
HOUSE BILL 1401

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Fitzgibbon, Dahlquist, Takko, Fey, Wilcox, Kochmar, Magendanz, O'Ban, Morrell, and Jinkins

Read first time 01/25/13. Referred to Committee on Local Government.

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) Unless the board makes a determination of invalidity as
31 provided in RCW 36.70A.302, a finding of noncompliance and an order of
32 remand shall not affect the validity of comprehensive plans and
33 development regulations during the period of remand. State agencies,
34 commissions, or governing boards shall not penalize jurisdictions
35 during the period of remand unless a determination of invalidity has
36 been issued.

37 (5) Any party aggrieved by a final decision of the hearings board
38 may appeal the decision to superior court as provided in RCW 34.05.514

1 or 36.01.050 within thirty days of the final order of the board. State
2 agencies, commissions, or governing boards shall not penalize
3 jurisdictions during the pendency of an appeal as provided in RCW
4 43.17.250.

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

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

12 (2) If a comprehensive plan or development regulation of a county,
13 city, or town adopted as required by RCW 36.70A.040, or amendments to
14 either the plan or regulations, has been appealed to the growth
15 management hearings board under RCW 36.70A.280 and has not yet taken
16 effect, the local jurisdiction shall not be deemed ineligible, or
17 otherwise penalized, in the award of a state agency grant or loan
18 during the pendency of the appeal before the board or during any
19 subsequent judicial appeals. However, during these appeals state
20 agencies shall accept an otherwise eligible application for a state
21 grant or loan.

22 (3) When reviewing competing requests from counties, cities, or
23 towns planning under RCW 36.70A.040, a state agency considering
24 awarding grants or loans for public facilities shall accord additional
25 preference to those counties, cities, or towns that have adopted a
26 comprehensive plan and development regulations as required by RCW
27 36.70A.040. For the purposes of the preference accorded in this
28 section, a county, city, or town planning under RCW 36.70A.040 is
29 deemed to have satisfied the requirements for adopting a comprehensive
30 plan and development regulations specified in RCW 36.70A.040 if the
31 county, city, or town:

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

34 (b) Adopts or has adopted a comprehensive plan and development
35 regulations before ~~((submitting a request for a grant or loan))~~ the
36 state agency makes a decision regarding award recipients of the grants

1 or loans if the county, city, or town failed to adopt a comprehensive
2 plan and/or development regulations within the time periods specified
3 in RCW 36.70A.040; or

4 (c) Demonstrates substantial progress toward adopting a
5 comprehensive plan or development regulations within the time periods
6 specified in RCW 36.70A.040. A county, city, or town that is more than
7 six months out of compliance with the time periods specified in RCW
8 36.70A.040 shall not be deemed to demonstrate substantial progress for
9 purposes of this section.

10 ~~((3))~~ (4) The preference specified in subsection ~~((2))~~ (3) of
11 this section applies only to competing requests for grants or loans
12 from counties, cities, or towns planning under RCW 36.70A.040. A
13 request from a county, city, or town planning under RCW 36.70A.040
14 shall be accorded no additional preference based on subsection ~~((2))~~
15 (3) of this section over a request from a county, city, or town not
16 planning under RCW 36.70A.040.

17 ~~((4))~~ (5) Whenever a state agency is considering awarding grants
18 or loans for public facilities to a special district requesting funding
19 for a proposed facility located in a county, city, or town planning
20 under RCW 36.70A.040, it shall consider whether the county, city, or
21 town in whose planning jurisdiction the proposed facility is located
22 has adopted a comprehensive plan and development regulations as
23 required by RCW 36.70A.040 and shall apply the standards in subsection
24 (2) of this section and the preference specified in subsection ~~((2))~~
25 (3) of this section and restricted in subsection ~~((3))~~ (4) of this
26 section.

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

29 (1) To qualify for loans or pledges under this chapter the board
30 must determine that a local government meets all of the following
31 conditions:

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

34 (b) The local government must have developed a capital facility
35 plan; and

36 (c) The local government must be using all local revenue sources

1 which are reasonably available for funding public works, taking into
2 consideration local employment and economic factors.

3 (2) Except where necessary to address a public health need or
4 substantial environmental degradation, a county, city, or town planning
5 under RCW 36.70A.040 must have adopted a comprehensive plan, including
6 a capital facilities plan element, and development regulations as
7 required by RCW 36.70A.040. A county, city, or town that has adopted
8 a comprehensive plan and development regulations as provided in RCW
9 36.70A.040 may request a grant or loan for public works projects. This
10 subsection does not require any county, city, or town planning under
11 RCW 36.70A.040 to adopt a comprehensive plan or development regulations
12 before requesting (~~or receiving~~) a loan or loan guarantee under this
13 chapter (~~if such request is made before the expiration of the time~~
14 ~~periods specified in RCW 36.70A.040~~). A county, city, or town
15 planning under RCW 36.70A.040 (~~which~~) that has not adopted a
16 comprehensive plan and development regulations within the time periods
17 specified in RCW 36.70A.040 is not prohibited from receiving a loan or
18 loan guarantee under this chapter if the comprehensive plan and
19 development regulations are adopted as required by RCW 36.70A.040
20 before (~~submitting a request for a loan or loan guarantee~~) the board
21 disburses the funds or guarantees the loan.

22 (3) In considering awarding loans for public facilities to special
23 districts requesting funding for a proposed facility located in a
24 county, city, or town planning under RCW 36.70A.040, the board must
25 consider whether the county, city, or town planning under RCW
26 36.70A.040 in whose planning jurisdiction the proposed facility is
27 located has adopted a comprehensive plan and development regulations as
28 required by RCW 36.70A.040.

29 (4) The board must develop a priority process for public works
30 projects as provided in this section. The intent of the priority
31 process is to maximize the value of public works projects accomplished
32 with assistance under this chapter. The board must attempt to assure
33 a geographical balance in assigning priorities to projects. The board
34 must consider at least the following factors in assigning a priority to
35 a project:

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

1 (b) Except as otherwise conditioned by RCW 43.155.110, whether the
2 entity receiving assistance is a Puget Sound partner, as defined in RCW
3 90.71.010;

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

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

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

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

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

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

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

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

22 (k) Except as otherwise conditioned by RCW 43.155.120, and
23 effective one calendar year following the development of model
24 evergreen community management plans and ordinances under RCW
25 35.105.050, whether the entity receiving assistance has been
26 recognized, and what gradation of recognition was received, in the
27 evergreen community recognition program created in RCW 35.105.030;

28 (l) The relative benefit of the project to the community,
29 considering the present level of economic activity in the community and
30 the existing local capacity to increase local economic activity in
31 communities that have low economic growth; and

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

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

1 (6) Before November 1st of each even-numbered year, the board must
2 develop and submit to the appropriate fiscal committees of the senate
3 and house of representatives a description of the loans made under RCW
4 43.155.065, 43.155.068, and subsection (9) of this section during the
5 preceding fiscal year and a prioritized list of projects which are
6 recommended for funding by the legislature, including one copy to the
7 staff of each of the committees. The list must include, but not be
8 limited to, a description of each project and recommended financing,
9 the terms and conditions of the loan or financial guarantee, the local
10 government jurisdiction and unemployment rate, demonstration of the
11 jurisdiction's critical need for the project and documentation of local
12 funds being used to finance the public works project. The list must
13 also include measures of fiscal capacity for each jurisdiction
14 recommended for financial assistance, compared to authorized limits and
15 state averages, including local government sales taxes; real estate
16 excise taxes; property taxes; and charges for or taxes on sewerage,
17 water, garbage, and other utilities.

18 (7) The board may not sign contracts or otherwise financially
19 obligate funds from the public works assistance account before the
20 legislature has appropriated funds for a specific list of public works
21 projects. The legislature may remove projects from the list
22 recommended by the board. The legislature may not change the order of
23 the priorities recommended for funding by the board.

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

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

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

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

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

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

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

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

8 (c) Actions required under federal and state permits and compliance
9 orders;

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

12 (e) Except as otherwise conditioned by RCW 70.146.110, whether the
13 entity receiving assistance is a Puget Sound partner, as defined in RCW
14 90.71.010;

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

17 (g) Except as otherwise provided in RCW 70.146.120, and effective
18 one calendar year following the development and statewide availability
19 of model evergreen community management plans and ordinances under RCW
20 35.105.050, whether the project is sponsored by an entity that has been
21 recognized, and what gradation of recognition was received, in the
22 evergreen community recognition program created in RCW 35.105.030;

23 (h) The extent to which the applicant county or city, or if the
24 applicant is another public body, the extent to which the county or
25 city in which the applicant public body is located, has established
26 programs to mitigate nonpoint pollution of the surface or subterranean
27 water sought to be protected by the water pollution control facility
28 named in the application for state assistance; and

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

33 (2) Except where necessary to address a public health need or
34 substantial environmental degradation, a county, city, or town planning
35 under RCW 36.70A.040 may not receive a grant or loan for water
36 pollution control facilities unless it has adopted a comprehensive
37 plan, including a capital facilities plan element, and development
38 regulations as required by RCW 36.70A.040. A county, city, or town

1 that has adopted a comprehensive plan and development regulations as
2 provided in RCW 36.70A.040 may request a grant or loan for water
3 pollution control facilities. This subsection does not require any
4 county, city, or town planning under RCW 36.70A.040 to adopt a
5 comprehensive plan or development regulations before requesting (~~or~~
6 ~~receiving~~) a grant or loan under this chapter if such request is made
7 before the expiration of the time periods specified in RCW 36.70A.040.
8 A county, city, or town planning under RCW 36.70A.040 (~~which~~) that
9 has not adopted a comprehensive plan and development regulations within
10 the time periods specified in RCW 36.70A.040 is not prohibited from
11 receiving a grant or loan under this chapter if the comprehensive plan
12 and development regulations are adopted as required by RCW 36.70A.040
13 before (~~submitting a request for a~~) the departments disburses funds
14 for the grant or loan.

15 (3) Whenever the department is considering awarding grants or loans
16 for public facilities to special districts requesting funding for a
17 proposed facility located in a county, city, or town planning under RCW
18 36.70A.040, it shall consider whether the county, city, or town
19 planning under RCW 36.70A.040 in whose planning jurisdiction the
20 proposed facility is located has adopted a comprehensive plan and
21 development regulations as required by RCW 36.70A.040.

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

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

28 (1) The comprehensive plan of each county and city that is planning
29 under RCW 36.70A.040 shall include a process for identifying and siting
30 essential public facilities. Essential public facilities include those
31 facilities that are typically difficult to site, such as airports,
32 state education facilities and state or regional transportation
33 facilities as defined in RCW 47.06.140, regional transit authority
34 facilities as defined in RCW 81.112.020, state and local correctional
35 facilities, solid waste handling facilities, and inpatient facilities
36 including substance abuse facilities, mental health facilities, group

1 homes, and secure community transition facilities as defined in RCW
2 71.09.020.

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

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

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

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

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

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

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

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

33 (b) A consideration for grants or loans provided under RCW
34 43.17.250(~~(+2)~~) (3); or

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

--- END ---