

ESHB 1401 - S COMM AMD

By Committee on Governmental Operations

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 36.70A.300 and 1997 c 429 s 14 are each amended to
4 read as follows:

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

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

17 (b) The board may extend the period of time for issuing a decision
18 to enable the parties to settle the dispute if additional time is
19 necessary to achieve a settlement, and (i) an extension is requested by
20 all parties, or (ii) an extension is requested by the petitioner and
21 respondent and the board determines that a negotiated settlement
22 between the remaining parties could resolve significant issues in
23 dispute. The request must be filed with the board not later than seven
24 days before the date scheduled for the hearing on the merits of the
25 petition. The board may authorize one or more extensions for up to
26 ninety days each, subject to the requirements of this section.

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

28 (a) Find that the state agency, county, or city is in compliance
29 with the requirements of this chapter, chapter 90.58 RCW as it relates

1 to the adoption or amendment of shoreline master programs, or chapter
2 43.21C RCW as it relates to adoption of plans, development regulations,
3 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

4 (b) Find that the state agency, county, or city is not in
5 compliance with the requirements of this chapter, chapter 90.58 RCW as
6 it relates to the adoption or amendment of shoreline master programs,
7 or chapter 43.21C RCW as it relates to adoption of plans, development
8 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
9 90.58 RCW, in which case the board shall remand the matter to the
10 affected state agency, county, or city. The board shall specify a
11 reasonable time not in excess of one hundred eighty days, or such
12 longer period as determined by the board in cases of unusual scope or
13 complexity, within which the state agency, county, or city shall comply
14 with the requirements of this chapter. The board may require periodic
15 reports to the board on the progress the jurisdiction is making towards
16 compliance.

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

21 (b) Unless the board makes a determination of invalidity, state
22 agencies, commissions, and governing boards may not determine a county,
23 city, or town to be ineligible or otherwise penalized in the acceptance
24 of applications or the awarding of state agency grants or loans during
25 the period of remand. This subsection (4)(b) applies only to counties,
26 cities, and towns that have: (i) Delayed the initial effective date of
27 the action subject to the petition before the board until after the
28 board issues a final determination; or (ii) within thirty days of
29 receiving notice of a petition for review by the board, delayed or
30 suspended the effective date of the action subject to the petition
31 before the board until after the board issues a final determination.

32 (5) Any party aggrieved by a final decision of the hearings board
33 may appeal the decision to superior court as provided in RCW 34.05.514
34 or 36.01.050 within thirty days of the final order of the board.
35 Unless the board makes a determination of invalidity under RCW
36 36.70A.302, state agencies, commissions, or governing boards shall not
37 penalize counties, cities, or towns during the pendency of an appeal as
38 provided in RCW 43.17.250.

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

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

8 (2) If a comprehensive plan, development regulation, or amendment
9 thereto adopted by a county, city, or town has been appealed to the
10 growth management hearings board under RCW 36.70A.280, the county,
11 city, or town may not be determined to be ineligible or otherwise
12 penalized in the acceptance of applications or the awarding of state
13 agency grants or loans during the pendency of the appeal before the
14 board or subsequent judicial appeals. This subsection (2) applies only
15 to counties, cities, and towns that have: (a) Delayed the initial
16 effective date of the action subject to the petition before the board
17 until after the board issues a final determination; or (b) within
18 thirty days of receiving notice of a petition for review by the board,
19 delayed or suspended the effective date of the action subject to the
20 petition before the board until after the board issues a final
21 determination.

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
37 or loans if the county, city, or town failed to adopt a comprehensive

1 plan and/or development regulations within the time periods specified
2 in RCW 36.70A.040; or

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

9 ((+3)) (4) The preference specified in subsection ((+2)) (3) of
10 this section applies only to competing requests for grants or loans
11 from counties, cities, or towns planning under RCW 36.70A.040. A
12 request from a county, city, or town planning under RCW 36.70A.040
13 shall be accorded no additional preference based on subsection ((+2))
14 (3) of this section over a request from a county, city, or town not
15 planning under RCW 36.70A.040.

16 ((+4)) (5) Whenever a state agency is considering awarding grants
17 or loans for public facilities to a special district requesting funding
18 for a proposed facility located in a county, city, or town planning
19 under RCW 36.70A.040, it shall consider whether the county, city, or
20 town in whose planning jurisdiction the proposed facility is located
21 has adopted a comprehensive plan and development regulations as
22 required by RCW 36.70A.040 and shall apply the standards in subsection
23 (2) of this section and the preference specified in subsection ((+2))
24 (3) of this section and restricted in subsection ((+3)) (4) of this
25 section.

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

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

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

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

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

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

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

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

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

37 (b) Except as otherwise conditioned by RCW 43.155.110, whether the

1 entity receiving assistance is a Puget Sound partner, as defined in RCW
2 90.71.010;

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

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

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

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

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

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

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

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

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

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

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

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

37 (6) Before November 1st of each even-numbered year, the board must
38 develop and submit to the appropriate fiscal committees of the senate

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

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

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

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

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

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

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

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

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

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

6 (c) Actions required under federal and state permits and compliance
7 orders;

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

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

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

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

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

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

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

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

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

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

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

26 (1) The comprehensive plan of each county and city that is planning
27 under RCW 36.70A.040 shall include a process for identifying and siting
28 essential public facilities. Essential public facilities include those
29 facilities that are typically difficult to site, such as airports,
30 state education facilities and state or regional transportation
31 facilities as defined in RCW 47.06.140, regional transit authority
32 facilities as defined in RCW 81.112.020, state and local correctional
33 facilities, solid waste handling facilities, and inpatient facilities
34 including substance abuse facilities, mental health facilities, group
35 homes, and secure community transition facilities as defined in RCW
36 71.09.020.

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

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

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

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

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

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

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

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

31 (b) A consideration for grants or loans provided under RCW
32 43.17.250(~~(+2)~~) (3); or

33 (c) A basis for any petition under RCW 36.70A.280 or for any
34 private cause of action."

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By Committee on Governmental Operations

NOT CONSIDERED

1 On page 1, line 2 of the title, after "act;" strike the remainder
2 of the title and insert "and amending RCW 36.70A.300, 43.17.250,
3 43.155.070, 70.146.070, and 36.70A.200."

EFFECT: Specifies that a county or city that fully plans under the Growth Management Act may apply for and receive financial assistance for qualifying public works projects, if the required comprehensive plans and development regulations are adopted before executing a contractual agreement for the assistance with the Public Works Board.

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