
Local Government Committee

HB 3272

Brief Description: Addressing the liability of county and city governments for failure to enforce building codes.

Sponsors: Representative Orcutt.

Brief Summary of Bill

- Makes counties and cities liable for damages caused by their negligent failure to enforce the provisions of the state building code and requires that such damage claims be subject to mandatory arbitration.
- Requires a city or county to refund building permit fees if the building code inspector fails to require the builder to remedy documented violations of the code.
- Requires a city or county to notify a building permit applicant of the local fire protection agency with jurisdiction over the property and to inform the applicant if there is no fire truck available to serve the property.

Hearing Date: 2/14/08

Staff: Thamas Osborn (786-7129).

Background:

Washington State Building Code

The Washington State Building Code (state code) consists of a series of national model codes and standards that have been adopted by this state to regulate the construction of residential, commercial, and industrial buildings and structures. The current state code consists of the International Building Code, the International Residential Code, the International Mechanical Code, the International Fire Code, and the Uniform Plumbing Code and Uniform Plumbing Code Standards.

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.

The state code is enforced by the counties and cities, but local jurisdictions have considerable discretion with respect to the adoption of amendments to the state code and thus may, in effect, create their own, local building codes. However, such local building codes must be consistent with the state code and impose standards that are at least as stringent as those required under the state code. Furthermore, locally adopted amendments to the state code must be reviewed and approved by the Washington State Building Code Council.

Public Duty Doctrine

The public duty doctrine is a judicially-created doctrine that provides a governmental entity with a defense against tort liability. The premise of the public duty doctrine is that, when engaged in a governmental function, a governmental entity has a duty to the public in general, not a duty to any individual person. Under the doctrine, the general rule is that a governmental entity is not liable for injuries resulting from its negligent actions unless it is shown that a duty was owed to the injured person as an individual, and not merely to the public generally. In applying the doctrine to building code compliance inspections, the courts have ruled that local governments are not liable for damages resulting from failures to enforce building codes. (See, e.g., Taylor v. Stevens County, 111 Wn.2d 159(1988))

Mandatory Arbitration of Civil Actions

Arbitration is a nonjudicial method for resolving disputes in which a third party is given authority to decide the case. Arbitration is intended to be a less expensive and time-consuming way of settling problems than taking a dispute to court. Parties are generally free to agree between themselves to submit an issue to arbitration. If parties agree to arbitration, the decision of the arbitrator is binding and is appealable to a court only on very limited grounds. In some cases, however, arbitration is mandatory. That is, arbitration is required by a statute, and the parties have no choice in the matter.

This mandatory arbitration is required in the superior courts of counties of more than 100,000 population. It applies to cases in which the sole relief sought is a money judgment of \$15,000 or less. In smaller counties, either the superior court judges or the county legislative authority may adopt mandatory arbitration.

By a two-thirds vote, the judges of the superior court in any county with either the statutorily required or the self-imposed mandatory arbitration have the option to raise the ceiling for mandatory arbitration cases from \$15,000 to \$50,000.

Summary of Bill:

Counties and cities are liable for damages caused by their negligent failure to enforce the provisions of the state building code. However, the liability of a city or county is limited to 50 percent of the actual monetary damages proved. In addition, damage claims arising from such negligence are subject to mandatory arbitration regardless of the amount of the claim or the population of the county in which the claim arises.

Counties and cities are required to refund building permit fees to an applicant if the building code inspector discovers code violations but fails to require the builder to remedy the violations.

However, such refunds are subject to the following conditions:

- if the cost of remedying the code violations is less than the cost of the pertinent building permit, then the refund must equal the actual costs incurred in obtaining the remedy; and

- if the cost of remedying the code violations is equal to or greater than the cost of the pertinent building permit, then the refund must be equal to the cost of the building permit.

Counties and cities are required to notify a building permit applicant of the local fire protection agency with jurisdiction over the property and to inform the applicant if there is no fire truck available to serve the property. Such notification must be made to the building permit applicant within fourteen days of the receipt of the application by a county or city.

Appropriation: None.

Fiscal Note: Not requested.

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