



Legislative Bulletin

August 19, 2019

Hot topics

Fish Consumption Rule in flux

You may recall the controversies a few years ago when the state went through a process to update the state's water quality rules to incorporate human health standards, commonly referred to as the Fish Consumption Rule. Read this update. We welcome thoughts from cities as we prepare to engage in upcoming hearings, starting at the end of this month.

JLARC reporting system reopened until August 28

The Joint Legislative Audit and Review Committee (JLARC) public records reporting system has reopened until August 28. Each local government with at least \$100,000 in staff and legal costs to fulfill public records requests during the preceding fiscal year is required to report various public records metrics. Cities or towns that do not meet the \$100,000 threshold should also report that they don't meet the threshold.

Things you can do

Register for two free webinars covering FCC Order on cable franchising

The Federal Communications Commission (FCC) issued a Third Report and Order pertaining to cable franchises in early August. The Order will likely have an effect on any Washington city with cable system franchises, especially those with public, educational, and governmental access channels (PEG). Ogden Murphy Wallace is hosting a webinar to provide an overview of the recent FCC Order and its impacts on Washington municipalities.

August 27 24 | Webinar

NLC is hosting a webinar to discuss the FCC order, when it goes into effect, and the impact it will have on cities.

September 17 | Webinar

Ogden Murphy Wallace is hosting a webinar to provide an overview of the recent FCC Order and its impacts on Washington municipalities.

View from the Hill

Congratulations to the new Speaker of the House

The House Democrats elected the next speaker of the House to replace Speaker Frank Chopp, who held the position for 20 years before stepping down. Find out who the House Dems chose, and the historic significance in this election. Also, you'll get updates on our forthcoming State of the Cities survey, our 2020 legislative priorities process, and what you can do to continue your efforts at year-round advocacy.

Media time

Watch this video to hear Candice and Carl chat about some quick and simple ideas that you can use to advocate for your city—right now—during the legislative interim.

Advocacy is a year-round job

At AWC, we're hard at work taking steps to prepare for 2020, including attending legislator meetings, organizing legislative priorities input, and planning fall advocacy travel around the state. We couldn't do it without you! Check out this year-round advocacy timeline to learn several tips and ideas that you can do to help make a difference, even when the Legislature is adjourned.

What you need to know

Affordable housing: New state law incentivizes increased residential building capacity and density.

Reminder: Housing Trust Fund soliciting applications for affordable housing projects.

JLARC recommends modification of the Multifamily Housing Tax Exemption program. Study findings critique city use and reporting.

Budget & finance: The State Auditor announced adjustments to the hourly billing rate for local government audits.

Draft city B&O tax model ordinance update sent out for feedback.

Economic development: Increased incentives for commercial office space development.

Environment & natural resources: Rulemaking proposed for Oil Spill Contingency Rule. Public hearings are coming up in September.

continued

Federal: The 2020 Census is hiring!

Homelessness & human services: States and cities clash over potential opioid settlements.

HR & labor relations: Measure to repeal affirmative action initiative makes November ballot.

L&I seeking feedback on proposed sick leave FAQs.

Land use & planning: Public hearings coming up for proposed building code changes. Changes include tiny homes.

Guidebook on civilian-military land use now available to community planners.

Public safety & criminal justice: Law enforcement mapping system survey is now open.

Public works: Public Works Board approves \$85 million in infrastructure loans, funding 30 infrastructure projects around Washington State.

The Drinking Water State Revolving Fund Program is accepting Consolidation Feasibility Study Grant applications until August 30.

Telecommunications: Register for local broadband workshops to learn more about digital applications and broadband solutions.

Transportation: Grant application period opens for freight rail capital projects.

View from the hill

Congratulations to the new Speaker of the House

Contact: Candice Bock

The House Democrats met at the end of July to elect the next speaker of the House to replace long-time Speaker Frank Chopp (D–Seattle). The House Democrats chose Rep. Laurie Jinkins (D–Tacoma) as Speaker-designate. Rep. Jinkins has served in the Legislature since 2011 and most recently served as Chair of the House Civil Rights & Judiciary Committee. Rep. Jinkins' election is historic in that she is the first woman and first open lesbian to serve as speaker. AWC sent a letter of congratulations and a pair of AWC socks to Rep. Jinkins (around the Capitol she is known for her unique socks and for curating the twitter hash tag #walegsocks).

Speaker-designate Jinkins will officially be selected as speaker when session begins in January 2020. Former Speaker Frank Chopp filled the role for an unprecedented 20 years. He announced during the 2019 session that he would be stepping down from that role. Rep. Chopp will continue to serve in the Legislature. Rep. John Lovick (D–Mill Creek) has been serving as acting speaker and will continue to do so during the interim.

State of the Cities survey on the way

AWC's State of the Cities project takes a look at the issues facing Washington's cities and towns and identifies common issues and trends as well as what cities need to succeed. We are currently gathering data for the next iteration of State of the Cities and as part of that effort we will be sending out a survey to mayors and city managers this week. If you get the survey, please take the time to complete it. The data you share is instrumental in telling the city story.

2020 Legislative Priorities

AWC's Legislative Priorities Committee has continued to work throughout the summer via subject-specific subcommittees to review issues for possible inclusion in AWC's 2020 Legislative Priorities. The full committee will meet again in early September to make recommendations to AWC's Board of Directors.

If your city has an issue that you would like to see considered as part of the 2020 agenda, please let AWC Advocacy staff know as soon as possible.

Have you met with your legislators yet this summer?

AWC is continuing to focus on our theme of "year-round advocacy". To be effective city advocates, we all have to pitch in and we can't wait until the legislative session starts. Now is the best time to be building relationships and communicating with your legislators. So, if you haven't yet, give them a call and invite them to coffee, invite them for a quick tour of a city project, or ask them to come to a council meeting. Need some additional inspiration - revisit AWC's Pocket Guide or the infographic below.

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Affordable housing

New state law incentivizes increased residential building capacity and density

Contact: Carl Schroeder, Shannon McClelland

A new law encourages all cities to take actions to increase residential building capacity, especially in areas served by existing infrastructure.

Passed in the 2019 legislative session, **HB 1923** provides temporary incentives in the form of financial support and appeal protection for jurisdictions over 20,000 in population that adopt two or more identified policies to support residential building capacity and density. Cities that adopt two or more of the policies detailed below are eligible to apply to the Department of Commerce for up to \$100,000 grants to support their adoption. Additionally, the action to adopt the policies is not subject to appeal under the State Environmental Policy Act (SEPA) or the Growth Management Act (GMA).

These incentives expire April 1, 2021 – the Legislature’s goal was to spur early action on the housing crisis.

Where these policies make sense, cities should take advantage of this unique opportunity. The appeal protection presents the ability to know that after your city goes through the normal robust public process and arrives at a conclusion with potentially difficult votes, you will know that your city is safe from legal appeal. The addition of financial support makes this tool worthy of strong consideration.

Eligible activities

Four options for allowing greater density:

1. Increasing residential density in one or more areas near commuter or light rail stations to 50 dwelling units per acre, within an area of at least 500 acres in size that has at least one train station.*
2. For cities greater than 40,000 population: authorizing twenty-five dwelling units per acre within an area of at least five hundred acres that includes at least one bus stop served by bus service at least four times per hour for twelve or more hours.*
3. For cities less than 40,000 population: authorizing twenty-five dwelling units per acre within an area of at least two hundred and fifty acres that includes at least one bus stop served by bus service at least four times per hour for twelve or more hours.*
4. Authorize a minimum net density of six dwelling units per acre in all residential zones (this action must result in an increase in capacity to be eligible).

* In all three of these options, a city cannot require more than an average of one on-site parking space per two bedrooms in the portions of multifamily zones that lie within this area.

Two methods for promoting specific types of missing middle housing (non-ADU):

1. Authorize at least one duplex, triplex, or courtyard apartment on all parcels in one or more zoning district that permits single family residences unless the city documents a specific infrastructure or physical constraint that would make this unfeasible for a specific parcel.
2. Authorize a duplex on every corner lot within all zoning districts that permit single-family residences.

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A very specific set of Accessory Dwelling Unit (ADU) policies:

- Authorize attached ADUs on all parcels with single-family homes where the lot is at least 3,200 sq. ft; and
- Allow attached and detached on all parcels containing single-family homes where the lot is at least 4,356 sq. ft; and
- Ordinances must not require on-site parking, owner occupancy requirements, or square footage limitations below 1,000 sq. ft for the ADU; and
- Must not prohibit the separate rental or sale of ADU and primary home; and
- Impact fees cannot be more than the projected impact of the unit.

Other than these factors, ADUs may be subject to such regulations, conditions, procedures and limitations as determined by the city.

Six permit or development streamlining related actions:

1. Authorize cluster zoning or lot size averaging in all zoning districts that permit single family residences.
2. Adopt a 'transit oriented' subarea plan under RCW 43.21C.420. Preexisting authority that provides SEPA appeal protections to qualifying projects near transit stations.
3. Adopt a planned action in an area containing residential or mixed-use development that is within one half mile of a transit stop or a proposed transit stop that will be built within five years. No environmental impact statement is required.
4. Adopt increases in SEPA categorical exemptions for residential or mixed-use development using the SEPA "infill" authority in RCW 43.21C.229. This authority allows a city to increase categorical exemptions to a virtually unlimited degree where current density and intensity of use is lower than called for in the comprehensive plan. There are several requirements to use this tool, but it is very powerful.
5. Adopt a form-based code or a code based on physical form rather than separation of uses.
6. Adopt the maximum authorized level for the division or redivision of land through the short subdivision process.

Resources

Department of Commerce: www.commerce.wa.gov/serving-communities/growth-management/growth-management-grants/

Depending on level of interest and available funds, grant support may also be provided to smaller cities. Check with the Department of Commerce.

Reminder: Housing Trust Fund soliciting applications for affordable housing projects

Contact: Carl Schroeder, Shannon McClelland

The Department of Commerce's Housing Finance Unit is soliciting applications for funds to build new affordable housing units or to acquire existing housing to be converted into affordable housing. Applications are due by noon on September 18.

Applications will be considered for:

- Multifamily Rental and Homeownership projects seeking capital financing from the Washington State Housing Trust Fund;
- Multifamily Rental and Homeownership projects seeking funding to implement Ultra High Energy Efficient (UHEE) elements designed to reach net-zero or Passive House standards;

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- Multifamily Rental and Homeownership projects seeking state match(es) on private charitable contributions; and
- Multifamily Rental projects seeking capital financing from the federal HOME and National Housing Trust Fund programs.

Awards will be announced in December. For more information, visit Commerce’s website.

JLARC recommends modification of the Multifamily Housing Tax Exemption program

Contact: Carl Schroeder, Shannon McClelland

The Joint Legislative Audit and Review Committee (JLARC) was directed to study the use and reporting of the Multifamily Housing Tax Exemption (MFTE).

The MFTE is a property tax exemption program that allows eligible cities to target specific areas for multifamily housing development. The tax preference was intended to stimulate development of new and rehabilitated multifamily housing – including affordable housing – in cities that plan under the Growth Management Act. It also aimed to allow unincorporated areas within urban growth areas to stimulate housing development near college campuses.

Under the MFTE program, property owners may apply for an 8-year or 12-year property tax exemption for building or rehabilitating multifamily housing. The 12-year exemption requires owners to offer at least 20% of their units as affordable housing, as defined by statute. Cities have the authority to approve and reject individual projects. Projects have been approved in 26 of 102 eligible cities.

After analyzing the use of MFTE, JLARC made the following summary conclusions:

- Developers have created housing using the MFTE
- It is inconclusive whether this use represents a net increase in development
- Cities have opportunities to maximize the impact of the exemption and improve reporting on results

JLARC’s report also stated that in numerous cases, the MFTE is not necessarily making multifamily units affordable. JLARC also critiqued how cities were using the program (noting it appeared cities had applied MFTE exemptions toward what could be considered outside the statutory intent of the program) and highlighted some reporting gaps (“At least 11 cities failed to report”). Forty-two percent of cities approving projects under the MFTE are out of compliance with reporting requirements.

JLARC’s recommendations to the Legislature reflect these compliance and reporting gaps:

- The Legislature should modify the preference to direct cities to include analysis of profitability as a consideration in offering or approving exemptions.
- The Department of Commerce should report annually to JLARC and the relevant policy committees on city compliance with the requirements, as well as the metrics in statute and affordability measures.
- The Department of Revenue should report to JLARC and the relevant policy committees on which statutory ambiguities can be resolved through guidance and which require statutory changes.

More information on JLARC’s recommendations are available on their website (http://leg.wa.gov/jlarc/taxReports/2019/MFTE/p_a/default.html).

JLARC detailed the results of its study and recommendations in a one-page summary (<http://leg.wa.gov/jlarc/taxReports/2019/OnePage/MFTEOnePageOverview.pdf>), preliminary report, and a video summary—all available on its website (http://leg.wa.gov/jlarc/taxReports/2019/MFTE/p_a/default.html).

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Budget & finance

State Auditor announces hourly billing rate adjustment

Contact: Candice Bock, Maggie Douglas

Beginning January 1, 2020, the local audit billing rate will be adjusted to reflect salary increases for state employees and increases to non-discretionary operating expenses. The hourly billing rate for local government audit work will be \$113 (up from \$100), and fraud investigations will be billed at a rate of \$210 per hour. Although the Office of the State Auditor evaluates audit rates each year, their goal is to maintain the adjusted hourly rate through 2021.

Local governments can take steps to prepare for their audit and manage audit costs, including:

- Prepare a list of all known and likely audits;
- Review your local government's past audit reports and ask colleagues if they know of audit requirements for their departments and programs; and
- Contact state or federal auditing offices, as they can often tell you if they have any planned or mandated audits for your government approaching.

For further information, review the Office of State Auditor's report (https://www.sao.wa.gov/wp-content/uploads/2019/08/Preparing_for_audit.pdf), *Preparing for audit: Tips for success*.

Draft city B&O tax model ordinance sent out for review

Contact: Candice Bock, Sheila Gall

The work group of city tax managers and finance directors working on implementing required changes to the city B&O tax model ordinance has sent drafts to cities and the business community for review. AWC would also encourage B&O tax cities to reach out to your local chamber and business community for feedback on the drafts.

Once the work group has finalized the updated city B&O tax model ordinance and proposed guidance on interpreting the changes, all cities with a local B&O tax will need to adopt the mandatory changes by January 1, 2020. A workgroup of cities is in the process of draft implementation guidance rules and plans to hold meetings with the business community this fall.

If your city has a B&O tax and is interested in participating on the AWC model ordinance work group's conference calls, please contact Sheila Gall.

Economic development

Incentivizing the development of commercial office space

Contact: Logan Bahr, Maggie Douglas

SHB 1746, sponsored by Rep. Jake Fey (D-Tacoma), increases incentives for commercial office space development in cities outside King County. Cities may establish both a local sales and use tax credit program and a local property tax investment program to incentivize the development of commercial office space. To qualify, the commercial office space must be a high-quality building, at least 50,000 square feet, and at least three stories in height. The space must also be centrally located within a city, near public transit, and offer amenities and advanced technology services to tenants.

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A commercial office space project may apply for a sales and use tax credit. The application must include:

- Written agreement for the use of local sales and use tax credit;
- Estimate of the tax revenue that will be credited to the taxpayer;
- The date the tax revenue will be credited; and
- The criteria by which a project can receive confirmation that the taxpayer is eligible for credit.

A project may be eligible for a sales and use tax credit on labor and services with respect to the project's construction, and the sales or use of personal property incorporated as a component of the property.

Additionally, a project may apply to participate in a city's property tax reinvestment program. If the city approves the application, the city must then deposit the equivalent of the city's share of the associated ad valorem property tax into a public improvement fund. The city can then transfer funding to the project applicant.

The Joint Legislative Audit and Review Committee (JLARC) will study the effectiveness of the local sales and use tax credit program and the local property tax reinvestment program and submit a report to the legislature by 2028. The report will include an assessment of the availability of quality office space and the effect of **HB 1746** on affordable housing, transportation, traffic congestion, greenhouse gas emission, and job creation.

Environment & natural resources

Fish Consumption Rule in flux

Contact: Carl Schroeder, Shannon McClelland

You may recall the controversies a few years ago when the state went through a process to update the state's water quality rules to incorporate human health standards, commonly referred to as the Fish Consumption Rule. It was called so because an element of the formula that established the water quality standard included a calculation based on grams of fish consumed per day. The Fish Consumption Rule proposed an increase in consumption to reflect actual consumption patterns of the state's tribal members and to protect any individual whose diet included a high level of fish.

The challenge cities faced in this effort was that the resulting water quality standards proposed were at a level that could not be met by any available technology. AWC partnered with the Association of Washington Business and Washington State Association of Counties to fund a technological assessment (https://www.awb.org/file_viewer.php?id=2903) which determined that necessary water treatment methodologies were not available. Specifically, this posed a concern for PCBs (polychlorinated biphenyls) which are persistent toxic substances, meaning they don't easily break down in the environment. Even though PCBs have been banned since the 1970s, they are still widespread despite decades of efforts to address the legacy pollutant. During the fish consumption rulemaking, cities and their utility customers were deemed responsible to clean up PCBs to a level for which treatment technology is not available—despite having no responsibility for their release in the environment so many decades ago.

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Years of discussion and stakeholder involvement—including work groups at the highest levels including the Governor, tribal chairs, business, and municipal leaders—resulted in a balanced proposal being developed by the state and proposed to the federal Environmental Protection Agency (EPA) in 2016. This proposal recognized the practical challenges with PCBs and other selected toxic chemicals and proposed an attainable approach that still strongly protected the people and waters of the state. Unfortunately, the EPA rejected the state’s approach and applied their own standards, the aspirational levels that were not achievable by existing technology.

Since then, the state has been operating under EPA’s new standards, trying to make them work. That effort has required the state and permittees to pursue variances—authorization to temporarily fail to meet the water quality standards. At least some of those permits relying on variances have been challenged under the federal Clean Water Act over the legality of the variance.

As the administrations changed in Washington, D.C., these standards have come under new review. The EPA has initiated a process that will withdraw the federal rule and approve the original Washington State compromise proposal. As a first step, in May the EPA reversed their disapproval (<https://www.epa.gov/wqs-tech/water-quality-standards-regulations-washington>) of the state rule (with a few technical changes), and approved Washington’s criteria; but the federal rule has not yet been withdrawn.

Because the state is operating under two standards currently, the most stringent is being applied (i.e. the federal rule). The next step, which the EPA has initiated, is to repeal the federal rule—leaving the stakeholder-supported Washington rule as the new water quality standard.

Under these circumstances, you would expect the state and Ecology, which spent years negotiating the compromise approach, to view this as a positive step. Somewhat surprisingly, they are fighting against EPA’s effort and insisting on the higher federal standard (the standard that is not achievable with current technology). Governor Jay Inslee and Attorney General Bob Ferguson released a statement (<https://www.governor.wa.gov/news-media/inslee-and-ferguson-oppose-epa-decision-dismantles-washington%E2%80%99s-clean-water-standards>) that noted:

“There is no legal basis for EPA to reconsider standards that Washington has been working to implement for more than two years in order to protect Washingtonians. We are 5-0 in lawsuits filed against President Trump’s EPA, and we continue to defeat the EPA in court because it continues to disregard legally required procedures. President Trump’s EPA does not always seem interested in protecting the environment. The attorney general’s legal team will be very carefully reviewing EPA’s proposal and we will consider all options, including bringing a legal action. The state will consider all available options to oppose this effort.”

Ecology Director Maia Bellon highlighted (<https://ecology.wa.gov/DOE/files/2e/2efe2bee-eba5-4ed2-a1e1-a08f07e7a2aa.pdf>) what the agency alleges is a breach of appropriate process for the EPA to approve the previous state proposal and rescind the federal rule.

AWC is watching and considering how to engage in this process.

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The process the state undertook to develop its original proposal was indeed admirable, with years of hard work and difficult balancing of interests. At the end of that process, we arrived at a standard that we, and the state, believed protected public health. In contrast, once that approach was rejected by the then-EPA, the federal government had an abbreviated process that resulted in the water quality standards that were put in place in 2016. To conflate those two processes with very different levels of public engagement and collectively call the outcome the result of a robust and transparent process is not the case from where we sit.

We remain supportive of the state's original proposal, which was truly created after years of difficult negotiations and balancing of public interests. That said, we are concerned about potential process fouls. It is critical that all procedural laws be followed and that all parties be appropriately consulted, including the state's tribes.

We would welcome thoughts from cities as we prepare for the online hearing on August 28, the in-person meeting on September 25 and the final comment deadline on October 7, 2019. If your city intends to comment, please share your comments with us so we can stay informed. Information on the federal process is available here (<https://www.epa.gov/wqs-tech/withdrawal-certain-federal-human-health-criteria-washington-proposed-rule>).

Although these are tough and difficult issues, both politically and technologically, we've shown once before the ability to find a reasonable path forward. We hope that can be found again.

Rulemaking proposed for Oil Spill Contingency Rule

Contact: Carl Schroeder, Shannon McClelland

The Department of Ecology is formally proposing an update to the Oil Spill Contingency Plan Rule (Chapter 173-182 WAC) and opening the public comment period. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur.

Public hearings will be held in September and public comments are due by October 6.

This rulemaking will:

- Establish requirements for review and approval of Spill Management Teams, including entities providing wildlife rehabilitation and recovery services;
- Enhance requirements for readiness for spills of oils that may submerge or sink;
- Update drill requirements to reflect legislative direction;
- Update planning standards to align vessel and facility requirements and ensure best achievable protection is maintained in contingency plans;
- Enhance planning standards for oiled wildlife response; and
- Make other edits to address inconsistent or unclear direction in the rule, or other administrative edits.

Background information

In 2018, the Legislature directed Ecology to update its contingency plan rule to enhance preparedness for spills of non-floating oils, require facilities to participate in large scale multi-plan holder drills, and require Spill Management Teams to apply to and be approved by Ecology in order to be cited in contingency plans. Ecology is conducting rulemaking to meet the legislative deadline of December 31, 2019.

continued

Public hearings

Date	Time	Location	Comment
Sept. 17, 2019	1 pm	Courtyard Seattle-Everett Downtown 3003 Colby Avenue Everett, WA 98201	Presentation, question and answer session followed by the hearing.
Sept. 19, 2019	1 pm	Ramada by Wyndham Spokane Airport 8909 West Airport Drive Spokane, WA 99224	Presentation, question and answer session followed by the hearing.
Sept. 24, 2019	1 pm	Webinar and in-person at: Hilton Vancouver Washington 301 W. 6th Street Vancouver, WA 98660	Presentation, question and answer session followed by the hearing. Join online and see instructions. https://global.gotomeeting.com/join/424089589

How can I provide comments?

Formal comments on this rulemaking will be accepted in the following ways:

- At the public hearings or during the webinar:
 - Comments are accepted verbally by those who attend in person, or during the webinar. Comments will not be accepted through the webinar chat box by persons viewing the webinar.
 - Written comments are accepted submitted by those who attend in person.
- Any time during the comment period:
 - By mail to Sonja Larson, Department of Ecology Spills Program, P.O. Box 47600, Olympia, WA 98504-7600 or 300 Desmond Drive, Lacey, WA 98504
 - Submitted through Ecology's online comment tool at: <http://cs.ecology.commentinput.com/?id=V6ATc>

Timeline

October 6, 2019: Comments must be submitted before midnight

December 18, 2019: The rule is expected to be adopted on this day

January 18, 2020: The effective date, if the rule is adopted

For more information

For more information about the rulemaking, documents available for review, and public hearings, visit Ecology's website at <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-182>. For questions, contact Sonja Larson at 360-407-6682 or sonja.larson@ecy.wa.gov.

Federal

The 2020 Census is hiring!

Contact: Brandon Anderson

The 2020 Census will be staffing up across the state as we get closer to the first major field operations of 2020. They are offering great paying part-time jobs with flexible hours.

Interested applicants can apply by visiting the 2020 Census job site (<https://2020census.gov/en/jobs/job-details.html>).

continued

Homelessness & human services

States & cities clash over potential opioid settlements

Contact: Sharon Swanson, Brandon Anderson

Progress towards a settlement in the massive federal opioid litigation has stalled, even as the financial and human costs continue to mount.

While 48 states have filed their own opioid lawsuits in their respective state courts, nearly 2,000 cities and counties have brought cases in federal court. Beginning in 2013 when the City of Chicago filed its opioid lawsuit, cities have played a huge role in addressing a public health crisis that has claimed more than 200,000 lives since 1999.

Most state attorneys general signed a letter opposing a proposal by the multitude of plaintiffs' attorneys to form the country's 33,000 cities, towns, counties, and tribes (even those that have not yet filed suit) into one negotiating group to help settle the opioid litigation. Proponents of this novel proposal point to the tobacco settlement of 1998 as a reason to allow cities and counties to negotiate for direct settlement payments. In 1998, the Master Tobacco Settlement resulted in payouts in excess of \$250 billion with 46 states seeking reimbursement. Much of that money, by some estimates 90%, went to state legislatures for general state uses, with little making its way to local governments.

Local governments are on the front line of the opioid epidemic and believe they are better placed to put the settlement money to use. As Denver City Attorney Kristin Bronson stated, "We are the ones answering the 911 calls, dealing with overdoses in our library bathrooms, seeing the impacts on families in our foster care system. The casualties have really been felt at the local level."

United States District Court Judge Dan Polster appeared to be sympathetic to the cities' argument, tying the plaintiffs' proposal to form a local government negotiating group to the tobacco settlement that left locals out. Judge Polster stated that city and county lawsuits were filed to "ensure that doesn't happen again."

If settlement talks fail, the first trial setting is scheduled for October 21 in Cleveland, Ohio.

AWC will continue to provide updates on this issue.

HR & labor relations

L&I seeking feedback on proposed sick leave FAQ

Contact: Candice Bock, Brandon Anderson

Following passage of Initiative 1433 (**I-1433**), the Washington State Department of Labor and Industries (L&I) engaged in rulemaking to adopt and implement rules to carry out and enforce the minimum wage and paid sick leave established by **I-1433**. During the rulemaking process in 2017, L&I committed to providing additional interpretive guidance through the development of administrative policies.

After developing the draft policies, L&I also committed to circulating each draft policy to stakeholders for review and feedback.

To help employers implement the requirements of I-1433, and to help employees understand their rights, the department developed a draft administrative policy that addresses frequently asked questions about paid sick leave. L&I is requesting your feedback on the draft policy.

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The deadline for submission of feedback is **COB Friday, October 18, 2019**. Stakeholders can submit their comments on the Paid Sick Leave Frequently Asked Questions – Draft Administrative Policy page (<https://lni.us.engagementhq.com/PaidSickLeaveFAQs?preview=true>) of the department’s engagement site (<https://lni.us.engagementhq.com/>), or via email to ESRules@lni.wa.gov. Please note that feedback submitted via email will be added to the engagement site as well.

A meeting will be held on Wednesday, September 25, 2019, from 2 – 4 pm at the L&I headquarters location in Tumwater. The purpose of this meeting is to discuss feedback regarding the draft administrative policy.

For more information visit the L&I website (<https://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/1443.asp>).

Measure to repeal affirmative action initiative makes November ballot

Contact: Candice Bock, Brandon Anderson

The Secretary of State’s office recently certified Referendum 88 (**R-88**) for the general election. **R-88** seeks to repeal the recent initiative that restores affirmative action in Washington state.

During the 2019 session, the Legislature passed the Washington State Diversity, Equity, and Inclusion Act, which was proposed by citizens as Initiative 1000 (**I-1000**). The initiative permits state and local governments to implement affirmative action laws, regulations, policies, or procedures in public employment, higher education, and contracting. I-1000 does not include mandates for local governments but instead amends current law to allow state and local governments to create policies to remedy discrimination against certain protected classes.

The opponents of **I-1000** had 90 days to gather 129,811 valid signatures to force a public vote. The referendum campaign submitted more than 213,000 signatures to the Secretary of State’s Office, ensuring that the issue will come before voters on the November ballot.

For more information on the initiative and referendum process, please visit AWC’s initiatives and referenda article or the Secretary of State’s Proposed Referendum Measures information page (<https://www.sos.wa.gov/elections/initiatives/referendum.aspx?y=2019>).

Land use & planning

Public hearings coming up for proposed building code changes

Contact: Carl Schroeder, Shannon McClelland

The State Building Code Council is entering the public comment period on the adoption and state amendments to the Group 2 Codes (IRC, IMC, UPC and WSEC-Residential). The public hearings will be held in:

- Spokane at the Center Place Regional Events Center on September 13, 2019; and
- Olympia at the Department of Enterprise Services building on September 27, 2019.

In addition, there are some correlation issues in the IBC and IFC remaining from the Group 1 codes. The 2018 codes are anticipated to go into effect July 1, 2020.

continued

The following codes are being considered for changes:

(Note: Please refer to this web page: <https://apps.des.wa.gov/sbcc/Page.aspx?nid=222> for the documents reference below. These website works best when opened in Internet Explorer.)

2018 International Building Code – Correlation issues on stair pressurization and smoke control. Submit written comments on the 2018 IBC

2018 International Fire Code – Correlation of existing state amendments and 2018 IFC language. Submit written comments on the 2018 IFC

2018 Washington State Energy Code-Residential – Proposed changes to the WSEC including changes to the point structure (including carbon emission factor), new requirements for gas fireplace efficiency, electric readiness for appliances, and a new Passive House compliance option. Submit written comments on the 2018 WSEC-R

2018 International Residential Code – Proposed changes to the 2018 IRC, including adoption of a modified Appendix Q for tiny houses. For those of you following tiny house policy changes, this rule change is in response to **SB 5383**. Submit written comments on the 2018 IRC

2018 International Mechanical Code – Proposed changes to the 2018 IMC, including revised requirements for whole-house ventilation. Submit written comments on the 2018 IMC

2018 Uniform Plumbing Code – Proposed changes to the 2018 UPC, including new requirements for water conserving fixtures. Submit written comments on the 2018 UPC

Guidebook on civilian-military land use now available to community planners

Contact: Carl Schroeder, Shannon McClelland

The Washington State Department of Commerce recently released the Washington State Guidebook on Military and Community Compatibility (<https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/military-base-land-use/>), a technical guide to land use planning surrounding military installations. The guidebook is designed for professional planners and municipalities, but also promotes public awareness about the importance of coordinated civilian-military planning processes.

The guidebook reflects public input gleaned during community workshops, technical focus groups, and a stakeholder advisory committee throughout 2018, as well as a 30-day public comment period on a draft completed in April 2019.

Open government

JLARC reporting system reopened until August 28

Contact: Candice Bock, Brandon Anderson

The JLARC Public Records reporting system has reopened to accept reporting until August 28, 2019. In 2017, the Legislature passed **ESHB 1594** which directed certain state agencies and local governments to report annually on performance metrics related to public records retention, management, and disclosure. The Joint Legislative Audit and Review Committee (JLARC) established an online system for agencies to submit their data.

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Under RCW 40.14.026 (5), each local government with at least \$100,000 in staff and legal costs associated with fulfilling public records requests during the preceding fiscal year is required to report various public records metrics. If your city meets the \$100,000 threshold and has not yet reported data for 2018, please ensure that a report is submitted by the new deadline. Cities or towns that do not meet the \$100,000 threshold are encouraged to confirm this through the online reporting system (<https://app.leg.wa.gov/PublicRecordsReporting/Account/Login>).

If you have questions, please review the reporting instructions (<http://leg.wa.gov/jlarc/Documents/PubRecordsAdmin/guidanceForReporting/PublicRecordsReportingInstructions.pdf>) or email JLARCPublicRecStudy@leg.wa.gov.

Public works

Public Works Board approves \$85 million in infrastructure loans

Contact: Logan Bahr, Maggie Douglas

The Public Works Board (PWB) met in early August to review loan requests for nearly 75 different pre-construction and construction infrastructure projects. Of these requests, PWB approved 30 projects around the state and awarded a total of \$85 million in infrastructure loans to cities, counties, and special districts.

A list of the projects on the Department of Commerce's website shows which projects received loans from PWB. The qualifying projects include improvements to domestic water systems, sanitary sewer systems, and stormwater systems.

AWC has consistently advocated for adequate funding the Public Works Board to ensure these basic services are accessible, affordable, and safe. Board Chair Scott Hutsell commented on the funding cycle, stating that "The cross-section of projects represented in these applications and awards is indicative of the need in all systems and areas of the state... We will continue, with our partner agencies, to help address the needs of the state through technical assistance, training, and financing."

Drinking Water Consolidation Study grants open

Contact: Carl Schroeder, Shannon McClelland

The Drinking Water State Revolving Fund (DWSRF) Program is accepting Consolidation Feasibility Study Grant applications until August 30. These grants can be used to study the feasibility of a drinking water system consolidation project.

To be eligible to apply:

- Applicant must be a Group A not-for-profit community water system, county, public utility district, or water district in Washington
- Tribal entities are eligible to apply
- System being consolidated must be a Group A water system serving fewer than 10,000 people
- Must provide letters of commitment to participate in the study

Eligible project activities include:

- Public meetings and stakeholder outreach
- Legal fees
- Preliminary engineering and cost development
- Preparation of report
- Water system plan updates
- Connection fees (cannot pay for any construction)

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The available funding is \$150,000. The minimum grant is \$10,000 and the maximum award per project is \$30,000. Applications must be submitted online. The grant guidelines, application worksheet (included in the guidelines), and a user guide to the online application system (WALT) are available on the DWSRF webpage (<https://www.doh.wa.gov/CommunityandEnvironment/DrinkingWater/WaterSystemAssistance/DrinkingWaterStateRevolvingFundDWSRF>). The presentation (<https://www.doh.wa.gov/Portals/1/Documents/4200/ConsolFeasStudyGrant-2019.pdf>) from a previously scheduled webinar is also available.

A separate DWSRF program funding opportunity for construction loans will begin in October. Information will be posted soon on the DWSRF webpage for this upcoming funding offering; but for a sneak peek, see the webinar presentation (<https://www.doh.wa.gov/Portals/1/Documents/4200/ConsolFeasStudyGrant-2019.pdf>). Please send any questions to dwsrf@doh.wa.gov.

Public safety & criminal justice

Law enforcement mapping system survey is now open

Contact: Sharon Swanson, Brandon Anderson

Law enforcement: Look for your unique survey link from WSU and complete the survey as soon as possible.

The 2019 Washington State Legislature directed staff of the Joint Legislative Audit and Review Committee (JLARC) to study K-12 school mapping systems used to facilitate responses to schools during incidents or emergencies (**HB 1216**). Mapping systems include Rapid Responder, as well as alternatives that school districts purchase. JLARC staff are working with Washington State University (WSU) to survey all school districts and law enforcement agencies in the state.

All law enforcement agencies should have received a survey link from WSU in early August. Please complete the survey as soon as possible. You will receive a letter, postcard, and email to remind you. Each agency will have a unique link and an access code.

If you have any questions, visit the JLARC web site (<http://leg.wa.gov/jlarc/Pages/K-12map.aspx>).

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Telecommunications

Register for free webinar covering FCC Order on cable franchising

Contact: Logan Bahr, Maggie Douglas

The Federal Communications Commission (FCC) issued a Third Report and Order pertaining to cable franchises in early August. The Order will likely have an effect on any Washington cities with cable system franchises, especially those with public, educational, and governmental access channels (PEG).

Ogden Murphy Wallace is hosting a webinar to provide an overview of the recent FCC Order and its impacts on Washington municipalities. Elana Zana, Telecommunications Attorney at Ogden Murphy Wallace, will cover the categorization of in-kind contributions (such as complimentary cable services), impact on PEG and I-Nets, the Mixed-Use Rule, and FCC's preemption of state and local regulation.

The webinar is on September 17 and is free for municipal governments and their attorneys to attend. Click here (<https://register.gotowebinar.com/register/4788982669251342861>) to register.

Space available at free rural broadband workshops

Contact: Logan Bahr, Maggie Douglas

Two free broadband grant and loan workshops are coming up in September.

The U.S. Department of Agriculture, in partnership with state agencies, will be hosting two one-day workshops to inform and engage local government officials, businesses, and community champions about digital applications and broadband solutions.

Participants will learn about federal and state grant and loan programs available to expand broadband access in rural communities. Participants must preregister with the option of attending a workshop in Olympia (<https://www.eventbrite.com/e/washington-rural-broadband-workshop-olympia-registration-65958949995>) on Sept. 16 or Davenport (<https://www.eventbrite.com/e/washington-rural-broadband-workshop-davenport-tickets-67330476267>) on Sept. 19. For more information, contact Philip.Eggman@usda.gov.

continued

Transportation

Grant application period opens for freight rail capital projects

Contact: Logan Bahr, Shannon McClelland

The Washington State Department of Transportation (WSDOT) issued a call for proposals (<https://www.wsdot.wa.gov/Freight/Rail/GrantandLoanPrograms.htm>) to fund freight rail capital projects through its Freight Rail Assistance Program (FRAP).

FRAP received \$2.9 million in supplemental funding for grants using funds from previous projects that were delivered under-budget or not undertaken. This supplemental funding is for new grant applications. Applications (<https://www.wsdot.wa.gov/NR/rdonlyres/36FD071C-85A3-4A91-A3BC-FB85D387317C/0/2019FRAPApplicationPacket20192021Supplemental002.pdf>) must be submitted by October 18.

If your project is selected, funds will be available in 2020, subject to legislative approval. Grants are directed toward larger projects, where it is difficult to gain a contribution and where the rail location of the project is of strategic importance to the state, as well as the local community.

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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