SENATE BILL REPORT
SB 5786

As of February 3, 2010

Title: An act relating to authorizing the creation of cultural access authorities.

Brief Description: Authorizing the creation of cultural access authorities.

Sponsors: Senators Fraser, Kohl-Welles, Honeyford and Shin.

Brief History:
Committee Activity: Labor, Commerce & Consumer Protection: 2/23/09, 2/24/09 [DPS-WM, w/oRec]; 1/28/10.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5786 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Honeyford, King and Kline.

Minority Report: That it be referred without recommendation.
Signed by Senator Holmquist, Ranking Minority Member.

Staff: Mac Nicholson (786-7445)

Background: A variety of special purpose districts may be created by counties, cities, or towns to provide specific public facilities or services which are generally financed by through taxes or assessments. Examples of special purpose districts include school districts, fire protection districts, public utility districts, port districts, irrigation districts, mosquito control districts, and public facilities districts.

Summary of Bill (Proposed Second Substitute): Cultural access authorities are created, the stated intent being to authorize funding for public school cultural access programs and the support of cultural organizations.

Creation and Governance. Any county may create a cultural access authority (authority) by resolution of the county. A group of contiguous counties may create an authority by entering into an interlocal agreement that is approved by each county. Single county authorities are governed by a five-member board. If the authority has a population smaller than 1.5 million, four board members are appointed by the county and one is appointed by the Governor. If

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the authority has a population greater than 1.5 million, two board members are appointed by the county, one is appointed from each of the two largest cities in the county, and one is appointed by the Governor. Multi-county authorities will be governed as provided in the interlocal agreements subject to the following provisions: authorities with four or fewer counties must have a board with nine or fewer members; authorities with more than four counties must have a board with 11 or fewer members; in all cases, at least one member must be appointed by the Governor. Special governance rules apply to multi-county authorities with an aggregate population greater than 2.5 million.

An authority is a municipal corporation, political subdivision, independent taxing authority, and a taxing district and possesses all the usual powers of a corporation for public purposes.

Authority board members may receive $50 per day for attending meetings on behalf of the authority, up to $3,000 per year. An authority board must adopt procedures for expense reimbursement, hire employees and establish wages and benefits, and adopt ethics policies consistent with applicable law and applicable best practices for board members, officers, and employees. An authority board may appoint an advisory council with representation from business, education, and cultural communities. Authority board members and employees are not personally liable for acts done, or omitted, in good faith while performing authority duties.

Single county authorities with a population greater than 1.5 million and multi-county authorities with a population of more than 2.5 million may contract with the State Arts Commission for consulting, management, or administrative services. A county participating in an authority may contract with the State Arts Commission to function as its designated public agency.

Start-up Funding. A county or counties creating an authority may advance to the authority up to $1 million annually for up to three years for administrative costs, including the cost of informing the public about the formation of the authority, how it is proposed to be funded, and the public benefits to be realized if it is successful. Counties seeking to create an authority are not authorized under the legislation to prepare and distribute information to the general public for the purpose of influencing the outcome of an authority election. Funds advanced to the authority must be repaid with interest if approved by the voters. An authority that has not secured voter approval of either the sales and use or property tax within three years must be dissolved, and any advanced funds that were expended need not be repaid.

On-going Funding. Authorities are funded by either a voter approved sales and use tax or a voter approved property tax. In either case, the ballot proposition must be submitted to the voters at a special election, and the tax must be re-authorized every seven years. The sales and use tax cannot exceed one-tenth of 1 percent and is in addition to any other taxes authorized by law. The total dollar amount to be collected in the first year of the regular property tax levy must be set forth in the ballot proposition, and cannot exceed an amount equal to one-tenth of the total taxable retail sales and taxable uses in the participating counties. Any property tax levied is subject to the one-percent limit, and will be included as a first priority junior taxing district for the purposes of property tax prorationing.

Distribution of Funds. For single county authorities with a service area population greater than 1.5 million and multi-county authorities with a service area population greater than 2.5 million, revenue is to be used as follows:

- repayment of start-up funding;
- up to 1.25 percent of total funds may be used for administrative costs;
- up to 2.75 percent of total funds may be used for projects of regional benefit to be undertaken within the authority service area;
- ten percent of the remaining funds must be used for a public school cultural access program;
- 75 percent of the remaining funds must be distributed to qualified regional organizations; and
- any remaining funds must be distributed to public agencies.

For all other authorities, revenue must be allocated as follows:

- up to 5 percent annually for administrative costs, including start-up funding and to support projects of regional benefit;
- not more than 2.5 percent for administrative costs;
- a percentage determined by the board for a public school cultural access program;
- a percentage determined by the board for distribution to regional organizations not to exceed 75 percent of remaining funds available annually; and
- any remaining funds are distributed to a designated entity in each participating county for distribution to community-based cultural organizations.

Projects of Regional Benefit. Projects of regional benefit may include regional cultural public information and promotional activities, support for new cultural organizations, and support for specific projects or organizations working to expand access to cultural activities by underserved populations. Eligibility guidelines and criteria for funding will be established by the authority board.

Public School Cultural Access Program. A public school cultural access program must:

- provide benefits designed to increase public school student access to facilities receiving funding under the legislation;
- offer benefits to every public school in the area of the authority while scaling benefits based on the percentage of students who participate in the national free or reduced-price school meal program;
- establish and operate a centralized service to coordinate opportunities for public school student access to programs and activities offered by cultural organizations;
- provide funding for public school student transportation to attend programs and activities;
- prepare and maintain a readily accessible catalog of access opportunities;
- coordinate closely with cultural organizations to maximize utilization of available opportunities;
- support the development of tools, materials, and media by cultural organizations that correlate with school curricula;
- build meaningful partnerships with public schools and cultural organizations;
- prepare an annual access plan; and
- compile an annual report.

Regional Organizations. A regional organization is a cultural organization that owns, operates, or supports cultural facilities that widely benefit and are broadly attended by the public. In order to receive funding under the legislation, a regional organization must:

- be in good standing for the preceding three years as a nonprofit corporation;
- have its principal location and conduct the majority of its activities in the authority service area;
- have not declared bankruptcy or substantially curtailed operations in the preceding three years for a period longer than six months;
- provide annual financial statements for its two most recent fiscal years to the authority;
- have average annual revenues of at least $1.25 million over the three preceding years; and
- meet any additional eligibility guidelines deemed necessary.

Funds available for regional organizations must be distributed based on an annual ranking using the combined size of their average annual revenues and attendance over the three preceding years. No organization may receive funds in excess of 15 percent of its average annual revenues. Funds distributed to regional organizations must be used to support cultural and educational activities, programs and initiatives, public benefits and communications, and basic operations.

Designated Entities. A designated entity is the entity designated by the county and may be a public agency, including the State Arts Commission, or a nonprofit corporation that is not a cultural organization.

Cultural Organization. A cultural organization is a 501(c)(3) nonprofit that has advancement and preservation of science or arts as its primary purpose.

Public Agencies. A public agency can use up to 8 percent of the amount received for administrative costs, the remainder must be used to fund community-based organizations. Community-based organizations are those that focus their activities and are supported or patronized within a local community. Public agencies must adopt eligibility guidelines, award criteria, and procedures for conducting annual competitive award processes. Funds awarded to community-based organizations may be used to support cultural and educational activities, public benefits, basic operations, and capital expenditures and acquisitions including the acquisition of property and equipment.

Public Benefits. All cultural organizations receiving funding must provide discernible public benefits. Authorities must identify a range of public benefits that cultural organizations may provide, including access to facilities, programs and services on a reduced or free basis; providing educational programs and experiences in schools and other venues; broadening cultural programs for the enlightenment and entertainment of the public; and increasing organizational capacity.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Proposed Second Substitute): The proposed substitute establishes new provisions regarding the governance, taxing authority, and funding distribution requirements of cultural access authorities.

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is a product of the Prosperity Partnership. To attract talent and businesses the state needs vibrant cultural organizations and ready access to those organizations for everyone including school children. This legislation gives the authority to counties to ask for voter approval to set up cultural access authorities. This bill gives broad access to science and cultural programs, supports emerging programs, and provides free school bus trips for children. All groups receiving funds would be required to provide free or discounted access to programs for children. The legislation has built-in accountability including audits and appointed governing bodies. It's not a good business to operate nonprofit cultural institutions, and nonprofits have difficulties staying open in all economic conditions. Nonprofits provide educational opportunities for children not found in schools. Cultural programs are necessary for communities and need a baseline of funding. The bill gives counties the ability to choose to support cultural access programs.

Persons Testifying: PRO: Deborah Jensen, Woodland Park Zoo; Bryce Seidl, Pacific Science Center; Sandra Jackson-Dumont, Seattle Art Museum.