

HOUSE BILL REPORT

ESHB 1401

As Passed House:
March 8, 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: House Committee on Local Government (originally sponsored by Representatives Fitzgibbon, Dahlquist, Takko, Fey, Wilcox, Kochmar, Magendanz, O'Ban, Morrell and Jinkins).

Brief History:

Committee Activity:

Local Government: 2/7/13, 2/21/13 [DPS].

Floor Activity:

Passed House: 3/8/13, 89-9.

Brief Summary of Engrossed Substitute Bill

- Prohibits state entities from determining counties, cities, and towns meeting specified criteria to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants during a period of remand following a finding of noncompliance by the Growth Management Hearings Board (Board), or during the pendency of an appeal before the Board or a subsequent judicial appeal.
- Makes counties, cities, and towns that have comprehensive plans or development regulations on appeal to the Board and that meet other requirements eligible for state agency grants and loans during the pendency of an appeal to the Board or during subsequent judicial appeals.
- Modifies grant and loan qualifications for counties, cities, and towns seeking financial assistance from the Public Works Assistance Account and for water pollution control facilities.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Kochmar, Assistant Ranking Minority Member; Buys, Crouse, Lias, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Ranking Minority Member.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act - Introduction.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA.

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.

Enforcement and Penalty Provisions.

The GMA includes enforcement and penalty provisions for public entities. A seven-member Growth Management Hearings Board (Board) established in the GMA is charged with hearing and determining petitions alleging noncompliance with the GMA and related statutory provisions by state agencies, counties, or cities. The Board must make findings of fact and prepare a written decision in each case decided by it. Final decisions and orders of the Board may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

In issuing final decisions and orders, the Board must find the state agency, county, or city identified in the petition to be either in compliance or not in compliance with the GMA and any related and applicable statutory provisions. If the agency or local government is found to be not in compliance, the Board must generally remand the matter to the agency or local government for 180 days, within which it must comply with applicable requirements. If, following a hearing to determine whether the agency or local government has satisfied the requirements of the remand, the Board may find that the agency, county, or city is in compliance or that it remains not in compliance. The Board may issue a determination of invalidity for all or part of a comprehensive plan or development regulation it determines is invalid. Additionally, the Governor may impose financial penalties in the form of reducing or withholding appropriations or revenues to which the noncompliant agency or local government would otherwise be entitled.

Grant and Loan Funds - Eligibility Provisions.

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 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, a planning jurisdiction wanting to qualify for loans or pledges from the Public Works Assistance Account (PWAA), an account established by the Legislature for loans and financial guarantees to local governments for public works projects, must have adopted a comprehensive plan and required development regulations. In limited time-specific circumstances, local governments could have requested and received a loan or loan guarantee from the PWAA before adopting a required comprehensive plan or development regulations.

Similarly, planning jurisdictions wanting to qualify for a Department of Ecology grant or loan for a water pollution control facility 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 Engrossed Substitute Bill:

Enforcement and Penalty Provisions - Growth Management Hearings Board.

Unless the Growth Management Hearings Board (Board) makes a determination of invalidity, state agencies, commissions, and governing boards may not determine a county, city, or town (local government) to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants during a period of remand or during the pendency of an appeal before the Board or a court. This determination requirement applies only to local governments that have:

- delayed the initial effective date of the action subject to the petition before the Board until after the Board issues a final determination; or
- within 30 days of receiving notice of a petition for review by the Board, delayed or suspended the effective date of the action subject to the petition before the Board until after the Board issues a final determination.

Grant and Loan Funds - Eligibility Provisions.

If a comprehensive plan, development regulation, or associated amendment, has been appealed to the Board, and a determination of invalidity has not been issued, the local government may not be determined to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the pendency of the appeal before the Board or subsequent judicial appeals. This determination requirement applies only to local governments that have:

- delayed the initial effective date of the action subject to the petition before the Board until after the Board issues a final determination; or

- within 30 days of receiving notice of a petition for review by the Board, delayed or suspended the effective date of the action subject to the petition before the Board until after the Board 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 jurisdiction that fully plans under the Growth Management Act (planning jurisdiction), the state agency must apply these eligibility and non-penalty 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 before the state agency makes a decision regarding award recipients of the grant and loan, and if other conditions are met.

A planning jurisdiction may not receive financial assistance from the Public Works Assistance Account (PWAA) unless it has adopted a comprehensive plan and development regulations within specified time periods. These jurisdictions are not prohibited from receiving financial assistance from the PWAA if the comprehensive plan and development regulations are adopted before executing a contractual agreement for financial assistance with the Public Works Board.

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 the Department of Ecology executes a contractual agreement for the grant or loan.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Growth Management Act (GMA) includes penalty provisions, and this bill is intended to provide certainty and due process as to when those penalties apply. This bill represents efforts working with local governments to provide certainty and flexibility, while working to make sure that they have every incentive to comply with the GMA.

This bill is a 2013 top priority for counties. Twenty years ago the penalty provisions in the GMA were intended to encourage jurisdictions to adopt comprehensive plans and development regulations, but the situation of 20 years ago has changed and the penalty

provisions from that time period should be modified to reflect today. Counties are looking at ways to improve the GMA.

Three comprehensive plan amendments in Pierce County that affected less than 250 acres were challenged before the Growth Management Hearings Board (Board), but the county is being penalized during the appeal because the Board action makes it ineligible to apply for grants or penalizes it in the application process. Pierce County might be ineligible for \$31 million in financial assistance because of an action before the Board, yet the adopted and challenged amendments have not even taken effect. Many of the accounts that the county would be ineligible to receive or penalized in the application process are accounts that promote objectives and principles of the GMA. Counties want certainty and flexibility during noncompliance remand periods, but are not looking for comparable flexibility after determinations of invalidity. Counties are required to correct inadequacies, and some corrective actions require capital facility expenditures, yet the current situation is unfair as a Board action can deny a county access to the mechanism needed to fix the inadequacy. Many efforts of small counties to comply with requirements of the GMA have taken place during a time of economic decline. This bill will provide significant help. Rarely do jurisdictions realize that they may be found out of compliance. This bill will grant jurisdictions time to reconcile matters before penalties are imposed.

(Opposed) Kittitas County opted into the GMA in 1990 and adopted their comprehensive plan in 1996. The county was out of compliance for 11 years and finally adopted required regulations in 2007. When is enough noncompliance enough? By removing incentives for coming into compliance with the GMA, you allow jurisdictions to delay, delay, delay. Invalidity has stronger penalties, but noncompliance allows vesting, the use of regulations, and development to occur. The bill needs to be modified to prohibit vesting during the period of noncompliance.

Attempts to develop a proposed substitute for the bill are underway with counties and the Department of Commerce. There are concerns about the bill, especially about weakening incentives to comply with the GMA. A proposed substitute bill will hopefully better mirror the actions of Pierce County to ensure that premature vesting does not occur. With limited state funds, it is important for the state to prioritize funds for jurisdictions that are following the law.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Laura Merrill, Washington State Association of Counties; Pete Philley, Pierce County Prosecutor's Office; Brynn Brady, Pierce County Government Relations; Wes McCart, Stevens County Board of Commissioners; Paul Jewell, Kittitas County; and Eric Baker, Kitsap County.

(Opposed) Paula Thompson; and April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.