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GOVERNMENTAL AFFAIRS

Sound Cities Association Legislative Report
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There is less than a week remaining in the regular legislative session. In the remaining days, the Legislature will iron out differences on bills where the two chambers have approved different versions of the bill, and budget negotiators will be continue meeting behind closed doors to develop final operating, capital, and transportation budgets.

Budget negotiators have reported that they are meeting frequently and worked in earnest to reach an agreement prior to the end of the regular legislative session. While budget details have not been publicly shared, there appears to be agreement between the House and Senate to increase revenues by replacing the state's current flat-rate real estate excise tax with a graduated rate and increase business and occupation taxes on certain industries. Additionally, there continues to be a robust discussion around increasing the capital gains tax – however, there does not appear to be the votes to support that tax increase in the Senate.

There is speculation that budget negotiations won't be finalized in time to pass a budget by the last day of session, Sunday, April 28th. It generally takes about three days from completion of budget negotiations for the legislature to draft budget bills and supporting documents, brief the caucuses, consider amendments, move the bills through committee and vote on them for final adoption. If budget writers can reach agreement in time to avoid a special session, final budgets will be publicly released by Thursday or Friday of this coming week.

Next week we also expect the House Democratic Caucus to begin discussing, if not actually selecting, a new Speaker of the House. Prior to the beginning of session, veteran Speaker, Rep. Frank Chopp, announced that he would be turning the gavel over at the end of session. Rep. Chopp has been the Speaker for the last 20 years. The Caucus could choose to select a new Speaker prior to the end of the legislative session or could delay making that selection until a later date.

Legislative Priorities

Affordable Housing & Homelessness

Credit Against State Sales Tax: House Bill 1406, sponsored by Representative June Robinson (D-Everett), would allow local jurisdictions to impose a .02 percent credit against the state sales tax to fund affordable housing. The House passed the bill 66-32. In the Senate, the Ways & Means Committee held a public hearing on the proposal but has otherwise not advanced the bill. The bill has been designated as necessary to implement in the budget and will continue to be considered throughout budget negotiations. This past week, advocates for the bill received feedback from budget negotiators that the fiscal note on the bill was too large. As currently drafted, the bill would cost the state $152 million for 2019-21.

Since receiving that feedback, advocates for the bill have been exploring alternative structures that would provide funding to affordable housing but reduce the overall fiscal note on the bill. Late this last week, one alternative that was suggested would "award" credits against the state sales tax up to a set amount per year for 20 years for affordable housing. For example, a local government could be awarded $1 million/year for 20 years for affordable housing; the award would be issued in the form of a credit against the state sales tax. Cities could bond against this award. The actual credit rate against the state sales tax would vary and equal whatever rate would allow the city to collect the award amount. The Department of Commerce would review applications from jurisdictions and issue a round of awards. Specific bill language has not yet been developed, and it's unclear whether this alternative structure would be able to advance given that there is less than a week remaining in the legislative session.

Given that the Legislature is not making as significant of an investment in affordable housing as outlined in the original drafts of House Bill 1406, there is renewed momentum behind passing a variation of House Bill 1590. Under the latest variation of House Bill 1590, cities and counties would split the .01 councilmatic sales tax authority (each would get the ability to increase their sales tax up to .005). If after 24 months the city does not take advantage of this authority, then it would be available to the county to impose, and vice versa. House Bill 1590 did not pass out of the House earlier this legislative session and has not yet been considered in the Senate. If it advances, it would be part of an overarching agreement on the budget.

Expanded REET Authority for Housing: House Bill 1219, sponsored by Representative Amy Walen (D- Kirkland), allows cities and counties to utilize real estate excise tax revenues for affordable housing. The bill passed the House, 74-24 and the Senate, 34-13. The Governor signed the bill into law on April 16 and the bill will take effect 90 days after the regular legislative session concludes (July 27th).

Cities and counties have the authority to use up to $1 million of real estate excise tax revenues for affordable housing under current law, but the authority is scheduled to sunset in June 2019. The final version of the bill extends the sunset on the authority to January 1st, 2026, so long as the city or county documents that it has funds for certain capital projects in its capital facilities plan. The amendment also reinstates the financial cap on the use of REET II funding for affordable housing, limiting the annual amount to either $100,000 or 25% of available funds not exceeding $1,000,000. This cap does not apply to jurisdiction that utilized REET II funding for affordable housing prior to June 30th, 2019.

Habitat for Humanity Housing Bill: Senate Bill 5025, sponsored by Senator Mona Das (D-Covington), was brought forward by Habitat for Humanity. The bill incentivizes self-help housing (like that built by organizations such as Habitat for Humanity) by providing certain tax exemptions. The bill passed the Senate 46-2 providing a real estate excise tax exemption to self-help housing. The House then amended and passed a version of the bill that provides a sales and use tax exemption, as opposed to a real estate excise tax exemption. The Senate has now refused to concur with the House amendments and asked the House to recede from their amendment and thereby return the bill to be a real estate excise tax exemption. The House and Senate will need to reach an agreement on what type of exemption to provide self-help housing for this bill to pass into law.

Minimum Density Incentives: House Bill 1923, sponsored by Representative Joe Fitzgibbon (D-Burien), was amended multiple times throughout the legislative process, wavering between mandating that cities take action to increase density, and incentivizing cities to take action to increase density. The final compromise reached on the bill removes mandatory language and instead encourages cities to undertake actions to increase housing density. The compromise exempts certain city actions to increase residential building capacity from SEPA appeals or legal challenges for actions taken prior to April 1, 2021. A grant program is established to be administered by Commerce for city programs. Cities may also receive grant funds for developing a housing action plan. The bill does include language mandating reduced parking requirements for low-income, senior, and disabled households near transit; however, the language retains city authority to waiver from the requirement.

The Senate approved this final compromise. However, the House did not concur with this version of the bill because of a technical error in the drafting of the final compromise. The bill will now return to the Senate where the technical error will be addressed prior to resending it to the House for concurrence.

ADU Bill: Senate Bill 5812, sponsored by Senator Guy Palumbo (D- Maltby), would have preempted city authority to regulate accessary dwelling units (ADUs). While there were many efforts to amend the bill to reach agreement, these efforts did not culminate in a final compromise. The bill was not voted on by the House prior to the latest cutoff deadline, and therefore, is no longer under consideration this session.

Transportation & Infrastructure

Model Toxics Control Account Funding/Transportation Funding: Senate Bill 5993, increases the hazardous substance tax thereby increasing the amount of revenue deposited into the Model Toxics Control Account. Without this additional revenue, other capital budget revenues would need to be deposited into the account. The bill was introduced as part of the Senate's capital budget proposal and passed out of the Senate Ways & Means Committee in an amended form this last week.

The Senate Ways & Means Committee amended the bill from its original form to reduce the overall hazardous substance tax increase being proposed. The current hazardous substance tax is a .7 percent tax on the wholesale of hazardous substances (i.e. petroleum). Under the amended version of the bill, the hazardous substance tax would shift from the current value-based percentage, to a volumetric tax of $1.39 per 42-gallon barrel (as opposed to $2.52 as originally drafted) for petroleum products. The bill also reforms the Model Toxics Control Account by replacing the current structure with three accounts: the Model Toxics Operating Account, the Model Toxics Control Capital Account, and the Model Toxics Control Stormwater Account. The bill proposes to deposit revenue from the hazardous substance tax into these accounts through the following percentages: 45% operating, 40% capital, and 15% stormwater – these are slightly different percentages than the original draft of the bill.

Whether the bill passes into law will be determined through budget negotiations between the House and Senate. The Senate's proposed capital budget relies heavily on this increased revenue in order to fund a higher level of investment than the House in key local government grant programs including the Housing Trust Fund, the Public Works Assistance, the Recreation and Conservation Office, and more. Additionally, the bill increases funding for the Model Toxics Control Account, which many jurisdictions rely on to fund environmental clean up projects. The bill is currently on the Senate floor calendar.

Some legislators, most notably Senate Transportation Committee Chair, Sen. Steve Hobbs, have indicated that they are unwilling to support the bill because, indirectly, it is an increase in the gas tax – a revenue source he would like to utilize in the next transportation revenue package. There continue to be ongoing conversations about also advancing a transportation revenue package this session. If an agreement is reached on a transportation revenue package, then it is more likely that key Senators would be able to support this increase in the hazardous substance tax.

Tolling Authorization & Bonding: The Senate is expected to approve tolling authorization and bonding for I-405, SR 167, and the Puget Sound Gateway project early next week. Senate Bill 5825, sponsored by Senator Steve Hobbs (D-Lake Stevens), is currently on the Senate floor calendar awaiting a vote. The underlying bill authorizes tolling on the Puget Sound Gateway project (SR 509/ SR 167), and on I-405/167, but does not authorize bonding.

A striking amendment is being offered by [Senator Hans Zeiger] (R-Puyallup) on the Senate floor that authorizes tolling on the corridors like the underlying bill, but also bonds toll revenue. Sen. Zeiger's amendment establishes three accounts: I-405 Express Toll Account, the SR 167 Account, and the Puget Sound Gateway Account.

If/when the Senate approves the bill, the bill will then go to the House where the House is likely to request a conference to reach an overarching agreement on the details of the bill. Additionally, it continues to be unclear whether 60% of the House would approve a bill that authorizes tolling and bonding. It is hoped that the Senate voting on the bill first will make it easier to get the necessary votes in the House.

Tools for Cities

Many of the priorities for cities will be determined in the final budget. However, as the Legislature wraps up bill action, below is an update on three bills that advanced this last week that impact the bottom line of city budgets:

Wrongful Death Bill: Senate Bill 5163, sponsored by Senator Bob Hasegawa (D- Seattle), addresses actions for wrongful injury or death. The bill passed the Senate, 30-17 and the House, 61-37. The bill has been delivered to the Governor to be signed into law. This legislation will expand the beneficiaries of a wrongful death action by removing dependence and residency requirements for parents and siblings. A parent or sibling may be a beneficiary of a wrongful death action if there is no spouse, domestic partner, or child, without having to show dependence on the deceased and regardless of whether the parent or sibling resided in the United States at the time of death. Noneconomic damages in a survival action are limited to the decedent's pain and suffering, anxiety, emotional distress, or humiliation. Local governments expressed concern with the bill, particularly around the joint liability portions of the bill, which would result in an increase in litigation costs. The Department of Enterprise Services projects the annual payments to claimants will increase by 20% and in turn, will increase costs for cities and counties.

Public Records Bill: House Bill 1667, sponsored by Representative Larry Springer (D- Kirkland), amends the reporting requirements under the Public Records Act. County and city legislative authorities are authorized to implement a local sales tax to fund affordable or supportive housing and the maximum rate imposed may not exceed either 1-2%. The Association of Washington Cities and the Washington State Association of Counties were promoting this legislation. The bill did not pass the Senate prior to last cutoff deadline; and therefore, will not continue through the legislative process this session.

Local Government Procurement Bill: Senate Bill 5418, sponsored by Senator Dean Takko (D-Longview), will provide a series of bidding procedures for unit priced contracts, increases the small works roster process and limited public works project cost thresholds. The bill passed the Senate, 54-3 and the House, 76-22. The bill allows counties, water and sewer districts, public transit agencies to enter into unit-priced contracts up to one year, with the option to extend the contract an additional year. The provisions intended to provide second class cities flexibility with the definition of lowest bidder in public works bids were amended by the House. A city may now choose a bidder that is not the lowest bidder, but within 5% of the lowest bid, if they have had prior bad experience with the lowest bidder.

The bill establishes a county purchasing department to counties with populations of less than four hundred thousand. The bill authorizes small works contracts for projects under $350,000 (the threshold under current statute is up to $300,000). The threshold for bids not accepted on the small-works roster changes from $150,000 (in current statute) to projects between $250,000 and $350,000.

Local governments would have cost savings as a result of being permitted to bypass the competitive procurement process on a greater number of projects. The costs are expected to vary depending on the size of the department to be established and the capacity of a county to support a new department within existing facilities. The Senate must concur on the House amendments before moving to the Governor’s desk.