
Local Government Committee

HB 2641

Brief Description: Reducing nontax administration costs associated with the conduct of city and county operations.

Sponsors: Representatives Springer, Takko, Kagi and Eddy.

Brief Summary of Bill

- Makes numerous changes to provisions governing or applicable to counties and cities in the following categories: (1) audits; (2) employment issues; (3) impact fee exemptions for low-income housing; (4) storm water and low-impact development; (5) civil actions; (6) public health recommendations; and (7) public notice and publications.

Hearing Date: 1/24/12

Staff: Ethan Moreno (786-7386).

Background:

General Information: Counties and Cities.

Counties and cities (including towns) are the two general purpose local governments in Washington state. Counties and cities are the governmental units that perform broad functions, including the delivery of a wide variety of public services. Additionally, through their elected officers, counties and cities provide a means for representing and responding to local citizens.

Washington's 39 counties are the area-wide governments that cover the entirety of the state. In contrast, cities are generally center-oriented governmental units that are established by incorporation to provide public services and an economic identity to large and small population concentrations. Although the boundaries of Washington's 281 cities and towns can change through annexation, the state's counties are legal subdivisions of the state and have fixed boundaries.

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.

Audits.

The Washington State Auditor (Auditor) is charged with examining the financial affairs of counties, cities, and other public entities at reasonable, periodic intervals as determined by the Auditor. The Auditor is required, however, to examine the financial affairs of all local governments at least once every three years, and to examine individual local government health and welfare benefit plans and local government self-insurance programs at least once every two years. Audits may be conducted more frequently to address suspected fraud or irregular conduct, at the request of the local government, or as required by federal requirements.

In conducting the examinations the auditor must make inquiries into the financial condition and resources of the local government, whether the legal requirements have been properly complied with, and the methods and accuracy of the accounts and reports. Reports resulting from the examinations must be filed with the Auditor, the local government, and, upon findings of noncompliance with state law, the state Attorney General.

Employment Issues.

Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission (PERC).

Collective Bargaining. The employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining: grievance procedures and personnel matters, including wages, hours, and working conditions.

Interest Arbitration. For uniformed personnel (including law enforcement officers in larger jurisdictions and firefighters), the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation. The arbitration panel must consider:

- the authority of the employer;
- the stipulations of the parties;
- the cost-of-living, and for some, regional differences in the cost-of-living;
- changes in circumstances in any of these factors during the proceedings; and
- other factors normally or traditionally considered in the determination of wages, hours, and conditions of employment.

For law enforcement officers in larger cities and counties and similar uniformed personnel, the arbitration panel must also consider a comparison of wages, hours, and conditions of employment of like personnel of like employers on the west coast of the United States.

For firefighters in all cities and counties and similar uniformed personnel, the arbitration panel must also consider a comparison of wages, hours, and conditions of employment of like personnel of like public fire departments on the west coast of the United States. When an adequate number of comparable employers exist in Washington, other west coast employers may not be considered.

Impact Fee Exemptions for Low Income Housing.

Counties, cities, and towns that fully plan under Washington's Growth Management Act may impose impact fees on development activity as part of the financing for public facilities. Impact fees:

- may be imposed only for system improvements that are reasonably related to the new
- development;
- may not exceed a proportionate share of the system improvements; and
- must be used for system improvements that will reasonably benefit the new development.

Local governments that impose impact fees may exempt low-income housing and other development activities with broad public purposes from impact fees. Jurisdictions choosing to exempt low-income housing and other activities with broad public purposes from the impact fees must repay the lost fee revenue resulting from the exemption from public funds other than impact fee accounts.

Storm Water and Low Impact Development.

The Department of Ecology (DOE) administers a state program for discharge of pollutants to state waters. State permits are required for anyone who discharges waste materials from a commercial or industrial operation to ground or to publicly owned treatment plants. State permits are also required for municipalities that discharge to ground.

The federal Clean Water Act (CWA) prohibits the discharge of pollutants in toxic amounts and establishes the National Pollution Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. The DOE has been delegated authority by the United States Environmental Protection Agency (EPA) to administer NPDES permits.

The CWA and implementing storm water regulations of the EPA established two phases for the NPDES permits to control storm water discharges from certain industries and construction sites, and from municipalities operating municipal separate storm sewer systems. Phase I of the NPDES storm water permit program applies to six local governments (Seattle, Tacoma, and the unincorporated areas of Clark, Pierce, King, and Snohomish Counties) and to the Washington State Department of Transportation facilities within those jurisdictions. The Phase II permit program rules apply to operators of small municipal separate storm sewer systems serving fewer than 100,000 persons.

The Washington State University's draft *2012 Low-Impact Development Technical Guidance Manual for Puget Sound* defines low-impact development as a storm water and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation and use of on-site natural features, site planning, and distributed storm water management practices integrated into the design of a project. Low-impact strategies can be applied to a variety of projects, including new development, infrastructure improvements, and revitalization projects to protect aquatic resources.

Civil Actions.

Any person 16 or older driving or riding in a car is required to wear a seatbelt. When a child under the age of 16 is riding in a vehicle, the driver must keep the child properly restrained in a

child restraint system or with a seatbelt, depending on the age and height of the child. A person may not operate a vehicle unless all child passengers under the age of 16 years are either wearing a seatbelt or securely fastened in a child restraint system. A person who fails to comply with the requirements under the seatbelt and child restraint laws may be issued a traffic infraction.

With certain exceptions, a violation of a statutory mandate is not per se negligence, but the fact of the violation may be introduced as evidence of negligence. However, the seatbelt statute specifically declares that a person's failure to comply with the seatbelt requirement does not constitute negligence and is not admissible as evidence of negligence in any civil action. Similarly, the child restraint statute provides that failure to comply with the child passenger restraint requirements does not constitute negligence by a parent or legal guardian, and may not be admitted in court as evidence of negligence.

Public Health Recommendations.

Public health services in Washington are provided by the Washington State Department of Health and the 35 local health jurisdictions. Local health jurisdictions may be structured as a county agency, a city-county agency, or a single agency comprised of multiple counties. The activities of these agencies are generally divided into five categories, including preventing and responding to communicable disease; protecting people from environmental health threats; assessing health status; promoting health and preventing chronic disease; and accessing health services.

Public Notice and Publications.

Counties and cities have numerous public notice and publishing requirements. For example, promptly after adoption, a full or summarized version of each city ordinance must be published one or more times in the official newspaper of the city. An inadvertent mistake or omission in publishing the full or summarized text does not render the ordinance invalid. Examples of newspaper-based publishing actions that counties must satisfy include the following:

- publishing all legal notices and delinquent tax lists;
- publishing requests for competitive bids and notices related to the disposal of county property;
- publishing notices relating to the creation of areas and districts, including aquifer protection areas, and park and recreation service areas, and local improvement districts and county road districts;
- publishing ordinances regarding levying and fixing taxes, and the completion of a preliminary budget; and
- publishing notices associated with land use and planning actions.

Summary of Bill:

Numerous changes to provisions governing or applicable to the operation of counties and cities are made. A summary, by general category, is as follows.

Audits.

The State Auditor, with some exceptions, is limited to conducting examinations of county and city financial affairs once every three years. Audits may continue to be conducted more frequently than every three years under specific circumstances, including for local governments that had a finding involving a significant violation of state law or a weakness in internal controls in the preceding year.

Employment Issues.

Collective Bargaining. Collective bargaining over the use of volunteers by counties and cities is permissive, rather than mandatory.

Interest Arbitration. The provisions governing arbitration panels for uniformed public employees are modified to specify that, in making a determination, an arbitration panel may not rely on or give undue consideration to past arbitration decisions. Additionally, a panel must consider the budget priorities of the public organization, as determined by the organization's governing body, financial and budgetary constraints, and internal equity within the organization among employee pay and benefits.

For purposes of making a determination involving law enforcement officers and similar uniformed personnel, an arbitration panel must continue to consider comparisons of wages, hours, and conditions of employment with those of like personnel of like employers on the west coast of the United States, but a requirement that the like employers be of similar size is deleted.

For purposes of making a determination involving firefighters and similar uniformed personnel, like public fire departments must be determined by factors that include, but are not limited to, population size and demographics, geographic location, financial conditions, workforce size, assessed valuation, and labor market conditions.

Impact Fee Exemptions for Low-Income Housing.

Local governments that grant impact fee exemptions for low-income housing are relieved from requirements to pay the exempted fees from non-impact fee public accounts. The impact fee exemptions may only be granted if the developer receiving the exemption records a covenant with the applicable county auditor or recording officer that prohibits using the property for any purposes other than for low-income housing. The covenant must satisfy delineated requirements, including addressing price restrictions and household income limits for the housing, and it also must require the property owner to pay applicable impact fees if the property is converted to a different use. Additionally, a local government that grants the exemption may not collect revenues lost through the exemption by increasing unrelated impact fees.

Storm Water and Low-Impact Development.

This issuance of a National Pollution Discharge Elimination System (NPDES) municipal storm water general permit by the The Department of Ecology (DOE) for Phase II permittees located west of the crest of the Cascade Mountains must include a process providing for:

- technical training on the benefits of low-impact development by the Department of Commerce and the Washington State University LID technical training program or equivalent. The training must be provided to the Phase II permittees and the private development community.
- a review and revision by Phase II permittees of their local development-related codes, rules, standards and other documents to remove barriers to, and to specifically authorize, the application of low-impact development principles and best management practices. A staggered four-year schedule with deadlines between June 30, 2015, and June 30, 2018, is established for Phase II permittees in 19 counties.

Phase II permits issued by the DOE must satisfy numerous other requirements, including:

- authorizing incentives to permittees to require low-impact development;
- authorizing permittees to offer specific incentives to prospective developers who use low-impact development techniques and best practices that are consistent with the permit; and
- obligating the DOE to develop model practices for jurisdictions to, at a low cost and liability for permittees, ensure ongoing maintenance of storm water treatment facilities owned by private parties.

This issuance of a NPDES municipal storm water general permit by the DOE for Phase II permittees located east of the crest of the Cascade Mountains must include:

- a process by the DOE to develop a collaborative program to monitor the effectiveness of storm water treatments required by an NPDES municipal storm water general permit; and
- an option allowing jurisdictions to have the DOE perform responsibilities related to measuring the effectiveness of public education and outreach techniques.

Lastly, in preparation for subsequent NPDES municipal storm water general permits, the DOE must review jurisdictional experiences when considering whether and how to expand requirements related to low-impact development.

Civil Actions.

A person's failure to comply with the seatbelt or child restraint requirements may be admissible as evidence of negligence in any civil action. The child restraint statute is amended to eliminate the provision that failure to comply with child restraint requirements does not constitute negligence by a parent or legal guardian.

Public Health System Recommendations.

The Department of Health is required to convene a work group of public health partners that must develop recommendations to the Legislature on: preferred funding and service delivery methods that ensure a cost-effective, nimble, responsive, and sustainable public health system; and the regionalization of certain health services delivered by local health jurisdictions that will save \$5,000,000 in state public health support in the 2011-2013 biennium. The recommendations must be submitted to the Legislature by January 1, 2013.

Public Notice.

Promptly after adoption, cities must post the text of each ordinance on their website and must make the text available at a location designated by the city. Within this same timeframe, cities also must publish an ordinance summary of 50 or fewer words in the official newspaper of the city. A failure to publish an ordinance does not make it invalid. Public notice procedures regarding forthcoming council meetings are amended to provide for the option of posting notice on the city's website.

Numerous public notice and publishing requirements for counties are modified. For example, counties, rather than publishing all legal notices and delinquent tax lists in the official county newspaper, are required to post these legal and official notices and tax lists on their website and to publish related summaries of 50 or fewer words in the official county newspaper. A failure to publish an ordinance does not render it invalid. Additionally, counties are authorized to publish summaries of 50 or fewer words rather than the full text in the official newspaper of the county for 47 separate publication requirements applicable to counties and county actions. Examples of

newspaper-based publishing actions that counties may satisfy through the publishing of brief summaries include requirements pertaining to:

- requests for competitive bids and notices related to the disposal of county property;
- notices relating to the creation of areas and districts, including aquifer protection areas, and park and recreation service areas, and local improvement districts and county road districts;
- ordinances regarding levying and fixing taxes, and the completion of a preliminary budget; and
- notices associated with land use and planning actions.

Appropriation: None.

Fiscal Note: Requested on January 23, 2012.

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