

HOUSE BILL REPORT

HB 2641

As Reported by House Committee On:
Local Government

Title: An act relating to reducing nontax administration costs associated with the conduct of city and county operations.

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

Sponsors: Representatives Springer, Takko, Kagi and Eddy.

Brief History:

Committee Activity:

Local Government: 1/24/12, 1/31/12 [DPS].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Rodne, Smith, Springer and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Fitzgibbon, Vice Chair; Upthegrove.

Staff: Ethan Moreno (786-7386).

Background:

General Information: Counties and Cities.

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.

Counties and cities (including towns) are the two general purpose local governments in Washington. 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.

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.

Collective Bargaining.

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

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. Other employment matters may, with the permission of both parties, be the subject of collective bargaining.

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 Pollutant 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.

In Washington, any person age 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 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, park and recreation service areas, and local improvement districts and county road districts; and
- publishing notices associated with land use and planning actions.

Summary of Substitute 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 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.

Collective Bargaining.

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

Storm Water and Low-Impact Development.

The issuance of a National Pollutant Discharge Elimination System (NPDES) municipal storm water general permit by 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 Local Improvement District 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.

The 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 a 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.

Statewide organizations representing local public health officials, counties, and cities must convene a work group and develop recommendations to the Legislature on preferred funding and service delivery methods pertaining to Washington's public health system. The work group must include local health jurisdiction representatives, elected county and city representatives, and the Secretary of the Washington State Department of Health (DOH) or his or her designee. The initial recommendations of the work group must be submitted to the appropriate committees of 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 legal and official notices, but not delinquent tax lists, on their website and to publish related summaries of 50 or fewer words, with web-

based links to the full text, in the official county newspaper. A failure to publish an ordinance does not render it invalid.

Counties are authorized to publish summaries with web-links, rather than the full text, in the official newspaper of the county for 47 county publication requirements. 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, park and recreation service areas, and local improvement districts and county road districts; and
- notices associated with land use and planning actions.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- removes all interest arbitration provisions from the underlying bill;
- deletes provisions authoring local governments to grant impact fee exemptions for low-income housing without recouping the lost fee revenue from other public funds;
- deletes a section requiring the DOH to convene a work group of public health partners that must make recommendations on the regionalization of certain health services that will save \$5 million in state public health support during the 2011-2013 fiscal biennium;
- inserts a section requiring statewide organizations representing local public health officials, counties, and cities to convene a work group charged with developing recommendations to the Legislature on preferred funding and service delivery methods pertaining to Washington's public health system. Membership requirements are specified and the work group is directed to submit its initial recommendations to the appropriate legislative committees by January 1, 2013;
- modifies provisions specifying that examinations of county and city financial affairs may be made by the Auditor more frequently than every three years if conditions delineated in the underlying bill are met;
- deletes web-posting and newspaper summary publishing requirements for delinquent tax lists specified in amendatory provisions of the underlying bill;
- specifies that when a county publishes a summary of a legal or official notice, the summary must indicate that the full text of the notice is available at a location designated by the originating county officer or authority rather than will be mailed upon request;
- allows the originating county officer or authority, rather than the county legislative authority, to designate the location where paper copies of legal and official notices are available; and
- removes a provision specifying that counties are not prohibited from publishing the full text of delinquent tax lists in the official county newspaper.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) This bill is the city/county fiscal relief bill, version 2.0, as a previous fiscal relief bill was adopted last year. This bill represents the continuance of an attempt to streamline local governments and make them more efficient.

This is an important bill to cities and counties who are facing difficult fiscal times. In 2011 the Legislature directed the Department of Ecology (DOE) to take additional time in issuing National Pollutant Discharge Elimination System (NPDES) permits. Cities are supportive of low-impact development, but they believe that the proposed language of the DOE pertaining to low-impact development and NPDES permits moves too fast. This bill slows that process and directs the DOE to provide assistance in the implementation of low-impact development requirements.

This bill will help cities and counties save money and move toward true fiscal sustainability, but it does not repeal local government requirements. Personnel expenses are the most significant costs of cities and counties, and binding arbitration requirements need to be revised to set fair and reasonable local government compensation. Current requirements have led to unreasonably high salaries for valued firefighters and police. This bill will help keep fire and police employed and it will give cities greater flexibility over the use of volunteers.

Cities and counties are audited annually by the Auditor. These audits are conducted at a significant cost to the local government. Fewer audits of cities will save money and is a common sense change. High impact fees can hamstring cities in their ability to provide low-income housing, but this bill will provide some impact fee relief to local governments.

This bill allows the lack of seatbelt use by an individual who is involved in a vehicle accident to be admissible in civil actions. This bill also seeks to improve the delivery of public health services. In 2011 the Local Government Committee considered legislation to eliminate newspaper notices. This bill offers an alternative proposal that requires notice summaries and web-links to be published in newspapers. This alternative will be a cost savings, as counties and cities are annually spending \$6 million on legal notice advertisements. All of the easy budget decisions have been made; this bill represents the hard choices.

Revenue cuts that are currently being considered by the Legislature would cut \$1 million per year in Kirkland – a city of 80,000 residents. This bill includes common sense and modest reforms, and will save cities money.

(Opposed) The DOE opposes the storm water provisions of the bill. In accordance with the fiscal relief compromise legislation that was passed last year, the DOE must issue new NPDES permits by July 31, 2012. In complying with this requirement, the DOE has conducted extensive outreach and has used public comments and other information to

develop draft requirements for the permits. As proposed, this bill represents a major policy departure and it lessens low-impact development requirements.

The Department of Natural Resources (DNR) opposes the storm water provisions of the bill and believes that we cannot delay the cleanup of Puget Sound; doing so will end up costing local governments a greater amount in the long run. Storm water is the primary source of Puget Sound pollution, and storm water outflows impact the DNR's aquatic lands. This bill will slow down efforts to clean up pollution at a time when these efforts should be accelerated. The Legislature should maintain its commitment to clean up Puget Sound by 2020.

This bill would derail the existing regulatory language and replace it with vague requirements related to incentives and other provisions that do not belong in a regulatory document. Phase I and Phase II permits are the principal regulatory mechanisms to address the problem of storm water pollution. Low-impact development is decentralized and represents the most cost-effective way for local governments to reduce storm water pollution. The voluntary approach proposed in this bill will not be sufficiently effective; incentives and training are critical, but a regulatory backdrop is needed. The DOE may not be able to complete a re-write of the NPDES permit provisions during the Governor's administration.

This bill relates to pollution control requirements, one of the top 2012 priorities of the environmental community. The DOE is charting a good NPDES permit course for our state. This bill will create near-term costs for the DOE and long-term costs for the state. The process that the DOE has begun should move forward.

Firefighters would normally support cost-savings measures for citizens, but at a time when firefighters have forgone salary increases, modifications to arbitration and collective bargaining requirements should be carefully considered. This bill represents a drastic and somewhat dictatorial approach to arbitration. Firefighters interpret the changes proposed in the bill dramatically differently than employers do. If predictably is important in arbitration, this bill makes no sense. Part three of the bill should be removed – if not, collective bargaining provisions will be dramatically rolled back.

Law enforcement guilds were given binding arbitration because they cannot strike. The current system is working and law enforcement personnel are making sacrifices during current economic times. Allowing budget priorities in an arbitration to be determined solely by the organization is problematic and may tie the hands of the neutral arbitrator. All local government employees are important, but the nature of police work is different and should be reflected in comparables. The provision relating to the use of volunteers creates questions: are local governments considering volunteer cops?

Persons Testifying: (In support) Representative Springer, prime sponsor; Dave Williams, Nancy McLaughlin, and Don Gerend, Association of Washington Cities; Scott Merriman, Washington State Association of Counties; and Mayor Joan McBride, City of Kirkland.

(Opposed) Kelly Susewind, Department of Ecology; Naki Stevens, Department of Natural Resources; Chris Wilke, Puget Sound Keeper Alliance; Bruce Wishart, People for Puget

Sound; Mo McBroom, Washington Environmental Council; Bud Sizemore, Washington State Council of Fire Fighters; and Jamie Daniels, Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying: None.