

# LEGISLATIVE STEERING COMMITTEE

## AGENDA

JANUARY 19TH, 2012 – 8:00 AM TO 10:00 AM

WASHINGTON PUD ASSOCIATION BUILDING – OLYMPIA, WA

**8:00 am – Welcome and Introductions**

**8:15 am – Co-Chair Remarks & Approval of Agenda**

**8:30 am – Including Small Farms into the Open Space Program  
(Action)**

**8:45 am – HPA, SEPA and GMA Standings reform bills (Action Item)**

**9:05 am – Voluntary Recording of Executive Sessions (Action Item)**

**9:15 am – Cure to *Dolan v. King County* case (Action Item)**

**9:30 am – Governors Transportation Package (Update)**

**9:45 am – Member Discussion**

**10:00am – Adjourn and head to the hill**

**12:00pm – Lunch at the Washington PUD Association building**

## LEGISLATIVE STEERING COMMITTEE

### ISSUE PAPER

|                      |  |
|----------------------|--|
| <b>Date</b>          | January 19 <sup>th</sup> , 2012                |
| <b>Category</b>      | Action   |
| <b>Policy Area</b>   | Tax and Finance                                |
| <b>Subject</b>       | Modifying the Current Use Property Tax Program |
| <b>Staff Contact</b> | Scott Merriman, smerriman@wacounties.org       |

#### **Issue:**

The current use program classifies farmland according to acreage. Large farms are 20 acres and above, and small farms are under 20 acres. Small farms have specific income requirements depending on whether they are less than 5 acres, or under 20 acres but 5 or over. These income requirements are in place to establish that the farm activity is indeed commercial, versus hobby farms. For both large and small farms, the home building and utilities are valued at fair market value.

The bill would treat the farmstead land for all farms the same and tax the land under the farm residence at current use, not fair market value regardless of parcel size.

#### **Background:**

Any parcel of land that is five acres or more but less than 20 acres, is devoted primarily to agricultural uses, and has produced a gross income equivalent to: a. Prior to January 1, 1993, \$100 or more per acre per year for three of the five calendar years preceding the date of application for classification. b. On or after January 1, 1993, \$200 or more per acre per year for three of the five calendar years preceding the date of application for classification.

“Farm and agricultural land” also includes any of the following: a. Incidental uses compatible with agricultural purposes, including wetland preservation, provided such use does not exceed 20 percent of the classified land. b. Land on which appurtenances are necessary for production, preparation, or sale of agricultural products exist in conjunction with the lands producing such products. c. Any non-contiguous parcel one to five acres, that is an integral part of the farming operations. d. Land on which housing for employees or the principal place of residence of the farm operator or owner is sited provided the use of the housing or residence is integral to the use of the classified land for agricultural purposes and provided that the classified parcel(s) is 20 or more acres.



If the bill were enacted, it would result in a shift to other taxpayers

**Staff Recommendation:**

Support

**LSC Action/Decision:**



## LEGISLATIVE STEERING COMMITTEE

### ISSUE PAPER

|                      |                   |
|----------------------|-------------------|
| <b>Date</b>          | January 19, 2012  |
| <b>Category</b>      | Decision          |
| <b>Policy Area</b>   | Natural Resources |
| <b>Subject</b>       | HPA Legislation   |
| <b>Staff Contact</b> | Josh Weiss        |

#### **Issue:**

For the second year in a row, Senator Hargrove will be introducing legislation that substantially amends the law relating to the Department of Fish and Wildlife's Hydraulic Project Approval (HPA) program. This legislation has not been finalized, and is likely to be amended significantly during the legislative process. WSAC staff are seeking LSC guidance for pending legislative negotiations.

#### **Background:**

The WSAC 2012 legislative agenda includes "Streamlining permitting processes by implementing alternative approaches for Hydraulic Project Approvals."

Last year, WSAC strongly opposed legislation that would have expanded WDFW's civil enforcement authority and jurisdiction for the HPA program. WSAC joined with a coalition of local government, agriculture, forestry, and business interests that were concerned about similar issues. The legislature did not pass any HPA legislation in the 2011 session.

Senator Hargrove's bill will likely contain some or all of the following elements:

#### Hydraulic Project Approval Program

- Clarifying jurisdiction for the HPA program. HPA's would be required for:
  - Projects conducted at, below, or physically connected to projects at or below the ordinary high water line
  - A list of seven types of projects located above the ordinary high water line (such as bridge repairs, and outfalls that discharge to state waters)
- Authorizing general HPA's
- Civil enforcement
  - The language included is consistent with commitments made by the Director of WDFW to WSAC during the last legislative session
  - The agency could issue civil penalties only after approval of the director



- Other than an amount necessary for the agency to recover its costs, revenue from civil penalties would be deposited into the general fund
- The agency would provide statistics on enforcement actions
- Require the Office of Regulatory Assistance to perform a review of state, federal and local government regulatory programs to determine if those programs adequately protect fish life above the ordinary high water line
- Implement new fees for HPA's ranging from \$125 to \$700 for most projects
- Restricts the agency from entering into a Habitat Conservation Plan for the hydraulics program until it has implemented the other provisions of the bill

#### Forest Practices

- Exempt forestry activities that receive a Forest Practices Application (FPA) from the HPA requirement
- Increases fees for FPA's, from \$50 to either \$100, \$150, or \$3500 for those that are converting to a non-forestry use
- Extends duration of FPA's from two to three years

#### Growth Management Act

- Changes the standard for making an appeal under the GMA by removing the participation standing category

#### State Environmental Policy Act

- Makes many of the same changes to SEPA as found in HB 2253 and SB 6130, but is stronger in the following ways:
  - The Council on Environmental Quality, which currently exists in law (as opposed to the Categorical Exemption Board), is given authority to adopt SEPA streamlining rules in addition to categorical exemptions
    - Much of Ecology's SEPA rulemaking authority is transferred to the Council. The Council is composed of five members: a county planning director, a city planning director, a business representative, an environmental representative, and the Director of the Department of Ecology
  - Authorizes local governments to adopt their own unique local environmental checklists if the jurisdiction determines that questions on the standard environmental checklist are adequately addressed by other local, state, or federal laws
  - Requires local governments to combine the environmental review process with the permit review process, such that there is no more than one formal comment period, one open record hearing, and one closed record appeal
- The bill does not include statutory categorical exemptions
- The bill includes the same confusing provisions relating to notice and appeal procedures found in the SEPA legislation

Other regulatory streamlining ideas have been provided to Senator Hargrove by business and local government representatives, and the bill may include more topics when introduced.

A critical question is whether WSAC would support legislation that includes a fee for HPA's, changes to HPA jurisdiction, and civil enforcement for WDFW in exchange for regulatory streamlining measures.

#### **Staff Recommendation:**

WSAC staff should continue to engage in legislative negotiations to support the best package of regulatory reforms possible. A final package will be brought back to LSC.



**LSC Action/Decision:**



## LEGISLATIVE STEERING COMMITTEE

### ISSUE PAPER

|                      |  |
|----------------------|--|
| <b>Date</b>          | January 19, 2012                                 |
| <b>Category</b>      | Decision   |
| <b>Policy Area</b>   | Land Use   |
| <b>Subject</b>       | SEPA Streamlining Legislation – HB 2253; SB 6130 |
| <b>Staff Contact</b> | Josh Weiss                                       |

#### **Issue:**

The 2012 WSAC legislative agenda includes the recommendation to “streamline permitting processes by minimizing outdated and unnecessary SEPA reviews.” Legislation has been introduced that makes a variety of changes to the State Environmental Policy Act (SEPA).

#### **Background:**

The issue of SEPA streamlining was brought to WSAC in 2011 following deliberations by county and city planners at the annual planning directors meeting, where there was unanimity that SEPA reform was crucial. Despite a significant effort by WSAC and others, the 2011 legislature did not approve any SEPA streamlining bills. In the fall of 2011, Representative Fitzgibbon picked up the effort and began a series of meetings between stakeholders (including WSAC and county planners). As a result of these negotiations, Representative Fitzgibbon has introduced HB 2253. A companion bill (SB 5130) has been introduced in the Senate by Senator Rolfes. These bills address a number of issues:

#### Categorical Exemptions

Currently, certain project types are categorically exempted from SEPA through regulations adopted by the Department of Ecology. This bill sets categorical exemptions for some project and non-project actions in statute.

The following types of non-project actions are exempt:

- Amendments to development regulations that are required to ensure consistency with an updated GMA comprehensive plan
- Amendments to development regulations that are required to ensure consistency with an updated Shoreline Master Program
- Amendments to development regulations that will provide increased environmental protection (such as increased critical areas)



- Amendments to technical codes required to ensure consistency with state law (such as the State Building Code)

The following project actions are exempt:

|  | <b>Inside the Urban Growth Area</b>                                   | <b>Outside the Urban Growth Area</b>                                 |
|--|---|--|
| Single family residential  | 50 units or less  | 25 units or less   |
| Multi family residential   | 80 units or less  | N/A  |
| Office, school, commercial, etc.   | 30,000 square feet or less, and associated parking for up to 100 cars | 15,000 square feet or less, and associated parking for up to 50 cars |
| Landfill or excavation   | 1,200 cubic yards or less   | 1,000 cubic yards or less  |
| Barns, loafing sheds, equipment storage sheds, agricultural structures, etc. | N/A   | 50,000 square feet or less   |

Currently, counties that are not fully planning under the Growth Management Act are not included. However, in speaking with the sponsor, he is inclined to add the non-project action exemptions for these counties.

Whether to include categorical exemptions in statute has been a significant debate among the interested parties. The environmental community is strongly opposed to statutory exemptions and wants exemptions set in rule by the Department of Ecology. The business community and WSAC staff have argued against agency rule making. As a result, the only provision in the bill which seems to have strong support is for the non-project categorical exemptions.

Due to the controversy around statutory categorical exemptions, the bills attempt to create middle ground by creating a third-party whose job would be to review and revise regulatory categorical exemptions. The Categorical Exemption Board would include representatives of city and county planners, business, tribes, environmental groups, the Department of Natural Resources, and the Department of Ecology. The Board must review and update categorical exemptions to reduce duplicative rules and regulations, and to reduce costs while still meeting environmental objectives. An initial set of exemptions must be adopted by December 31, 2012, another set by the end of 2013, and is authorized to keep the exemptions up to date thereafter. The Board is prohibited from adopted rules that lower categorical exemptions or that relate to climate change.

The concept of the Categorical Exemption Board is not supported by the environmental community or the Department of Ecology, and seems likely to be removed.

If the Categorical Exemption Board, and project-level statutory exemptions are both unacceptable to the environmental community and Department of Ecology, the question is whether the bills will address categorical exemptions at all.

#### SEPA Checklist

The bills allow local governments to make changes to the SEPA checklist that may be used within that specific jurisdiction. Rather than requiring project applicants to fill out the entire SEPA checklist, local governments can add “standard” responses that apply jurisdiction-wide. This would allow the local government to reference locally adopted codes (such as stormwater regulations) that are



providing substantive environmental protection and reduce the amount of time applicants will need to spend completing the SEPA checklist. Business and local-government planners originally wanted this language to be significantly stronger so that the checklist would reduce appeals. However, this would be unacceptable to environmental and tribal stakeholders. A key question now is whether the language in the bills, if approved, would provide sufficient benefit to local governments to warrant support.

#### Project Review and Notice

The Department of Ecology succeeded in inserting several sections to these bills that attempt to harmonize notice and appeal requirements and procedures in SEPA and the Local Project Review Act (36.70B). The language is confusing and local government planners are still struggling to understand what the impact of these sections would be. We do know that the new language would impose new notice procedures on jurisdictions that are not planning under the GMA.

#### Other Changes

The bill makes additional changes that would streamline SEPA review within urban growth areas, relating to infill development and planned actions. The bill also provides new mechanisms to fund SEPA reviews on a non-project basis, or in an up-front manner. These changes do not significantly help counties, but are of assistance to cities and business.

#### **Staff Recommendation:**

WSAC staff should continue to work with Representative Fitzgibbon and other stakeholders to try and keep as many helpful provisions in the legislation as possible. If no other provisions appear politically feasible, WSAC should support legislation that only includes revised categorical exemptions for non-project actions in all jurisdictions as this would save counties money.

#### **LSC Action/Decision:**



## LEGISLATIVE STEERING COMMITTEE

### ISSUE PAPER

|                      |  |
|----------------------|--|
| <b>Date</b>          | January 19 <sup>th</sup> , 2012                    |
| <b>Category</b>      | Action   |
| <b>Policy Area</b>   | General Government                                 |
| <b>Subject</b>       | Public Disclosure – Taping of Executive Session    |
| <b>Staff Contact</b> | Brian Enslow, 360.489.8121, benslow@wacounties.org |

#### **Background:**

The state allows confidential discussions behind closed doors on a limited number of topics, such as bargaining strategies for labor contracts, litigation, evaluating qualifications of job applicants, potential real estate deals -- and employee performance evaluations. Any decisions must be voted on in open session.

The State Attorney General and the State Auditor have historically favored changing the state law to mandate recordings of executive session. During the 2008 session, the Legislature, lead by Rep. Lynn Kessler, attempted to require that all units of local government record their executive sessions. At the time, WSAC members and staff played a significant role in helping defeat that measure.

WSAC's decision to oppose prior legislation was based on the belief that executive sessions are private for very important public policy reasons. They are used to discuss personnel matters that are intensely private and the prospect that such discussions could ever become available through misuse or inadvertent release would have a chilling effect on the frank discussion of governing bodies over personnel. Indeed, it would be the individual being discussed that would be the most damaged.

Furthermore, we have been concerned that it dilutes the attorney-client privilege. Diluting it in one area, threatens it across the board. This is a fundamental element of the legal system, the private relationship between attorney and client, and it is never appropriate for a judge to be privy to those conversations. In rural areas, this would be especially detrimental in litigations where there is only one judge available. The governing body could be discussing another case that the same judge would be hearing, raising serious ethical questions concerning conflict of interest.



**Issue:**

The Attorney General and State Auditor have introduced SB 6109, which states that video and audio recordings of any portion of an executive session are exempt from public disclosure. The bill allows for a legislative body to waive this exemption for any portion of a recording not made confidential by some other law if the majority of the legislative body chooses to do so.

**Recommendation:**

Oppose SB 6109. The bill does not resolve the issue in Everett where one member wanted to record and the other didn't. Nor does it provide us a tool we don't already have; counties already have the authority to tape executive sessions if they so choose and recordings of executive sessions are already exempted from disclosure due to attorney-client privilege.

WSAC staff are concerned that this could be used as a means to require mandatory taping of executive sessions, the proverbial "camel's nose under the tent".

**LSC Action/Decision:**

## LEGISLATIVE STEERING COMMITTEE

### ISSUE PAPER

|                      |  |
|----------------------|--|
| <b>Date</b>          | January 19 <sup>th</sup> , 2012                    |
| <b>Category</b>      | Action   |
| <b>Policy Area</b>   | Civil Legal  |
| <b>Subject</b>       | Contract Employees: Dolan v. King County           |
| <b>Staff Contact</b> | Brian Enslow, 360.489.8121, benslow@wacounties.org |

#### **Background:**

Last fall, the State Supreme Court (Court) ruled that the nonprofit public defense firms that contract with King County are eligible for the state public employees' retirement system (PERS), allowing more than 200 attorneys to join the pension system. In a 5-4 decisions, the Court found, "that employees of the agencies are also county employees for the purposes of PERS". This finding was based on the majority's opinion that King County has, "such a right of control over the defender organizations that they are arms and agencies of the county".

WSAC and the Washington Association of County Officials submitted a joint brief requesting the court to reconsider its decision. Given that public agencies contract for a wide variety of services, sometimes even required to do so, WSAC was concerned that the Court could hand private industry the keys to the public retirement system at great cost to the taxpayers.

WSAC was also concerned that this ruling might not be limited to just this case and potentially opens the door to similar claims from other government contractors. This concern is based, in part, on the fact that the majority opinion does not articulate a clear test to be used to determine whether a contractor is in fact an arm or agency of government. The decision lists factors, but doesn't really state what those factors mean or how they should be applied. Prior to this case, counties have always relied on the clear direction provided in statute as to who was or was not a county employee. This case has clearly blurred what once was a clear line.

Last week the Court declined the motion to reconsider. Furthermore the Court clarified that this case pertains solely to political subdivisions of the state, and not state employers.



**Issues:**

We are not certain of the extent of the financial impact the Dolan case will have on King County, but it has the potential to be extremely significant. King County has had a long-standing relationship with the Dolan plaintiffs; some have been contracting with King County for approximately 40 years. Much of their exposure hinges on Court determinations such as:

- How far back is King County responsible for making contributions?
- What is the employee contribution, who is responsible?
- What interest rate is applied to contributions?

As previously noted, WSAC is concerned that this ruling is not limited to just this case and opens the door to similar claims from other government contractors. County contracts, particularly performance-based contracts or other types of contracts that are designed to achieve specific outcomes are vulnerable to similar challenges. At a minimum this case appears to seriously limit our ability to use contract language to exert control over a contractor.

The Court “clarification” that this case only applies to local government was not helpful. Given that the Court declined to reconsider the case, our only remaining recourse is to pursue legislation. The Legislature, heretofore, has been very engaged in the issue. It remains to be seen how willing they will be to help resolve this issue now that it no longer applies to the state.

**Recommendation:**

Support Legislation that clarifies contract employees are not eligible for retirement benefits. Give staff dispensation to work on other liability issues related to Dolan as they arise.

Counties need to be able to maintain the flexibility that contracting out provides without having to give up the accountability that the public requires. We need to have a clear line on who is or isn't a public employee in order to protect ourselves from future lawsuits that could limit our ability to provide essential services.

**LSC Action/Decision:**

## LEGISLATIVE STEERING COMMITTEE

### ISSUE PAPER

|                      |  |
|----------------------|--|
| <b>Date</b>          | November 19 <sup>th</sup> , 2012           |
| <b>Category</b>      | Update                                     |
| <b>Policy Area</b>   | Transportation                             |
| <b>Subject</b>       | Governor's proposed Transportation Package |
| <b>Staff Contact</b> | Scott Merriman, smerriman@wacounties.org   |

**Issue:**

The Governor has proposed a revenue package and investment strategy after input from her Connecting WA Task Force.

Counties need to review the package and discuss if the mix of investments and the proportions are something we can support or would like changes to.

**Background:**

Please see attached Governor's document.

**Staff Recommendation:**

Review and discuss at the next meeting.

**LSC Action/Decision:**





## **ADDRESSING CRITICAL NEEDS: PRESERVING THE INTEGRITY OF WASHINGTON'S TRANSPORTATION SYSTEM**

Last year, Governor Gregoire convened the Connecting Washington Task Force. Its charge was to create a 10-year plan to maintain and improve the state's transportation system for consideration during the 2012 legislative session. Among its findings were that our transportation system faces enormous challenges in such measures as an increase in number of vehicle miles traveled and in public transit and ferry ridership. Connecting Washington recommended a \$21 billion investment.

Washington's transportation system is the lifeblood of our economy. Its scope is as wide as it is vital:

### **Freight**

- Freight-dependent businesses represent 44 percent of the state's jobs
- Companies move \$37 million worth of freight on Washington roadways hourly

### **Highways**

- 18,500 state highway lane miles
- 87 million vehicle-miles per day driven
- More than 3,600 bridges and structures

### **Ferries**

- 22.3 million passengers per year
- 22 vessels, 19 terminals
- 900 total sailings per day

### **Passenger rail**

- More than 750,000 passengers per year

### **Freight rail**

- 3,600 rails of operated public and private freight railroads move 103 million tons of freight

### **Transit**

- Commute programs support more than 810,000 workers statewide, which cuts 170 million vehicle miles traveled per year
- 2,400 vans form the largest public fleet in the nation



Without funding for maintenance, we face such consequences as elimination of five ferry routes and reductions on two others. We risk further deterioration of state highways, leading to hazardous conditions. And we risk compromising bridge safety and triggering freight-restricting weight limits.

---

At the same time that population pressures and economic growth are placing greater demands on our transportation system, our purchasing power to maintain and improve the system is diminishing. This was caused by Initiative 695, which reduced the revenue collected through the Motor Vehicle Excise Tax by more than \$750 million annually. Passage of I-695 also cut state support for the ferries. Today, the ferry system is more dependent on passenger fares and transfers from other state transportation funds for its operating costs. With the loss of the Motor Vehicle Excise Tax, nearly 75 percent of the funding for local transit agencies now comes from the sales tax, which is especially volatile during periods of economic uncertainty.

**Although voters have passed two fuel tax increases, these funds have been exhausted:**

- » The 2003 Nickel Package passed by the voters is committed for paying off the bonds sold to fund 160 completed transportation projects.
- » The 2005 Transportation Partnership Package is also fully committed for paying off the bonds sold to fund 261 additional projects with a 9½ cent increase.
- » Neither initiative provided funds for maintenance.

**Compounding this situation are these factors:**

- » The Department of Transportation does not have a source of funds that can be used to preserve the state's highways and bridges, and maintain ferry service at current levels.
- » Counties lack the resources to maintain county roads, fix unsound bridges and address stormwater problems.
- » Cities cannot keep up with street, pavement and bridge repairs.
- » Public transit systems are being forced to cut service just as demand is rising.



**WE MUST ADDRESS TRANSPORTATION MAINTENANCE**

Tough times notwithstanding, Governor Gregoire believes we must at least maintain our transportation system. The health of our economy depends upon the ability of businesses to move freight and the ability of their employees to get to and from work. The Governor recommends that the Legislature make at minimum the following base investments so we continue to move passengers safely and goods efficiently to market:

- » **State operations and maintenance** to maintain 90 percent of state highway pavement in fair or good condition, operate ferry service and preserve bridges to avoid weight or traffic limitations – \$2.67 billion
- » **Grant funding for cities and counties** to address critical pavement and bridge structure needs – \$310 million
- » **Grant funding for transit** to mitigate potential service cuts to passengers that would affect their ability to get to work, school and other destinations – \$150 million
- » **Stormwater retrofit projects** to prevent polluted stormwater from reaching Puget Sound – \$250 million
- » **Washington State Patrol** to prevent the elimination of up to 12 percent of the trooper workforce that keeps our highways safe – \$200 million
- » **Passenger rail** to help operate service on Amtrak trains – \$100 million

To fund these investments, Governor Gregoire recommends the Legislature take the following actions:

- » Impose an oil barrel fee of \$1.50. The \$2.75 billion raised would be dedicated to operations, maintenance of the state transportation system and stormwater retrofits.
- » Impose a fee of \$100 on each electric vehicle. Because electric vehicles owners do not pay gas tax, they contribute little to the maintenance of our roads. The \$10 million raised would be spent on operations and maintenance; \$1.5 million would be invested in a pilot project to identify an equitable way to raise revenue from electric vehicle operators.
- » Impose an additional 15 percent increase on the heavy commercial vehicle combined license fee. This increase mitigates the erosion of the existing fee caused by inflation. The \$177 million raised would be invested in pavement preservation.
- » Impose an additional \$15 base passenger vehicle weight fee. The \$760 million raised would be directed to the Washington State Patrol, public transit, passenger rail service and local governments.
- » Impose a \$5 fee on each studded tire sold. Studded tires damage Washington roads. The \$7.5 million raised would be dedicated to highway and road maintenance.
- » Either allow local governments the option, through councilmatic approval, to impose a 1 percent increase in the Motor Vehicle Excise Tax, with proceeds to be dedicated to local road and transit needs, or allow transportation benefit districts the option, through councilmatic approval, to adopt up to a \$40 vehicle license fee for local road and transit needs.

If passed by the Legislature, the Governor's proposal is estimated to create an average of 5,500 direct, indirect and induced jobs annually over a 10-year period. The larger effect of this investment, however, would be to keep today's transportation system intact, which benefits our communities and our economy.



In the future, our children and our communities will face these and other vital transportation needs. We must continue to work together to find ways to fund these important improvement projects. Investing in our transportation infrastructure will create jobs and build the future prosperity of Washington.