

Municipal

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Research News

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Is Municipal Consolidation the Answer? (or ... Is Bigger Always Better?)

Fragmentation Reconsidered

We're all familiar with the criticism that our system of local government is "too fragmented." The existence of numerous cities and towns together with a sometimes bewildering array of special purpose districts is frequently criticized in the popular media as being uncoordinated, inefficient, and wasteful. While seldom defined, the "scourge" of fragmentation is usually "proven" simply by counting up the number of governments in a given county or region and concluding that there are too many.

Having thus diagnosed the problem as one of "too many" governments, the critics-turned-reformers typically propose consolidation as the remedy, promising such benefits as improved efficiencies and economies of scale. The arguments are compelling and track with the conventional wisdom on the subject that says fragmented local government structures are inherently inefficient.

But are "many governments" always "too much government"? Could it be that our complex and fragmented system actually promotes, rather than detracts from, efficient and responsive government? As it turns out, there is a growing body of evidence suggesting that smaller and more flexible governments may actually operate more efficiently and cost less than larger governments,

challenging some of the key assumptions of the pro-consolidation reformers.

The Arguments for Consolidation

The idea that consolidating or merging local governments will improve services has its roots in the progressive reform movement that began during the late nineteenth and early twentieth centuries in the United States. Metropolitan areas with large numbers of local governments were viewed as organizationally "fragmented" and prone to a variety of ills, including inefficiencies and inequities. Fragmented authority, either within a government or between several local governments, was viewed as a source of weakness.

The proponents of consolidation argue that fewer and larger local governments will be more efficient and effective than many small governments. Costs can be held down and perhaps reduced through the elimination of duplicative services, personnel, and equipment. Larger governments may also be able to take advantage of "economies of scale" or lower per-unit costs for government services. Further, a single unified government will be better able to coordinate policies and decisions for activities, such as regional planning and economic development, than several independent governments.

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In fragmented government systems, some services may benefit citizens in adjoining areas who neither pay for the service nor share in the effort involved in its delivery. The proponents of consolidation argue that “spillover effects” like this will be eliminated when the boundaries of the service area are the same as the boundaries of the taxing jurisdiction. In this way, the tax burdens within communities can be equalized through the creation of governments that more clearly match area needs.

The Arguments against Consolidation

The opponents of consolidation counter that greater fragmentation of local governments and increased competition between them will promote reductions in service costs, increased public access, and greater political accountability.

The superior fiscal performance of governments in a fragmented system comes from the effects of inter-jurisdictional competition and from their ability to choose from a variety of service arrangements of various scales (*ACIR, 1992*). Where contracting out is an option, even the smallest cities can take advantage of economies of scale, where they exist, through contracts with outside (public or private) service providers.

The opponents also charge that consolidation undermines community identity and reduces political accessibility and accountability by further removing elected representatives from their constituents. They argue that decentralized structures are inherently more democratic for the simple reason they are closer to the people.

Findings from Consolidation Research and Case Studies

The most popular argument advanced by the pro-consolidation advocates is that of cost savings through “economies of scale.” The assumption is that consolidation will result in cost savings by reducing duplication and the number of employees. However, many of the case studies on consolidations in both the U.S. and Canada over the last 20 years have failed to find significant economies of scale for most municipal services. The findings from these and other studies have shown that costs

for many services actually go up following large municipal consolidations.

Costs appear to rise with size for several reasons:

- Consolidated city services that are labor-intensive and must be replicated from one neighborhood to the next (e.g.,

“ . . . many of the case studies on consolidations in both the U.S. and Canada over the last 20 years have failed to find significant economies of scale for most municipal services.”

police patrols, fire stations, and parks) often do not achieve economies of scale and may end up costing the same or even more.

- When local governments consolidate, the wages of the consolidated government’s employees usually increase to the level of the highest-paid comparable employees.
- A similar “averaging up” phenomenon occurs with service levels and standards for equipment and facilities, which also tend to rise to the highest level among the consolidating organizations.

As a result, many of the cost savings that may be achieved by streamlining services and staff are often offset by the absence of scale economies and the averaging up of wages and service standards.

In contrast, the evidence from various studies has led many researchers to conclude that the least expensive local governments are found in complex systems of small and medium-sized municipalities that both compete and cooperate with one another (*Bish, 2001*).

Where are the Economies of Scale?

The consensus among researchers who have studied consolidation efforts is that nearly 80 percent of municipal services and activities don’t possess economies of scale beyond a population of approximately 20,000 residents. The remaining 20 percent tend to be services that are highly specialized, such as police crime labs that are used only infrequently, or those that require large capital investments, such as sewage treatment plants or landfills (*Bish, 2001*).

The Federal Advisory Commission on Intergovernmental Relations concluded that per capita costs generally fall for municipalities with populations up to 25,000, remain fairly constant for those up to 250,000, but then rise significantly (*ACIR, 1987*).

In general, services that require large capital investments, like sewage treatment plants or landfills, may possess economies of scale and will benefit by spreading the cost over a large population. Activities that are labor-intensive, like police services, on the other hand, are likely to experience diseconomies of scale such that average costs actually increase with the size of the jurisdiction (*Bish, 2001*).

While the research findings do not appear to support the claims of the pro-consolidation proponents in cases that have involved consolidations of large communities, the evidence from these same studies does suggest that scale economies may still be achievable through consolidations of smaller communities (e.g., those under 20,000 population) (*Bunch and Strauss, 1992*). In fact, most of the consolidations in this country have been between very small cities below 10,000 population or between one small and another relatively large city (*Halter, 1993*).

Consolidation vs. Fragmentation in Washington

If the behavior of Washington voters is any indicator, we might conclude that their preference is for a fragmented rather than consolidated system of local government. Ironically, even while Washington’s voters have enthusiastically approved a series of ballot measures aimed at curbing local government spending, they have shown a

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remarkable willingness to embrace the formation of new cities. Witness the spate of municipal incorporations that have occurred in the Puget Sound region, and particularly in King County, in recent years. In the ten-year period from 1990 to 2000, the voters in King County created no fewer than 11 new cities!

By voting to incorporate, the citizens in these communities did what many others before them have done—acting in their own self-interest, they created yet another layer of local government. The voters seem to be saying they want their government to be both small and local, where they can more easily influence its policies and monitor its activities. And they want it to operate in the most cost-efficient manner possible.

City-City Consolidation in Washington

Our experience with consolidating governments in Washington has, on the other hand, been much more limited. In fact, it's been 35 years since the last successful city-city consolidation in this state – Kirkland and Houghton in 1968. Even here, the successful election was the fourth in a series of failed consolidation elections extending back to 1951. Interestingly, in each of the previous three elections, the larger city of Kirkland approved consolidation, but Houghton did not.

While others since that time have considered consolidation, there have been no other city-city consolidations in Washington. In the early 90's, Coulee City, Coulee Dam, Electric City, and Grand Coulee in Grant County gave serious consideration to a possible four-city consolidation aimed at eliminating duplicative services and reducing costs, but were apparently unable to come up with an agreement that suited all the parties. More recently, the cities of Aberdeen and Hoquiam in Gray's Harbor County have been talking about joining forces, a subject the leaders in these communities have been discussing off and on since the 1960s. In spite of several petitions and advisory ballots on the subject, the two cities so far seem inclined to maintain the status quo.

There have actually been a total of 11 successful city-city consolidations in Washington dating all the way back to 1891 when the town of New Whatcom merged with the town of Whatcom, which later merged with the town of Fairhaven to form the current city of Bellingham. Most of the past city-city consolidations in Washington appear to have involved either two small cities or one small and another relatively large city.

Successful City-City Consolidations in Washington State	
City/Town	Year
Houghton - Kirkland	1968
East Stanwood - Stanwood	1961
Lakeside - Chelan	1957
Charleston - Bremerton	1927
Port Orchard* - Bremerton	1927
Hillyard - Spokane	1924
George Town - Seattle	1910
Ballard - Seattle	1908
Fairhaven - New Whatcom**	1903
New Tacoma - Tacoma	1883
New Whatcom - Whatcom	1891
*Historically there was apparently another Port Orchard, not to be confused with the modern-day Port Orchard **Formed the city of Bellingham	

City-County Consolidation in Washington

Consolidated city-county governments have also been proposed in a few Washington counties as a way to improve local government service delivery. The 58th Amendment to the Washington State Constitution (Article XI, Section 16), approved by the voters in 1972, authorizes the voters of any county to adopt what is referred to as a “combined city-county charter.” City-county consolidation involves the unification of the governments of one or more cities with the surrounding county.

Consolidated city-county governments have been proposed at various times for Vancouver and Clark County, Olympia and Thurston County, Spokane and Spokane County, and Shelton and Mason County.

However, none of these proposals has been adopted. In the Vancouver/Clark, Spokane/Spokane, and Olympia/Thurston County cases, home rule charters were drafted by freeholders, only to be rejected by the voters. Consolidation was considered by Shelton and Mason County, but no official action was taken.

In spite of the voter's rejection of full city-county consolidations, local governments in these and many other Washington counties have found a variety of ways to cooperate with each other in planning activities and in delivering public services.

Alternatives to Consolidation

Of course, short of consolidation, there are a number of alternative service delivery approaches that offer opportunities to reduce costs and improve services. These include private contracting, mutual aid agreements, shared use of facilities and/or equipment, exchange of services, intergovernmental contracting, and consolidation of selected functions.

- *Private Contracting.* Contracting out services to private firms is the most common alternative service delivery approach used by local governments. Under private contracting arrangements, a local government pays a private firm to deliver all or a portion of a service instead of doing the work itself. Contracting with private firms may result in lower costs where competition keeps prices low. In addition, local governments may be able to avoid high capital investment costs where private firms provide their own specialized equipment.
- *Mutual Aid Agreements.* Mutual aid agreements provide municipalities with collaborative support on an “as needed” basis in such areas as fire protection, emergency services, and law enforcement. The participating local governments maintain control of their participating departments and services.
- *Shared Use of Facilities and/or Equipment.* Sharing facilities and equipment also presents opportunities for improving the efficiency of services. For example, it may be much more cost-effective for several small jurisdictions

to pool their resources for the purchase of expensive street cleaning or snow removal equipment, where the costs of purchasing, operating, and maintaining the equipment can be spread over a larger population base.

- *Exchange of Services.* A variation on the sharing of facilities or equipment would be an exchange of services in-kind between two or more local governments. For example, one city could plow snow in the winter while the other maintains rights-of-way in the summer.

- *Intergovernmental Contracting.* Intergovernmental service contracts with neighboring jurisdictions may also provide opportunities to reduce service delivery costs where smaller jurisdictions can collectively realize economies of scale that would not be possible for individual jurisdictions. Opportunities arise in situations where one municipality has greater resources or ability to provide a given

service, and effectively “sells” the service to neighboring municipalities.

- *Consolidation of Selected Functions.* Functional consolidation is any agreement by two or more local governments to consolidate the funding and/or delivery of a specific service. This can be done at a service level (e.g., street sweeping) or at the departmental level (e.g., police or public works).

Transfers of functions between municipalities and counties, mutual aid, service consolidations, intergovernmental agreements, and private contracting offer a rich array of cost-effective means for satisfying growing service needs, even while municipal borders may remain fixed.

Conclusions

The short answer to the question posed by the title of this article must necessarily be an equivocal “it depends.” The evidence seems to suggest that larger governments do not provide labor-intensive services (which make up the bulk of local govern-

ment spending) at a lower per-capita cost than smaller governments do. In other words, in the context of local government, “bigger” is not always better. While cost savings through economies of scale have eluded many large municipal consolidations, the evidence suggests that these may still be achievable for consolidations of smaller entities (e.g., cities under 20,000 population).

Increasingly, research indicates that fragmented metropolitan areas are more efficient in providing public services than was once thought to be the case. Smaller governments can cost less because they do not have to provide all services themselves and because they have the ability to capture economies of scale, where they are available, by using a variety of alternative service delivery mechanisms.

The voters seem to know instinctively what the political scientists and economists are telling us about the benefits of smaller and more flexible governments. The record in Washington and around the country shows that they usually side with keeping decentralized, fragmented systems, while rejecting proposals for major consolidations.

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ASK MRSC

Summaries of recent inquiries answered by MRSC consultants

Comprehensive Plans – Subarea Plans • Has there been a change in the exemption that allowed subarea plans to be adopted outside of a jurisdiction’s annual GMA plan amendment cycle?

Many jurisdictions followed the progress of SSB 5841 (Chapter 320, Laws of 2002), which staggered and extended the deadlines by which counties and the cities within the counties must review and, if needed, revise their comprehensive plans. Perhaps less noticed was another section of the same bill that will be of interest to jurisdictions considering adoption of subarea plans. In general, a local government may consider comprehensive plan amendments no more frequently than once every year, with some exceptions. Among these, RCW 36.70A.130(2)(a)(i) provided that the initial adoption of a subarea plan could be considered outside of a local jurisdiction’s annual plan amendment cycle. That section was amended by SSB 5841 to add language that only the initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea may be adopted outside of the annual amendment cycle. The added language emphasizes that a subarea plan, which implements and enhances the comprehensive plan, may be adopted at any time during the year. However, a subarea plan that represents a change of policy from that in the comprehensive plan may only be considered together with other comprehensive plan amendments once a year.

Employment Testing – Police Officers • Under what legal basis can law enforcement agencies require physical agility tests for police officers?

The requirement that police officers demonstrate certain physical agility is considered a “bona fide occupational qualification” and, therefore, not discriminatory. This means that agility tests may be permitted because agility requirements are

essential to, or will contribute to, the accomplishment of the purposes for which that person is hired. WAC 162-16-240.

Inspections • If a city or county wants to inspect a building that may need to be abated because of dangerous conditions, is consent from the tenant sufficient for the city or county to enter and inspect, or is consent from the landlord necessary?

Because the tenant, not the landlord, has the constitutionally protected privacy interest in the leased premises, the tenant possesses the authority to consent to a search or inspection of the leased premises. *Seattle v. McCready*, 124 Wn.2d 300, 306 (1994). The tenant also has the authority to consent to a search or inspection of common areas in the leased building. *Id.*

Meeting Location • May county commissioners take final action at a special meeting being held outside the county seat?

If proper notice is given for the special meeting, final action may be taken even if the meeting is held outside the county seat. There is no restriction in the Open Public Meetings Act that would prohibit county commissioners from voting on an item at a special meeting, if proper notice is given for the meeting and the item is listed as business to be transacted at the meeting.

RCW 36.32.080 requires that regular meetings of the county commissioners be held at the county seat. RCW 36.32.090 allows for special meetings of county commissioners to transact the business of the county and indicates that these may be held outside the county seat. There is no general statute that restricts the ability of county commissioners to vote at a special meeting.

Therefore, unless there is a restriction in the local county code, the county commis-

sioners are not prohibited from taking final action at a special meeting held outside the county seat.

Probation Fees • If a district court imposes probation fees, must those fees be strictly spent on probation department expenditures?

Yes. RCW 10.64.120 (4) states:

Revenues raised under this section shall be used to fund programs for probation services and shall be in addition to those funds provided in RCW 3.62.050

Public Disclosure • Must copies of public records be provided at no cost if requestor says he/she cannot afford the cost?

There is no provision in state public disclosure law that exempts indigent persons from having to pay for copies of public records pursuant to a public disclosure request. A public agency could adopt a policy to that effect; however, unless it puts an upper limit on that number, it would be opening itself up to providing to indigent persons any number of copies at no charge. Also, any such policy should require proof of indigent status, as that may be defined in the policy.

Public Records • When a city incorporates, is the county required to turn over to the new city all permitting documents regarding land use within the newly incorporated city, and does the county have any ongoing responsibility regarding maintenance of the records or disclosure of such documents?

There are no statutes placing ongoing responsibilities on the county for retention and maintenance of the records. As a practical matter, it would seem reasonable to transfer the documents to the new city. A

county could make copies of the land use documents for their own records and transfer the originals to the new city, but the costs of such copying could be substantial. The county and the new city must both make sure that all public records regarding the land are properly maintained by at least one of the jurisdictions. Both jurisdictions also must be able to locate the appropriate documents when there is a public disclosure request.

Public Right-of-Way • Is it permissible to have a public street or road in a gated community?

Probably not, although there is no specific authority on this issue in this state. This would be antithetical to the concept of a public street or road that is open for purpose of public travel. While a right-of-way may be vacated, closed to all travel (or not opened), or only open to certain modes of travel (e.g., pedestrian only), it cannot be open only to certain people (e.g. those who live in a gated community and their guests and invitees).

Although there is no case law in this state on this issue, a California Court of Appeals

case has held that gates cannot legally be erected on public streets. *Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.*, 23 Cal.App.4th 812, 28 Cal.Rptr.2d 451 (1994).

Public Works Contracting • Is there a statutorily required minimum time between the issuing of an addendum to contract specifications and the time of opening bids?

There is no statutory minimum time between the date an addendum to contract specifications is issued and the time of opening bids. This time is simply determined by the agency based upon the need to allow sufficient time for the bidder to revise his/her bid. Faxes and e-mail notification may allow shorter times, *if* all bidders can receive them.

Surplus Equipment • May a county sell surplus computers on e-bay?

Though the statutes were not written with e-bay auctions in mind, it appears that a county may use e-bay as the “privately

operated consignment auction” referred to in RCW 36.34.080. The county must publish notice of the intended auction(s) “once during each of two successive weeks in a newspaper of general circulation in the county” (see RCW 36.34.090). The published notice of the auction(s) must be specific (see RCW 36.34.100); a county would need to list the items to be auctioned and provide the date and time that each auction will be started. *We recommend that county officials review this issue with their prosecutor.*

Vacancies and Elections • How long before an election must a vacancy occur before a person can be selected without having to run for office at the election?

The person must stand for election if the election occurs more than 28 days after the occurrence of the vacancy. A vacancy that occurs less than 28 days before the election must be filled by appointment, and that person does not stand for election immediately. See RCW 42.12.070.■

How to “Ask MRSC.” Assistance from MRSC may be obtained by **Phone** (206) 625-1300 or 1-800-933-6772 for long-distance calls; **Letter** 2601 4th Avenue, Suite 800, Seattle, WA, 98121-1280; **Fax** (206) 625-1220; or **E-mail** mrsc@mrsc.org. Telephone inquiry service is available from 8:00 a.m. to 5:00 p.m. If a consultant is not immediately available, you can record a detailed request on voice mail 24-hours a day, and a staff member will call back as soon as possible.

The Industrial Welfare Act and Local Governments

A copy of this article, complete with links to referenced information, may be viewed on the MRSC Web site at <http://www.mrsc.org/focus/0305welfare.aspx>.

On May 20, 2003, Governor Locke signed SHB 6054 (Chapter 401, Laws of 2003), which, because it contains an emergency clause, takes effect immediately. This bill clarifies that most sections of the "Industrial Welfare Act" ("Act"), chapter 49.12 RCW, were not intended to apply to public employers, relieving the state and local governments of potential liability for additional wages for meal and break periods over the last three years (the applicable statute of limitations). However, under this legislation, public employers will in the future be subject to the Act, unless one of the three exceptions discussed below apply.

The purpose of this article is to outline the reasons why this legislation came about, explain the provisions of the Industrial Welfare Act that now may apply to local governments, and provide guidance to cities and counties on complying with the new law.

Why was this legislation needed?

The state and its political subdivisions had long understood that the meal and break period provisions of the Industrial Welfare Act did not apply to public sector employers. However, recent court decisions called this interpretation into question.

The state is currently facing two major class action lawsuits challenging the "straight eight" work shifts traditionally used by the institutional staffs of the Department of Social and Health Services and the Department of Corrections. Even though these employees collectively bargained to work straight eight-hour shifts, without designated rest and meal periods, instead of a nine-hour shift that includes designated break times, the lawsuits claim the employees were denied their statutory rest and meal periods guaranteed in chapter 49.12 RCW and WAC 296-126-092. The state argued, among other things, that the Industrial Welfare Act, including the WAC regulations on meal and break periods, did not apply to public employers. The trial court rejected this argument, finding that

the state was not excluded from these regulations. The state appealed this decision to state court of appeals, and that appeal is pending. With just these two cases, the state faces \$229 million in back pay liability. Additional litigation is pending, including a recent suit filed by Snohomish County corrections officers.

This unexpected judgment forced the legislature to take immediate action to clarify that most of the provisions of the Industrial Welfare Act were not intended to apply to the state and local governments. Of utmost concern to legislators and state and local policy makers was the potential for significant liability if the cases against the state were upheld. That could have opened up the floodgates of litigation - any public employer whose practices, policies, or collective bargaining agreement language did not conform exactly to the wording of WAC 296-126-092 could have been subject to liability for back overtime pay for meal and break periods.

As originally introduced, SHB 6054 simply stated that most provisions of the Act did not apply to public employers. Labor interests succeeded in having the bill amended so that the Act will apply to the state and to local governments in the future, though language was also added to ensure that employers and employees could agree to meal and break period provisions that varied from those specified in WAC 296-126-092. This legislation should serve to relieve public employers from potentially significant liability for back pay for rest and meal periods.

What are the major provisions of the Industrial Welfare Act that now apply to local governments?

Previously, only a few of the provisions of this Act, contained in chapter 49.12 RCW and implemented by Department of Labor and Industry (L&I) regulations in chapters 296-125 and 296-126 WAC, applied to local governments. Those provisions that had previously applied are the rules regarding sick leave to care for family members (RCW 49.12.270-.295), parental leave (RCW 49.12.350-.370), compensation for required employee apparel (RCW 49.12.450), and employer duties relat-

ing to volunteer fire fighters (RCW 49.12.460).

The major provisions of the Act now additionally apply to local governments can be summarized as follows:

Requirements concerning rest and meal periods;

Restrictions concerning the employment of minors, including the requirement that employers obtain minor work permits;

Requirements concerning employee access to their personnel records.

Note that the Fair Labor Standards Act (FLSA) has rules regulating the employment of minors that apply to local governments, but these vary somewhat from the state rules and do not include a minor work permit requirement. Where the rules under the FLSA and the state Industrial Welfare Act differ, the most stringent ones should be applied.

WAC 296-126-080 requires that employers post in each work site a current copy of the L&I regulations "in a form provided by the department." This form provides a good summary of the Industrial Welfare Act implementing regulations.

The Industrial Welfare Act also contains other requirements and standards that may perhaps be considered "minor" in comparison to the above requirements. These include certain recordkeeping requirements (RCW 49.12.050 and WAC 296-126-050), which are essentially identical with requirements under the Minimum Wage Act, and a prohibition on wage discrimination based on sex (RCW 49.12.175), which is also prohibited by the law against discrimination, specifically RCW 49.60.180(3).

What exceptions are provided in the new legislation?

The new legislation provides two basic exceptions, although one applies only to the rest and meal period rules. First, the provisions of the Industrial Welfare Act that now apply as a result of SSB 6054 do not apply to the extent they conflict with "any

local resolution, ordinance, or rule” adopted by a local legislative body before April 1, 2003. So, if a city council or board of county commissioners or county council had in place by April 1 personnel policies addressing employee access to their personnel files or rest and meal periods that are different than what is contained in chapter 49.12 RCW and L&I’s implementing regulations in chapters 296-125 and 296-126 WAC, that local policy would control. It is unlikely, however, that a city or county has in place any rules regarding employment of minors, as this is already regulated by federal law in the FLSA.

The other exception, limited to the rules adopted by L&I concerning rest and meal periods, allows public employers to vary from or supersede those rules in collective bargaining agreements or in “other mutually agreed to employment agreements.” This exception will be discussed further below.

What are the requirements for rest and meals periods that now apply to local governments?

These requirements, of the provisions of the Industrial Welfare Act that now apply as a result of SHB 6054, have potentially the greatest significance for local governments. They are adopted by L&I under the authority given to it by the Industrial Welfare Act and are stated in WAC 296-126-092 as follows:

- WAC 296-126-092 Meal periods - Rest periods. (1) Employees shall be allowed a meal period of at least 30 minutes which commences no less than two hours nor more than five hours from the beginning of the shift. Meal periods shall be on the employer’s time when the employee is required by the employer to remain on duty on the premises or at a prescribed work site in the interest of the employer. (2) No employee shall be required to work more than five consecutive hours without a meal period. (3) Employees working three or more hours longer than a normal work day shall be allowed at least one 30-minute meal period prior to or during the overtime period.

(4) Employees shall be allowed a rest period of not less than 10 minutes, on the employer’s time, for each 4 hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period. No employee shall be required to work more than three hours without a rest period.

(5) Where the nature of the work allows employees to take intermittent rest periods equivalent to 10 minutes for each 4 hours worked, scheduled rest periods are not required. (Emphasis added.)

To evaluate the impact of these requirements, take a look at your work force, your working conditions, etc. If your operations would not be impacted by following the WAC language (or if you already follow it), then you need do nothing other than to inform employees about the rest and meal period requirements and, of course, to allow them those periods. Keep in mind that paragraph 5 above makes it very clear that scheduled rest periods are not required if employees are allowed to take intermittent rest periods throughout the work day. This is likely the case with most of your office employees, and probably your field employees as well.

Section 3 of SHB 6054 provides for an exception to the rest and meal period requirements:

Employees of public employers may enter into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, rules adopted under this chapter regarding appropriate rest and meal periods.

If you have already bargained meal and rest period provisions with your unionized employees, then this bill will have little impact on you. If your bargaining agreements are silent on the issue, your unionized employees may want to bargain new provisions that differ from the requirements in WAC 296-126-092.

What about management and non-represented employees? Again, if you are content

to comply with the provisions of the WACs for these employees, you need take no further action other than to ensure compliance. However, if you want to implement different meal and rest period provisions for non-represented employees, the bill requires a “mutually agreed to employment agreement.” AWC has heard that the state intends to have all non-represented employees (including supervisors and managers) sign individual employment agreements regarding meal and break periods. This seems quite cumbersome, but would certainly satisfy the requirement in the legislation.

“Mutually agreed to” is not defined in the bill, and there is no requirement that the employment agreement be in writing. There is a school of thought that continuing to work under the employer’s existing meal and rest period policies constitutes “agreement” with the provisions. Written acknowledgment of receipt of personnel policies outlining meal and break provisions might also satisfy the requirement. Obviously, the cautious approach would be to obtain written agreements with each employee. You should consult with your own legal counsel before making a decision on how to proceed.

What are the state rules regarding employment of minors?

When employing a minor (a person under 18 years of age), a local government employer must now obtain from L&I a minor work permit. See RCW 49.12.121. The Department of Labor and Industries implements this requirement through a simplified process adopted in 1999 that requires a minor work permit endorsement on an employer’s Master Business License and also individual parent/school authorization forms. See chapter 296-125 WAC.

The Department of Labor and Industries also has rules restricting the hours a minor may work (WAC 296-027), identifying what jobs are prohibited for minors (WAC 296-125-030 and WAC 296-125-033), and concerning rest and meal periods for minors that are different from those that apply to other employees (WAC 296-125-0285 and WAC 296-125). There are separate rules for 14 and 15-year olds and for 16 and 17-year olds. Minors under 14 may not be employed.

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HEADS UP

Emerging information for local government

Many local governments recognize the advantage of utilizing the skills of their community members in volunteer programs. Such programs can increase the quality and quantity of public services at a minimal cost and can provide an opportunity for citizens to contribute to the betterment of their community, thus creating a sense of ownership and pride. The International City/County Management Association found from a survey that, for every dollar invested by a local government in volunteers, \$10 in benefits may be realized. The city of Bellevue notes that 8,000 people volunteer services to the city each year and contribute 100,000 hours of time, worth \$1.5 million each year.

With tight fiscal conditions, more local governments may be thinking about recruiting volunteers. This month's *Heads Up* is a sampling of "volunteer want ads" taken from city and county Web sites. They are being presented to provide you with program ideas.

Administrative Volunteers

Lacey Fire District No. 3

Do you enjoy working with the public? Would you like to make a meaningful contribution to your community? If you answered yes to any or all of the above questions, we need you! Lacey Fire District Three is recruiting for volunteer receptionist for the main fire station. Duties include answering and directing calls and assisting walk-in customers. Training is provided; typical schedule is four hours per week.

University Place

- Volunteers to help staff the city hall main reception desk. Duties include answering a multi-line phone, greeting the public and general clerical assistance. Volunteers in this area need to be able to volunteer at least one day per week for 3-4 hours; and

- Volunteers to help staff the police department main reception desk. Duties include answering a multi-line phone, greeting the public and general clerical assistance. Volunteers in this area need to be able to

volunteer at least one day per week for 4-4.5 hours.

Animal Shelter Volunteers

Seattle Animal Shelter Volunteer Program

Our volunteers work 365 days a year and are hard working and extremely dedicated. SAS volunteers are required to attend on-going training. This is one of the few successful animal control volunteer programs in the nation. We are proactive in the community and have been recognized for our accomplishments at the City and State level.

Thurston County-Lacey Animal Shelter

Volunteers help clean kennels, bathe and groom animals, assist people who visit the Shelter, file mountains of paperwork and perform many other tasks. Volunteers also help with our "Purrs 'n Paws Pet Therapy" program by visiting senior homes in the community. Others help with special projects, like attending booths at community fairs, decorating the Shelter, or participating in fund-raising events. Some even help by fostering pets too young for adoption, or in need of special attention.

Environment Related Activities

Lacey Stream Team Volunteers

Stream Team involves citizens in the protection and enhancement of our local water resources through education and action. Citizens learn through field classes and trainings, then give back to the community through action projects. Since 1990, Stream Team volunteers have donated over 30,000 hours to our community through monitoring, litter clean-ups, salmon and revegetation projects, storm drain stenciling, day camps, wildlife projects, and other activities. Stream Team is jointly funded by Lacey, Olympia, Tumwater, and north Thurston County residents through their storm and surface water utilities.

Lakewood - Adopt-A-Street Litter Control Program

A city-wide litter control program whereby volunteer organizations may contribute to a cleaner environment and a more attrac-

tive city by adopting sections of a City street and removing litter along those sections.

Adopt-A-Site Program

A city-wide litter control and maintenance program whereby volunteer organizations may contribute to a cleaner environment and a more attractive city by adopting sites within the City, removing litter, and generally maintaining the sites.

Pasco's Award Winning Auxiliary Code Enforcement Program (ACE)

Offers residents an opportunity to play a key role in keeping our community looking its best. This program directly affects our "first impression" with both visitors and travelers just passing by on the freeway. The ACE program uses a select group of volunteers to help control property nuisance activity with minimal cost to the public. As ACE officers, they patrol alleys and lots looking for weeds, debris and trash nuisances.

Shoreline Recycling Events

Recycling Volunteers, who are at least 16 years old, can assist at bi-annual "Clean Sweep Recycling Events" by offering information packets, conducting surveys, directing traffic, and/or loading bins.

Snohomish County Lake Water Testing and Monitoring

- If you live on a lake (or have direct access to one), have a boat, and would like to help track your lake's health, we could use your help.

- Surface Water Division (Public Works Dept.) needs volunteers interested in learning about and helping salvage native plants from construction sites. The plants are stored at county holding facilities to be used for restoration projects. Families, community groups, and individuals are welcome to participate.

Parks and Recreation Volunteers

Federal Way

- Celebration Park Scotch Broom Removal - The Parks Department is seeking assis-

tance eradicating scotch broom from Celebration Park. It's a huge park and a long term project that really needs help this spring and summer before the plants go to seed.

- Olympic View Park - Clear/cut back brush at entrances to Olympic View Park and Green Belt entrances.
- Lake Grove Park - Clear/cut back brush at Lake Grove Park.
- Weed ornamental flower bed along boat ramp parking lot at Steel Lake Park.
- Blueberry Farm Watering - We need volunteers to learn how to turn on the sprinkler system. Volunteers will commit to one two hour watering segment every two weeks from late June through August.

Kitsap County

- Join Guillemot Cove Stewards and Kitsap County Park staff as they work on trail maintenance and a long list of park improvement projects. Park staff will provide training and equipment.
- Fairground Campsite Renovation - Groups and individuals are needed to renovate 56 campsites before July 1, 2003.
- Adopt a Park - Lend a hand, have fun and enjoy the great outdoors! This is a great way for a family, club, or small employee group to get involved in the community. Those who adopt a park commit to a year of helping maintain that park. Guidelines, safety instruction and staff support are provided.

Shoreline Park Restoration

Individuals and groups can improve our existing Shoreline parks by working with the Parks Department to remove invasive plants, plant native species, and monitor habitat conditions.

Police

Kitsap County Citizens on Patrol (COP) Program

Volunteers are trained to patrol and monitor disabled parking spaces located within the unincorporated areas of the county and to take appropriate enforcement action as needed. While on patrol, volunteers act as the eyes and ears of law enforcement, reporting suspicious activities without exposing themselves to risk. They may also perform security checks or assist law enforcement with traffic control at community events or accidents.

Marysville Seniors Against Crime

Perform residential vacation checks, school patrolling, school assemblies, safe house program, neighborhood block watch program, personal safety lectures, residential and commercial building security inspections, schemes and scams lectures crimes against business, robberies, shoplifting and burglary lectures, illegal signage removal, event/activity security, emergency/earthquake preparedness lectures, kid care identification kits memory impaired program, high visibility wheelchair program disabled parking warning program

Pasco Police Department

Volunteers for the Pasco Police Department may find themselves working in one of several locations. Volunteers are needed at each of the three neighborhood mini-stations as well as police headquarters located at Pasco City Hall. Duties include everything from answering phones to helping compile statistical reports for use in Community Block Watch Programs.

Shoreline Police Department

Volunteers to help at the two Neighborhood Police Centers and at the main police station. Last year, Shoreline police volunteers donated more than 2,000 hours and handled over 2,300 citizen inquiries.

These volunteers help in a variety of ways, including answering inquiries, assisting with neighborhood crime analysis, administering the vacation house check and court reminder programs and providing disabled parking education, among other things.

Snohomish Sheriff Volunteer Crime Prevention Unit

Tasks include street watch, home checks, data entry/filing, public education, graffiti eradication, etc.

Criminal Justice Kitsap County

- Kitsap County Mentor - Provide support for a juvenile offender and help build a stronger community.

- Kitsap County Community Diversion Board Member - Participate on a board, which determines the consequences and meets with minor juvenile offenders and their parent/s to explain and offer a Diversion Agreement as an alternative to Court proceedings.

- Kitsap County Probation Assistant (Intern) - Work closely with an assigned Probation officer in the monitoring and tracking of juvenile offenders.

A number of jurisdictions have listed Volunteer Opportunities as a menu item on their home pages. One click brings all the departmental offerings together so the citizen can easily see what opportunities are available. MRSC has assembled a Web page linking examples of county and city volunteer programs, including application forms and policy guides, at <http://www.mrsc.org/Subjects/Governance/Participation/Volunteer.aspx>

Care of Family Members

Changes have been made both to the state law providing for family leave and to the regulations implementing that law. The amendments, which expand the availability of the leave for the care of children and other family members, went into effect January 2003.

As amended, the state law, SSB 6426 (Chapter 243, Laws of 2002), allows an employee to take sick leave or other time off to care for his or her child, if the child has a condition requiring treatment or supervision, or to care for certain other relatives listed by the statute. Availability of the leave is contingent upon there being a collective bargaining agreement or a personnel policy entitling an employee to sick leave or other time off, i.e., time allowed the employee for illness, vacation, or personal holiday.

Leave to care for family members may only be taken according to the terms of the collective bargaining agreement or personnel

policy, and then only if the employee has earned the leave. If the criteria of the agreement or policy are met, the employee – not the employer – decides which leave balance to use.

The amendments expand the definition of a “child” to cover “a biological, adopted, or foster child, a stepchild, a legal ward, or a child standing in loco parentis” who is either under 18 years of age, or over 18 years and incapable of self-care because of a physical or mental disability. The act also allows an employee to take leave to care of “a spouse, parent (including a person who stood in loco parentis when the employee was a child), parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition.”

No employer may discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee has exercised

or attempted to exercise his or her rights under the Act. Employee complaints regarding employer compliance must be filed with the Department of Labor and Industries within six months of the alleged violation. Violations may result in a fine of up to \$200 for the first violation and up to \$1,000 for subsequent violations.

The revised act applies to all employers, including municipal and quasi-municipal corporations. Each employer is required to display a poster detailing employees’ rights and the employer’s obligations; posters are available from the Department of Labor and Industries. See <http://www.lni.wa.gov/IPUB/700-074-000.pdf>



The Industrial Welfare Act continued from page 9

Cities and counties that have employed minors should already be familiar with the FLSA requirements, which are, for the most part, the same as those under L&I regulations. See 29 C.F.R. Part 570 (Child labor regulations, orders, and statements of interpretation).

The following on-line resources on this issue are available from L&I and on the Web:

- “Teen Workers Have Two Jobs”
- L&I Administrative Policy - ES.C.4.1 (School Week and Work Week for Minors)

What are the requirements concerning employee access to their personnel records?

The Industrial Welfare Act gives employees certain rights regarding inspection of their personnel files and correction of those files, and these rights are now extended to public employees under SSB 6054. RCW 49.12.240 gives employees the right to inspect their own personnel files at least

annually, and RCW 49.12.250 gives them the right to request their employer to determine if there is any “irrelevant or erroneous information” in their personnel files and to remove such information. It also gives employees the right to include in their files a statement of “rebuttal or correction” regarding the employer’s determination. See L&I Administrative Policy - ES.C.7 (Employee Access to Personnel File).

The requirement that the employer, upon request, remove information from personnel files it determines to be “irrelevant or erroneous” may cause a problem for local government employers who are subject to state records retention requirements that prohibit the destruction of public records within certain specified time periods. See Local Government General Records Retention Schedules. So, it may be that irrelevant or erroneous information contained in records that are removed from an employee’s personnel file must be kept elsewhere and not destroyed until expiration of the applicable retention period.

What are the penalties for violation of the Industrial Welfare Act?

The Department of Labor and Industries has enforcement authority with respect to compliance with the Industrial Welfare Act.

Serious or repeated violations of the child labor laws will subject an employer to a civil penalty up to \$1000 for each day the violation continues. An employer will be given a reasonable time, without penalty, to correct a violation of the minor work permit rules. Also, L&I may establish a specific period of time for abatement of “nonserious violations” of the child labor laws in lieu of a penalty for first time violations. See RCW 49.12.390. An employer who “knowingly or recklessly” violates the child labor laws is guilty of a gross misdemeanor. RCW 49.12.410.

Violations of other standards established under the Act is a misdemeanor punishable by a fine of \$25 to \$1000. RCW 49.12.170.■

Municipal Annexation

New Petition Method in Effect

On May 16, the Governor signed SSB 5409, which adopts a new petition method of annexation designed to overcome what the state supreme court decided in *Grant County Fire Protection Dist. v. Moses Lake* were constitutional defects in the “old” petition method. (The court has yet to rule on the motions for reconsideration in the *Grant County* case, and it is possible that the old method may, at least in some circumstances, be resurrected. That reconsideration decision would, however, have no effect on the new method.) This law was effective upon the Governor’s signature. In other words, cities may now begin using this new method of annexation. What follows is, in question and answer format, a detailed outline of this new petition method, which, with minor exceptions as noted, is the same for all classes of cities and for towns. The new method follows the format of the old method, with differences primarily in the signing requirements for the annexation petition. The primary difference between the new and the old method is that the annexation petition must be signed by property owners (owning a majority of the area) and by registered voters (a majority in the area). If there are no registered voters (vacant, commercial, or industrial property, or property that has residents but no registered voters), then only owners of a majority of the area need sign.

How is an annexation under this method initiated?

1. Notice of Intention. An annexation under this method can be initiated by written notice to the city council of an “intention to commence annexation proceedings” signed by:

- 10 percent or more of the residents of the area to be annexed (non-code cities only), or
- Owners of not less than 10 percent of the acreage of this area.

An exception is recognized for school district property, which, under RCW

28A.335.110, can be annexed only if it constitutes the entire area proposed for annexation.

2. Meeting with Initiators/Initial Decision by City Council. The city council must set a date for a meeting with the initiating parties, which may occur no later than 60 days after the filing of notice of intention, to determine whether the council will:

- Accept the annexation as proposed;
- Geographically modify the proposed annexation (and accept the proposed annexation as modified); or
- Reject the annexation.

The decision of the council whether to “accept” the proposed annexation is entirely within the council’s discretion. By accepting a proposed annexation, the council is not committing itself to ultimately annexing the territory proposed when a sufficient petition is presented to it. The decision to accept merely allows the annexation to go forward procedurally. If the council rejects the proposed annexation, the initiating parties have no right of appeal.

If the council accepts the annexation, it must also decide:

- Whether it will require the simultaneous adoption of a comprehensive plan (non-code city) or a proposed zoning regulation (code city), and
- Whether it will require the assumption of all or any portion of existing city indebtedness by the area to be annexed.

If the council decides to require either or both of the above, that decision must be reflected in the meeting minutes.

What must a sufficient annexation petition contain?

If the city council accepts the initial annexation proposal, the initiating parties may

draft and circulate a petition for signatures. The petition for annexation must:

- Be in writing and be addressed to the city council;
- Contain a legal description of the property;
- Be accompanied by a drawing that outlines the boundaries of the area proposed for annexation;
- If the city council is requiring the assumption of all or any portion of city or town indebtedness and/or the adoption of a comprehensive plan or proposed zoning regulation for the area to be annexed, state those facts, along with a quotation from the meeting minutes where the council imposed such requirements;
- Be signed by:
 - Owners of a majority of the acreage of the area proposed for annexation, and
 - A majority of the registered voters residing in the area proposed for annexation
 - If there are no residents in the area proposed for annexation (or no registered voters), by the owners of a majority of the acreage of the area.
 - (For school district property, the petition is to be signed by the district board of directors);
- Comply with the rules for petitions in RCW 35.21.005 (non-code city) or RCW 35A.01.040 (code city); and
- Be filed with the city council.

The procedures following the filing of the annexation petition with the city council are not changed by this legislation. ■

WEB TALK

News and information about www.mrsc.org

What's New?

Library catalog - We have implemented a new library catalog system on the MRSC Web site. To use the catalog, go to mrsc.org and click on "Services" then "Library." The system allows you to search the MRSC library holdings by subject keyword, title, or author. After locating materials of interest, you can request to borrow materials directly through the system. If we have the item in electronic format, we link from the catalog to the document, but in most cases, we will mail the items to you on a three-week loan.

Electronic council packets - At the most recent Local Government Webmasters meeting, the city of Bothell did a presentation on their highly successful program to prepare and distribute electronic council packets. If you would like to view the PowerPoint presentation, go to mrsc.org,

click on "Site Index" and then select "Webmasters meetings." The group meets three times per year and all local government officials and staff are welcome to attend, even if Web site maintenance is only a small part of your job. Contact MRSC for additional information.

Additional on-line codes - Our collection of online codes continues to grow and now includes more than 80 city and county codes. You can either search an individual city or county's code, or search the entire collection at once. Go to mrsc.org and click on "Legal Resources" then "City and County Codes."

How Do I?

Search Past MRSC Inquiries - To research the responses to a wide range of questions that MRSC has received, go to mrsc.org and click on "Research Tools" then "MRSC

Inquiries." Browse through the questions and answers by subject, or enter your search terms in the "Search Past MRSC Inquiries" in the box in the upper-left of the page. (We have "sanitized" all of our responses to protect the anonymity of the inquirer.)

What's Coming?

In the coming months, we hope to expand our collection of online court decisions to include the Washington Reports First Series, contingent on a licensing agreement between the Supreme Court and the Statute Law Committee. Combined with the second series, this would provide access to the full text of the Washington State Supreme Court decisions from 1889 to present. We also have on our site the full text of the Washington State Appellate Court decisions from 1969 to present.▶

When using materials on the MRSC Web site, please note the date of the information indicated on the page. In some cases, laws or regulations may have changed since the time we posted the information; please contact MRSC if you have any questions. We make every effort to keep the materials on our site up-to-date, but due to the large quantity of information that we make available, we are not able to do so in all cases.

LIBRARY LISTINGS

New resource materials now available

New Acquisitions

This list contains new publications, ordinances, and other materials recently received by the MRSC library. We also prepare a more comprehensive list of new acquisitions each month which is posted on our Web site at www.mrsc.org/library/newacq.htm. If you would like to borrow one or more of these publications, please contact Amy Harper in our library at (206) 625-1300.

▼Economic Development

The Civic Culture of Local Economic Development, by Laura A. Reese and Raymond A. Rosenfeld, 2002

▼Environment

Lake and Pond Management, by Steve McComas, 2002

▼Finance

"County Treasurers' Procedures Manual" [computer file], by Washington State Association of County Treasurers, 2002

▼Governance

"Analysis of the Financial Feasibility of the Proposed City of Frederickson for Pierce County, Washington," by ECONorthwest with Henderson, Young & Company, 2002

Tales from the Trenches: Achievements, Blunders and Challenges in Local Government Management, by Len Wood, Joe Baker, 2003

Tools for Decision Making: A Practical Guide for Local Government, by David N. Ammons, 2002

Washington County Government Structure Roles and Responsibilities, by Washington State Association of Counties, 2003

▼Licensing and Regulation

Handbook of Regulations for Direct Farm Marketing: "The Green Book," by Washington State Department of Agriculture Small Farm and Direct Marketing Program, 2002

▼Personnel

"Alcohol and Controlled Substances Testing Policy and Procedures for Drivers of Commercial Motor Vehicles," by City of Port Angeles, 1996

▼Planning and Land Use

Edgeless Cities: Exploring the Elusive Metropolitan, by Robert E. Lang., 2003

Parking Standards, edited by Michael Davidson and Fay Dolnick, 2002

Making Places Special: Stories of Real Places Made Better by Planning, by Gene Bunnell, 2002

Shopping Center Renovation and Expansion, by Urban Land Institute, 2003

True West: Authentic Development Patterns for Small Towns and Rural Areas, by Christopher J. Duerksen, James van Hemert, 2003

▼Public Safety

Disaster Management, ICMA, 2001

Reaching for Higher Ground in Conflict Resolution: Tools for Powerful Groups and Communities, by E. Franklin Dukes, 2000

▼Utilities

Drought Management Handbook, by American Water Works Association, 2002

The Practice of Watershed Protection, by Thomas R. Schuelerand, Heather K. Holland, 2002

Water Resources Planning, by American Water Works Association, 2001

▼Transportation/Traffic/Streets

It's your Street: Making Traffic Improvements in your Neighborhood [computer file], by Institute of Transportation Engineers, 2002

Residential Streets, by Walter Kulash, 2002

Resource Sharing

The *Information Partnership Program* seeks and collects current materials from Washington local governments. The materials received provide answers and support to the challenges faced by cities and counties every day. You may order the materials below by contacting the MRSC library at (206) 625-1300 or 1-800-933-6772 or e-mail us at mrsc@mrsc.org. Due to space limitations, the list below may not be complete. A comprehensive list of IP materials received may be requested from the library or viewed on our Web site at www.mrsc.org/library/rshare.htm.

▼New Intergovernmental Contracts

Auburn Interlocal agreement for the administration of the Green River Control Zone district, 17 p., 7/1/02 (SPD 9.5000); Puyallup Interlocal agreement with Pierce County regarding administering funds generated as a result of State of Washington SHB 2060, which created a document recording fee on certain documents to be utilized for affordable low-income housing, 8 p., 4/7/03 (HO 4.4000); Pierce County enhanced 9-1-1 public safety answering point participation agreement, 10 p., 4/21/03 (PS 5.1000)

▼Initiative Petitions

Everett Initiative petition to eliminate Hewitt Avenue sites from consideration for a regional center, 1 p., 12/20/01 (E 5.2000)

▼Developer Extension Agreements

Auburn Agreement for developer public facility extensions, 20 p., 2003 (U 3.4000).

▼Sick Leave Policy

Everett Leave policies: family and medical leave policy, 6+ p.; care for family members with serious medical conditions 7 p., 1/1/03 (PE 6.8500).

FYI

Flag Protocol

The Washington Secretary of State Web site has a page devoted to information on the Washington State flag at <http://www.secstate.wa.gov/flag/?m=undefined>. There are several links to all sorts of good information, including how to display the state flag with the United States flag and other flags. This page also contains information on the United States flag, including the laws governing its display. Check it out!



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