board until after the board issues a final determination.

7 (5) Any party aggrieved by a final decision of the hearings board  
8 may appeal the decision to superior court as provided in RCW 34.05.514  
9 or 36.01.050 within thirty days of the final order of the board.  
10 Unless the board makes a determination of invalidity under RCW  
11 36.70A.302, state agencies, commissions, or governing boards shall not  
12 penalize counties, cities, or towns during the pendency of an appeal as  
13 provided in RCW 43.17.250.

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

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

21 (2) If a comprehensive plan, development regulation, or amendment  
22 thereto adopted by a county, city, or town has been appealed to the  
23 growth management hearings board under RCW 36.70A.280, the county,  
24 city, or town may not be determined to be ineligible or otherwise  
25 penalized in the acceptance of applications or the awarding of state  
26 agency grants or loans during the pendency of the appeal before the  
27 board or subsequent judicial appeals. This subsection (2) applies only  
28 to counties, cities, and towns that have: (a) Delayed the initial  
29 effective date of the action subject to the petition before the board  
30 until after the board issues a final determination; or (b) within  
31 twenty-one days of receiving notice of a petition for review by the  
32 board, delayed or suspended the effective date of the action subject to  
33 the petition before the board until after the board issues a final  
34 determination.

35 (3) When reviewing competing requests from counties, cities, or  
36 towns planning under RCW 36.70A.040, a state agency considering  
37 awarding grants or loans for public facilities shall accord additional

1 preference to those counties, cities, or towns that have adopted a  
2 comprehensive plan and development regulations as required by RCW  
3 36.70A.040. For the purposes of the preference accorded in this  
4 section, a county, city, or town planning under RCW 36.70A.040 is  
5 deemed to have satisfied the requirements for adopting a comprehensive  
6 plan and development regulations specified in RCW 36.70A.040 if the  
7 county, city, or town:

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

10 (b) Adopts or has adopted a comprehensive plan and development  
11 regulations before (~~submitting a request for a grant or loan~~) the  
12 state agency makes a decision regarding award recipients of the grants  
13 or loans if the county, city, or town failed to adopt a comprehensive  
14 plan and/or development regulations within the time periods specified  
15 in RCW 36.70A.040; or

16 (c) Demonstrates substantial progress toward adopting a  
17 comprehensive plan or development regulations within the time periods  
18 specified in RCW 36.70A.040. A county, city, or town that is more than  
19 six months out of compliance with the time periods specified in RCW  
20 36.70A.040 shall not be deemed to demonstrate substantial progress for  
21 purposes of this section.

22 (~~(3)~~) (4) The preference specified in subsection (~~(2)~~) (3) of  
23 this section applies only to competing requests for grants or loans  
24 from counties, cities, or towns planning under RCW 36.70A.040. A  
25 request from a county, city, or town planning under RCW 36.70A.040  
26 shall be accorded no additional preference based on subsection (~~(2)~~)  
27 (3) of this section over a request from a county, city, or town not  
28 planning under RCW 36.70A.040.

29 (~~(4)~~) (5) Whenever a state agency is considering awarding grants  
30 or loans for public facilities to a special district requesting funding  
31 for a proposed facility located in a county, city, or town planning  
32 under RCW 36.70A.040, it shall consider whether the county, city, or  
33 town in whose planning jurisdiction the proposed facility is located  
34 has adopted a comprehensive plan and development regulations as  
35 required by RCW 36.70A.040 and shall apply the standards in subsection  
36 (2) of this section and the preference specified in subsection (~~(2)~~)  
37 (3) of this section and restricted in subsection (~~(3)~~) (4) of this  
38 section.

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

3       (1) To qualify for (~~loans or pledges~~) financial assistance under  
4 this chapter the board must determine that a local government meets all  
5 of the following conditions:

6       (a) The city or county must be imposing a tax under chapter 82.46  
7 RCW at a rate of at least one-quarter of one percent;

8       (b) The local government must have developed a capital facility  
9 plan; and

10       (c) The local government must be using all local revenue sources  
11 which are reasonably available for funding public works, taking into  
12 consideration local employment and economic factors.

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

32       (3) In considering awarding (~~loans~~) financial assistance for  
33 public facilities to special districts requesting funding for a  
34 proposed facility located in a county, city, or town planning under RCW  
35 36.70A.040, the board must consider whether the county, city, or town  
36 planning under RCW 36.70A.040 in whose planning jurisdiction the  
37 proposed facility is located has adopted a comprehensive plan and  
38 development regulations as required by RCW 36.70A.040.

1 (4) The board must develop a priority process for public works  
2 projects as provided in this section. The intent of the priority  
3 process is to maximize the value of public works projects accomplished  
4 with assistance under this chapter. The board must attempt to assure  
5 a geographical balance in assigning priorities to projects. The board  
6 must consider at least the following factors in assigning a priority to  
7 a project:

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

11 (b) Except as otherwise conditioned by RCW 43.155.110, whether the  
12 entity receiving assistance is a Puget Sound partner, as defined in RCW  
13 90.71.010;

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

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

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

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

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

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

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

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

32 (k) Except as otherwise conditioned by RCW 43.155.120, and  
33 effective one calendar year following the development of model  
34 evergreen community management plans and ordinances under RCW  
35 35.105.050, whether the entity receiving assistance has been  
36 recognized, and what gradation of recognition was received, in the  
37 evergreen community recognition program created in RCW 35.105.030;

1 (1) The relative benefit of the project to the community,  
2 considering the present level of economic activity in the community and  
3 the existing local capacity to increase local economic activity in  
4 communities that have low economic growth; and

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

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

11 (6) Before November 1st of each even-numbered year, the board must  
12 develop and submit to the appropriate fiscal committees of the senate  
13 and house of representatives a description of the loans made under RCW  
14 43.155.065, 43.155.068, and subsection (9) of this section during the  
15 preceding fiscal year and a prioritized list of projects which are  
16 recommended for funding by the legislature, including one copy to the  
17 staff of each of the committees. The list must include, but not be  
18 limited to, a description of each project and recommended financing,  
19 the terms and conditions of the loan or financial guarantee, the local  
20 government jurisdiction and unemployment rate, demonstration of the  
21 jurisdiction's critical need for the project and documentation of local  
22 funds being used to finance the public works project. The list must  
23 also include measures of fiscal capacity for each jurisdiction  
24 recommended for financial assistance, compared to authorized limits and  
25 state averages, including local government sales taxes; real estate  
26 excise taxes; property taxes; and charges for or taxes on sewerage,  
27 water, garbage, and other utilities.

28 (7) The board may not sign contracts or otherwise financially  
29 obligate funds from the public works assistance account before the  
30 legislature has appropriated funds for a specific list of public works  
31 projects. The legislature may remove projects from the list  
32 recommended by the board. The legislature may not change the order of  
33 the priorities recommended for funding by the board.

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

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

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

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

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

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

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

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

17 (c) Actions required under federal and state permits and compliance  
18 orders;

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

21 (e) Except as otherwise conditioned by RCW 70.146.110, whether the  
22 entity receiving assistance is a Puget Sound partner, as defined in RCW  
23 90.71.010;

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

26 (g) Except as otherwise provided in RCW 70.146.120, and effective  
27 one calendar year following the development and statewide availability  
28 of model evergreen community management plans and ordinances under RCW  
29 35.105.050, whether the project is sponsored by an entity that has been  
30 recognized, and what gradation of recognition was received, in the  
31 evergreen community recognition program created in RCW 35.105.030;

32 (h) The extent to which the applicant county or city, or if the  
33 applicant is another public body, the extent to which the county or  
34 city in which the applicant public body is located, has established  
35 programs to mitigate nonpoint pollution of the surface or subterranean  
36 water sought to be protected by the water pollution control facility  
37 named in the application for state assistance; and



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

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

25 (3) Whenever the department is considering awarding grants or loans  
26 for public facilities to special districts requesting funding for a  
27 proposed facility located in a county, city, or town planning under RCW  
28 36.70A.040, it shall consider whether the county, city, or town  
29 planning under RCW 36.70A.040 in whose planning jurisdiction the  
30 proposed facility is located has adopted a comprehensive plan and  
31 development regulations as required by RCW 36.70A.040.

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

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

1 (1) The comprehensive plan of each county and city that is planning  
2 under RCW 36.70A.040 shall include a process for identifying and siting  
3 essential public facilities. Essential public facilities include those  
4 facilities that are typically difficult to site, such as airports,  
5 state education facilities and state or regional transportation  
6 facilities as defined in RCW 47.06.140, regional transit authority  
7 facilities as defined in RCW 81.112.020, state and local correctional  
8 facilities, solid waste handling facilities, and inpatient facilities  
9 including substance abuse facilities, mental health facilities, group  
10 homes, and secure community transition facilities as defined in RCW  
11 71.09.020.

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

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

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

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

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

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

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

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

5           (b) A consideration for grants or loans provided under RCW  
6 43.17.250(~~(+2)~~) (3); or

7           (c) A basis for any petition under RCW 36.70A.280 or for any  
8 private cause of action.

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