



Legislative Bulletin

June 19, 2017

Hot topics!

New water bill creates unfunded mandates and legal risks for cities

AWC is working to resolve challenges created by state Supreme Court water cases, *Hirst* and *Foster*. A new House proposal has no fix and threatens to invite lawsuits against cities.

Updated contingency plan for state shutdown if no budget by June 30

The state has been communicating about its contingency plan for what would happen if a budget is not in place by the start of the fiscal year July 1, which has never occurred before in our state. See examples.

From the Director

Legislators know it's time to finish and go home

There's still no action on budgets. The end of the state's fiscal year looms on June 30. Quiet backroom conversations are likely to lead to the callback of a short third special session where legislators will make rapid decisions that will impact cities across the state.

Media time

Dataview illustrates what HB 1764 could have meant for city local option authority on property tax.

Kennewick Mayor Steve Young writes PWF opinion

Check out this Tri-City Herald guest opinion where Mayor Young uses history and local impacts to describe how the Public Works Trust Fund has helped build infrastructure in his community. Through facts, educational background, and a call to action, Mayor Young lays the groundwork for community engagement on an important city priority.

Take action

Disposition of housing and homelessness issues continues to be unclear

Uncertainty about whether the Legislature will pass any of the housing and homelessness bills remains. As we near potential shutdown on July 1, the likelihood increases that this important issue will not be addressed. Urge your legislators to take action on homelessness and housing this session.

What you need to know

Budget & finance:

Cities support marketplace fairness and graduated REET in revenue proposals.

Environment & land use:

AWC expresses concerns with new MTCA bill.

Human services:

Governor signs law to help providers and local governments confront opioid crisis.

AWC cosponsored conference focused on ending homelessness.

Infrastructure:

Still waiting on fate of the Public Works Trust Fund. Final outcome will be revealed with the budget.

Open government:

New public records bills effective July 23, implementation work just beginning.

Personnel:

New DRS pension rates to go into effect on July 1 for PERS, PSERS and LEOFF.

Negotiators come to a compromise on statewide paid family leave program.

Public safety & criminal justice:

New, stronger distracted driving bill goes into effect on July 23.

Federal drone registration rules struck down by appeals court.

continued

From the Legislative Director

Legislators know it's time to finish and go home

Second special session concludes on June 21 after 165 days, and there's still no action on operating or capital budgets. That's about to change rapidly as the end of the state's fiscal year looms on Friday, June 30. Quiet backroom conversations are likely to yield a quick callback for all legislators to convene for a shortened third special session for rapid decisions that will impact cities across the state.

We are cautiously optimistic that our remaining budget and policy issues will be positively addressed. We have been talking with several key legislators and administration officials involved who are working on agreements, and we know they are hearing from city officials about issues that matter. That evidence provides some hope, but no guarantees.

AWC delivered this letter (awcnet.org/portals/0/documents/legislative/061317Leadershipbudgetletter.pdf) last week to fiscal committees and leadership, which includes our key messages on vital issues for cities in the final budget.

These next two weeks are crucial for you to reach out to your legislators – once again to thank them for their efforts, remind them of what you need, and ask for their voices to carry those messages to their budget and caucus leadership. Other interests and voices are flooding their inboxes and voicemails, so we need make sure those do not drown out our messages, and that our priorities remain in the forefront of their minds.

This is (hopefully) our last Legislative Bulletin of the session, where we provide you with key information about any policy issues still in play. When session concludes, we will send out a quick summary of what happened, and then we will work on our more detailed Final Bulletin that will be sent out after the Governor's 20-day window required to act on bills passed during this final stage.

More than 450 city officials from every legislative district will be in Vancouver, Washington this week for our Annual Conference. We will rally those voices to echo in the halls of the State Capitol. Adding your voices on what matters to you can make a difference!

Budget & finance

Cities support marketplace fairness and graduated REET in revenue proposals

One of the provisions that cities support in the revenue proposals **HB 2186** and **SB 5929** is a state version of a long-standing AWC priority, the Marketplace Fairness Act. To see projections for your city if the proposal passes, visit the data view [here](#), and click the arrow to choose your city from the list.

Updating sales tax collections to reflect the growing reliance on internet sales makes sense in Washington, where sales tax accounts for almost 50 percent of state revenues in the operating budget.

Cities support these changes to help level the playing field between local brick and mortar businesses and out-of-state internet retailers in sales tax collections.

AWC does not support the proposal in the House budget to end Streamlined Sales Tax mitigation beginning in 2019 to cities impacted by the change to destination-based sourcing. The state should continue to provide mitigation to impacted jurisdictions.

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In addition, AWC has continued to express support for new proposed revenues that include a local government share and promote local economic security, such as repeal of the tax exemption on bottled water and support for a graduated rate for the state Real Estate Excise Tax (REET).

The proposal to establish a graduated rate for the state REET would result in a lower 0.75 percent rate on residential sales under \$250,000, the same 1.28 percent rate on sales \$250,000 to \$1 million, higher rates of 2 percent for sales \$1 million to \$5 million, and 2.5 percent for sales over \$5 million. AWC also requests similar authority for cities as a local option.

More examples of impacts if the Legislature fails to adopt a budget before June 30

The state has been communicating about its contingency plan for what would happen if a budget is not in place by the start of the fiscal year July 1, which has never occurred before in our state.

Here are some examples of community impacts of a state shutdown:

- Most state employees, grant recipients, and contractors have received notices according to the contract terms and evaluation of essential government functions in the event a shutdown becomes necessary, including temporary layoff notices and delays on contracted projects.
- State parks, wildlife areas, and boating access sites would close. Nearly 11,000 paid camping and overnight reservation holders for the first week of July will need to be notified of park closures and reservation cancellations.
- Business license activity for the state and partnering cities through the state's Business Licensing Service will be suspended.
- Cities would continue to receive distributions of local taxes collected by the state from skeleton crews at the Department of Revenue and Office of the State Treasurer.

For more information on what a government shutdown would mean for cities, and to see copies of communications on the contingency planning, click here - awcnet.org/Advocacy/Newsandupdates/LegislativeIssues/TabId/677/ArtMID/1863/ArticleID/1793/What-does-it-mean-for-cities-if-the-Legislature-fails-to-adopt-a-budget-before-June-30.aspx.

Environment & land use

New water bill creates unfunded mandates and legal risks for cities

AWC is working this session to resolve the challenges created by the two state Supreme Court water cases known as *Hirst* and *Foster*. Those cases turned water management on its head by requiring local governments to independently assess the legal availability of water in parallel with the state (*Hirst*), and eliminating the opportunity for creative mitigation to offset impacts of new water rights, changes or transfers (*Foster*).

A new proposal from the House Democratic negotiators would be a double blow to cities. It does not help cities facing water challenges, and it introduces significant new legal risk for almost all cities – whether you have a water availability challenge or not.

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Please contact your legislators now and ask them to support **SB 5239**, and reject **HB 2226**. We expect a bill to pass in the coming days, so it is critical that you contact your legislators right away.

On June 15 we sent this Action Alert to City Managers, Public Works Directors, Planning/Community Development Directors and City Attorneys. We encourage you to coordinate your response with others and act as soon as you can. The House introduced **HB 2226** on June 14 and legislators have said they will pass a bill on this issue before the end of session, which we expect will wrap up on or near June 30.

The challenge imposed by the *Foster* case

Cities are facing significant population growth in coming years and the result of the *Foster* decision leaves us without the authority to craft mitigation packages alongside the State Department of Ecology so that new water rights, or even changes or transfers can be issued. The result of the *Foster* decision is that in all cases, the only allowable mitigation is that which replaces “water for water.” As Ecology states: “[*Foster*] limits our ability to approve mitigation plans that do not perfectly match the season and place of use in basins with closures or adopted instream flows that are not met. We can no longer use out-of-kind mitigation, such as habitat restoration, to offset impairment to protected rivers and streams. There are few areas in the state where in-kind, in-time, and in-place mitigation water will be available.”

The House bill establishes new requirements and potential new liability for almost all cities

The House of Representatives has failed to find consensus on an approach this session. Unfortunately, the most recent attempt from House Democratic negotiators is bad for cities. Introduced on June 14, **HB 2226** does not fix the *Foster* issue, and creates new legal exposure for cities under the Growth Management Act (GMA) – even for cities who do not currently face challenges with water.

Cities fully planning under the GMA would be required to ensure that the level of planned growth in their comprehensive plan is “consistent with current scientific information on the availability of water within the area during the twenty-year planning period,” without clear definitions of what information would be sufficient, how consistency would be established, and whether cities could rely on information from the state.

Cities that issue building permits for residences served by private wells would be required to:

- Ensure that comprehensive plans and development regulations match growth with available, unappropriated water supplies;
- Confirm that senior water rights are not impaired by existing or planned growth; and
- Ensure that ground and surface water levels are stable.

Cities do not have access to this information because the state is the manager of water rights, and language to this effect will only invite lawsuits against cities.

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Senate bill fixes both *Hirst* and *Foster*

In contrast, the Senate has passed **SB 5239** that restores the authority to Ecology to create mitigation packages that work for both fish and people. It allows local governments to rely on the state to manage water, retains all existing protections for senior water users to protect themselves, and all authority for the agency to protect the resource. It provides clear paths forward for rural well users as well as municipal providers to secure legal water in a way that protects the state's resources.

Call your legislators today and ask them to pass **SB 5239**, a well-crafted solution that includes a *Foster* fix, and ask them to reject the approach in **HB 2226** that adds new poorly-defined GMA requirements that will likely result in legal challenges for cities.

If you have questions please contact Carl Schroeder or Dave Catterson.

AWC expresses concerns with new MTCA bill

The Senate Energy, Environment & Telecommunications Committee held a public hearing on **SB 5943** on June 14. AWC testified with concerns about how some of the provisions of the bill would affect cities. The intent of the legislation is to prioritize and provide additional budgetary capacity for toxic cleanup projects and to streamline the implementation of those projects. These are goals that cities can support. Unfortunately, the bill took an approach that would exacerbate other critical problems.

Key elements of the bill would:

- Eliminate the authority for MTCA funds to be used for stormwater projects. Stormwater is a major pollution source facing the state, and much of the responsibility for managing stormwater falls to cities. Without dedicated MTCA authority, it is unclear where cities are expected to turn for state assistance.
- Eliminate Ecology oversight of independent cleanups. Currently Ecology is responsible for ensuring local codes are followed in these cleanups. If Ecology's authority is removed there will be no one with that responsibility.
- Set up faster judicial review timelines and reviews of whether certain substances are appropriately considered hazardous substances for tax purposes. These are elements of the bill we can support.

It is unclear where this bill goes from here, it seems most likely that these are just conversation starters for next legislative session.

Housing

Disposition of housing and homelessness issues continues to be unclear

Once again, the status of conversations about whether the Legislature will pass any of the housing and homelessness bills remains uncertain. The House has passed one revenue bill (**HB 1570**) and is poised to pass another local option bill (**HB 1797**), while the Senate has passed one accountability bill (**SB 5252**) and has a major growth management/housing/homelessness bill (**SB 5254**) still on their plate.

As the end of the fiscal year fast approaches and legislators scramble to complete business before a July 1 state government shutdown, it is becoming more and more possible that they will leave town without making significant investment in new tools to fight this critical challenge facing so many communities around the state. Cities who are concerned about this happening are encouraged to call your legislators and ask them to make sure this gets done, especially if you are represented by Senate Republicans.

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Human services

Governor signs law to help providers and local governments confront opioid crisis

Gov. Inslee signed **HB 1427**, sponsored by Rep. Eileen Cody (D-West Seattle) that enacts several recommendations made by the King County Heroin and Opioid Task Force (kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/task-forces/heroin-opiates-task-force.aspx?utm_medium=email&utm_source=govdelivery). The legislation gives cities more tools to confront the epidemic by lowering barriers to treatment and reducing wait lists for treatment. It takes away cities' authority to require special use permits for the siting of opioid treatment programs, but maintains the same oversight requirements that other substance abuse/use disorder treatment programs are required to follow.

The legislation takes effect July 23, 2017.

AWC cosponsored conference focused on ending homelessness

AWC was a cosponsor for the Low Income Housing Alliance's "Conference on Ending Homelessness." Service providers, nonprofits, policymakers, the health care industry, and other stakeholders convened at the Tacoma Convention Center for two days to discuss needs, trends and solutions to today's most vexing problems. Sessions topics covered the role of housing authorities, low-barrier shelters, using data to improve services, and more. The entire conference schedule, including some presentation material, can be found by clicking here - wliha.org/conference/full-program.

Infrastructure

Still waiting on Public Works Trust Fund fate

Conversations have slowly continued between the House and Senate on how to finalize the approach on the Public Works Trust Fund. The chambers are talking about what to do with the policy provisions (**HB 1677** and the House-amended version of **SB 5033**) and there seems to be bipartisan support. Right now, the biggest risk is that the funds will again be diverted to the operating and education budgets. This could happen if budget negotiators cannot identify adequate revenues to balance the budget without digging deeper into dedicated accounts (such as the Public Works Assistance Account). That may not become clear until the very end of the session. Continue to let your legislators know the importance of preserving the Public Works Trust Fund.

continued

Open Government

New public records bills effective July 23, implementation work just beginning

The effective date of AWC's two priority public records is July 23, 2017. Work has already begun on various implementation pieces for the bills. **HB 1594** directed the Attorney General to develop a consultation program that local governments could access. The Attorney General's office has started planning for that program and anticipates that they will have something operational later this fall. Additionally, **HB 1594** tasked the Joint Legislative Audit and Review Committee (JLARC) with creating a reporting system for a number of performance measurement metrics. JLARC is just beginning the process with initial stakeholder conversations. They also anticipate providing additional guidance later this fall with data tracking likely to take effect for cities come January. The bill also requires agencies to keep a log of each request with the following information:

- Identity of requestor (if provided);
- Date and text of request;
- Description of records produced in response to request;
- Description of records redacted or withheld and the reasons for redaction/withholding; and
- Date of final disposition of the request.

For the new ability to charge a fee for electronic records under **HB 1595**, there are some implementation steps that individual cities will need to take before charging the fee. MRSC provided a good rundown in a recent blog post, mrsc.org/Home/Stay-Informed/MRSC-Insight/May/New-PRA-Legislation.aspx. Prior to implementing the fee, an agency must calculate the actual costs or find that it would be unduly burdensome to calculate the actual cost and then rely on the default charges in the new law. Additionally, any charges may be adopted only after providing notice and public hearing.

HB 1595 amends the PRA to allow cities to charge a small fee for providing copies of electronic records. A city may establish different fees by conducting its own cost-study, but the default charges in the bill are as follows:

- 10 cents per scanned page
- 5 cents per four files or attachments
- 10 cents per gigabyte
- These charges may be applied cumulatively

The bill also:

- Allows an agency to charge a flat fee of \$2 for providing copies when the estimated costs are expected to be \$2 or more.
- Creates the ability for cities to deny overwhelming computer generated "bot" requests.
- Prohibits overly broad requests for all of a city's records.
- Creates a way for cities to apply a service charge to exceptionally complex requests.

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HB 1594:

- Requires training for records officers to address issues of retention, production and disclosure of electronic records.
- Creates a grant program within the Office of the Secretary of State for local governments to improve their public record management systems.
- Establishes a program within the Office of the Attorney General and the State Archives to consult with local governments on public records best practices.
- Provides for a \$1 document recording fee to fund the consultation and grant programs.
- The funding and the programs will sunset in 2020.
- Updates the process for asking a requestor to clarify a request.
- Requires agencies to maintain a log of each records request.
- Requires agencies with actual budgeted public records costs over \$100,000 to report certain performance measurements to JLARC.

Personnel

New DRS pension rates to go into effect on July 1 for PERS, PSERS and LEOFF

The Department of Retirement Systems (DRS) recently provided notice of pending contribution rate changes for the LEOFF, PERS, PSERS and the WSPRS pension systems. The new rates reflect changes made last year by the Pension Funding Council and the LEOFF Plan 2 Board. To be clear, the recent budget proposal to eliminate the state's LEOFF 2 contribution has not passed into law and is not incorporated into the announced rates. These rates are scheduled to go into effect at the start of the new fiscal year on July 1, 2017. To read the full DRS notice, click here - drs.wa.gov/employer/DRSN/drs-email-17-009-new-contribution-rates-2017.

Agreement reached on new statewide Paid Family & Disability Leave program

The Legislature introduced dueling bills early in the 2017 session to create a funded paid family and disability leave program. Representatives from the labor and business communities and each of the legislative caucuses have been negotiating over the past few months to see if they could reach agreement on a program.

This past week, the negotiators announced that they had reached a tentative agreement on the parameters of the program and will be introducing new legislation for a vote later this month.

The program is intended to cover all employees and provide paid leave for a medical disability as well as paid leave to care for a family member.

We have not yet seen the details of the agreement, but understand it will include some of the following parameters:

- The Employment Security Department (ESD) will administer the program. ESD will collect the premiums and make the payments to covered individuals.
- Employees must work 820 hours in the last five quarters to qualify – once they qualify, they are vested and there is no waiting period to use the benefit if they change employers.
- There will be 12 weeks of family leave and 12 weeks of disability leave with a combined 16-week cap in a twelve-month period.

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- Employees will receive a percentage of their weekly wage, with the lowest paid employees receiving 90 percent of their average weekly wage. Those earning more will receive a lower percentage with a maximum of \$1,000 per week.
- Premium sharing will be 45 percent employee paid and 55 percent employer paid for the disability leave portion of the program and 100 percent employee paid for the family leave portion of the program. Only employers with more than 50 employees will pay the employer premium, but all employees will pay the employee share.
- The state will begin collecting premiums in 2019 and benefits will begin in 2020.
- Job protections provisions will be similar to FMLA and only apply to employers with 50 or more employees.
- There will be a waiver program for employers who offer equal to or better benefits to opt out of the state program. There will not be a specific exemption for Collective Bargaining Agreements.
- Cities will be preempted from adopting additional requirements for family and disability leave for employers in their jurisdictions.

AWC staff will continue to follow this issue closely and report on additional details as they become available.

Public safety

Federal drone registration rules struck down by appeals court

A U.S. Court of Appeals recently struck down the 2015 regulation requiring drone operators to register with the FAA. The court held that the regulations were in violation of the “FAA Modernization and Reform Act of 2012” which prohibits the agency from issuing any rule or regulation of model aircraft. In response, a bipartisan bill was introduced in the U.S. Senate concerning state and local authority to regulate drones. There have been multiple attempts to pass drone regulations in the Washington State Legislature but, currently, none of have passed into law.

AWC Legislative Contacts

During the legislative session, AWC’s lobbyists often are unable to return your phone calls immediately. If you have a legislative or specific issue question, please request AWC’s analyst staff, or send them an email.

Call AWC at (360) 753-4137 or 1-800-562-8981

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