

# Strategic Litigation and Communications Program



# Why This? Why Now?

*Counties have been neglected by the State of Washington.*

WSAC has decided to develop a Strategic Litigation and Communications Program. WSAC members saw this action as a necessary response to the continued neglect by the State of Washington of the various state services that the state constitution and laws require counties to perform.

For the last six sessions, WSAC has sought help from the state on specific proposals and solutions to provide financial relief for counties including:

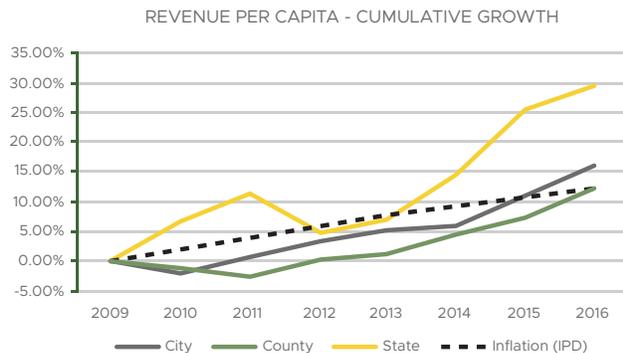
- Changes in laws to help counties control costs.
- Additional revenue capabilities.
- Flexibility with existing revenue.
- Additional state shared revenues to perform state required services.

## WHAT'S THE PLAN?

WSAC will continue to work with the Legislature and the Executive Branch to assure long-term county financial stability. At the same time, WSAC is refining its litigation parameters and policies. Once the process and framework is identified, recommendations will be made to the WSAC Board of Directors for final approval. No decision to proceed on any litigation has been made. WSAC is simply adding additional tools to advance its policy agenda and more capacity to augment their existing advocacy capabilities.

### The proposed work plan includes:

Developing policies, procedures, and parameters for WSAC's Litigation Program; Establishing and supporting a committee to guide litigation strategy development in conjunction with WSAC's legislative strategy; Conducting research to support the legal strategy; Coordinating with partners, members, and others in making and pursuing litigation decisions; Hiring a staff attorney who has the ability to litigate cases WSAC chooses to pursue; Strategic communication to explain WSAC's actions when litigation is utilized.



## State Growth v. County Growth

The State of Washington saw billions of dollars in new revenues in the 2017 legislative session. However, counties revenues continue to remain flat or decline due mostly to the cap on the 1% property tax.

"Clark County Budget Faces 20 Million Shortfall"

July 25, 2018



"Spokane County Facing \$10 Million Shortfall"

September 11, 2017



"Reductions Still Needed to Balance Lewis County Budget"

August 24, 2017



"Proposed budget cuts would hit sheriff's office hard"

October 5, 2016



## Counties Face Shortfalls

Even though Washington State revenues are increasing due to the upturn in the economy, counties continue to make cuts to public health and safety. Counties are forced to lay off employees and defer maintenance on roads and infrastructure.

# Frequently Asked Questions

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*WSAC wants you to stay informed of the process.*

## 1 Why create this workgroup?

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The Washington State Legislature continues to undervalue and underfund the needs of counties and our options are limited.

Counties have worked for six sessions to fix the structural problems and cannot do it without the help of the state. Counties are looking at all their options and find that they need to consider litigation as a possible route to either inspire or mandate action from the Legislature.

## 2 Who is WSAC going to sue?

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There has been no decision on who or what will be up for litigation. WSAC is still in the very early process of figuring out how and when any litigation could be brought forward.

WSAC is exploring claims against the state concerning unfunded mandates and agencies that don't operate within the bounds of the law as it pertains to counties.

## 3 Does my prosecutor need to be involved?

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WSAC is working closely with WAPA and other independently elected officials throughout the decision making process.

WSAC recognizes the importance of harmony within the courthouse and that the prosecutor is your attorney. WSAC is exploring ways to support that role and/or for WAPA involvement. Additionally, WSAC has four representatives of WAPA on the SLAC Workgroup.

## 4 I get along with my legislator(s), how do I explain this to them?

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There are lots of great individual legislators, the problem is with their collective lack of action. WSAC hopes that you will be able to retain your positive relationships with all elected officials through this process.

However, legislator's collective action on passage of unfunded mandates hurts counties bottom lines and it needs to stop.

# March 2018 Update

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## *Strategic Litigation and Communications Committees*

Since the WSAC members approved the development of a strategic litigation program and to augment our advocacy efforts with additional communications resources, the association has been in action.

The officers appointed a committee with 15 representatives of WSAC, four representatives of Washington Association of Prosecuting Attorneys (WAPA), two representatives from the Washington Association of County Officials (WACO), and eight county staffers with particularized expertise in communications or government relations.

Matt Steuerwalt, from Strategic Insight Partners,

is facilitating and assisting with the development of the program and assist the process and strategy subcommittees.

Since January, the full committee has met every other week (sometimes more often) and has begun laying the groundwork for a successful advocacy effort that integrates communications, legislative advocacy, and litigation. The group has heard from other organizations about how they have used litigation, including the Washington Farm Bureau, Washington Environmental Council, and Washington Education Association.

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## Process Subcommittee

The purpose of the Strategy Subcommittee is to develop an advocacy strategy to advance WSAC's policy objectives. While a legislative strategy has been our mainstay, the subcommittee is tasked with discerning how to utilize communications and litigation along with legislative advocacy. Robust conversations have occurred about what success would look like, and whether the Fiscal Sustainability Initiative is still our operating framework.

While the group has identified a plethora of ideas that require additional legal research and could be viable causes of action, it is currently less clear where our initial focus should lie. We are also still sorting through the pieces from the recently ended 2018 legislative session, and trying to discern what our 2019 legislative strategy should be. There is a great deal of enthusiasm for these efforts, and the group is making steady progress.

## Strategy Subcommittee

The Process Subcommittee was created to develop the internal decision-making process for WSAC when engaging in proactive litigation. Initiating litigation and entering litigation as a party is a much more consequential decision submitting an amicus brief, which is the limit of WSAC's current involvement in legal advocacy. WSAC members and staff recognize the need to make choices based on good facts and issues of importance to our members and the citizens they serve. Because of the gravity of these decisions, the organization must have a robust decision-making process that fully accounts for these risks.

There is also the need for clear criteria to guide WSAC in deciding which cases to pursue. Litigation is not only risky, but it is also costly, and WSAC must be judicious with its limited resources. The subcommittee is weighing all of these considerations in developing a proposal.

# May 2018 Update

*County leaders frustrated with the unfunded mandates and lack of support coming out of Olympia have authorized the Washington State Association of Counties to explore legal action against the State.*

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## Action Taken

In May of 2017, WSAC members began looking for new ways to advocate for additional state funding, and in November of 2017, the membership approved resources for WSAC to start work on developing a strategic advocacy, communications, and litigation program. Since then, a broad coalition of county leaders has worked to create the necessary framework for this program. On the evening of May 10, 2018, the WSAC Board of Directors formally adopted a 2018-19 work plan that includes potential legal action against the State for failure to meet its constitutional and statutory duty to assure counties are provided adequate funding to deliver services to the citizens of Washington State.

## Context

“Counties are required to provide numerous services on behalf of the State, and it is the Legislature’s duty and obligation to assure that counties have the necessary resources to be able to provide these constitutionally required services to the public. However, the Legislature is making that harder and harder for counties to do.” WSAC’s Executive Director, Eric Johnson continued, “Washington’s citizens have passed two citizen initiatives (I-61 in 1979 and I-601 in 1993) to hold the Legislature accountable and to prohibit the Legislature from requiring local governments to offer new or expanded services unless the state pays the

costs. This law has frequently been ignored for years. If the Legislature is not going to hold themselves accountable, then we are prepared to ask the courts to do so”.

## About Health & Safety

“This is about health and safety, period,” said Pierce County Councilmember, Derek Young and co-chair of the WSAC Legislative Steering Committee. “Every dollar that I have to spend on laws that are passed down from the Legislature without funding comes directly out of my budget for Sheriff deputies, road maintenance, and resources to combat important issues like the opioid crisis. We are tired of the Legislature balancing their budget on the backs of counties especially since we all share the same constituency.”

## Advocacy Agenda

WSAC’s Legislative Steering Committee also adopted the WSAC’s 2019 Policy Agenda. The agenda focuses on working with the Legislature in the upcoming session to secure funding for trial court indigent defense, support for foundational public health services, and to actively oppose any legislation that will increase costs for local government without the necessary resources coming from the State.

# Strategic Advocacy, Communications & Legal Activities Program

## *2018-2019 Action Plan Highlights*

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### 2019 LEGISLATIVE ADVOCACY RECOMMENDATION TO WSAC MEMBERSHIP

- Request full funding (\$300 million a biennium) for trial court indigent defense to ensure constitutional due process for all Washingtonians and to provide fiscal relief for county governments
- Support request (anticipated at \$70 million for 2019-2021 biennium) in funding for Foundational Public Health Services
- Resist new unfunded costs associated with proposed legislation or executive or judicial branch rules based on fiscal merit

## **1** Communications

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### **Aggressively communicate to:**

- Support WSAC legislative advocacy priorities;
- Explain why WSAC legal action is the direct result of the county fiscal plight and how the legislature continues to fail to provide resources and tools for counties to deliver high quality public services;
- Explain how the Legislature and other state agencies continue to regularly impose mandates without the necessary funds to implement;
- Explain how the Legislature shirks its responsibility to provide funding and support for state services that are statutorily and constitutionally required - and instead requires counties to provide them without funding from the state;
- Explain how the state forces counties to shift the county taxpayers' money to fund new state required services and programs while the state keeps its money for its own lower priority projects and programs.

**Prepare strategy and materials to communicate to internally and externally to stakeholders on the progress of the Strategic Litigation and Communications Program.**

## 2 Litigation

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**Direct the Legal Committee to initiate review of two issues for potential legal action against the State:**

- Challenge the constitutionality of SHB 2887 (2018) requiring Spokane County to elect five County Commissioners by District. This legislation violates the uniformity clause of Article XI and creates a precedent for the Legislature to impose different requirements on different counties over county objections.
- Challenge Senate Bill 5472 (Ballot Drop Box Bill) as a violation of RCW 43.135.060, prohibition of new or extended programs without full reimbursement as a means of getting judicial review of the strength of the unfunded mandate law and signaling to the Legislature the strength of our opposition to those unfunded mandates.

**Direct the Legal Committee to initiate legal proceedings against the State for failure to provide trial court indigent defense funding, such that legislative inaction in 2019 could result in litigation in 2020.**

**Direct Legal Committee to begin research as to additional causes of action, be they related to administrative rule, statute, or constitutional.**

## 3 Administration

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- Bylaws Review and Proposed Amendments
- Comprehensive Business and Policy Manual Review and Amendments
- Communication with Members on Litigation Proceedings
- Staffing and Contractor Support
- 2019 Budget Preparation

*Approved by the WSAC  
Board of Directors on  
May 10, 2018*

# What is WSAC?



*The Washington State Association of Counties is often known as WSAC and represents all 39 counties in Washington State.*

Created in 1906, the Washington State Association of Counties (WSAC) is a voluntary, non-profit association serving all of Washington's 39 counties. WSAC members include elected county commissioners, council members and executives from all of Washington's 39 counties.

## WHO WE ARE

The Association provides a variety of services to its member counties including advocacy, training and workshops, and a forum to network and share best practices.

While voting within the organization is limited to county commissioners, council members and county executives, the Association also serves as an umbrella organization for affiliate organizations representing county road engineers, local public health officials, county administrators, emergency managers, county human service administrators, clerks of county boards, and others.

In addition, we work closely with our sister organization, the Washington Association of County Officials (WACO), which serves independently elected nonjudicial county officials including assessors, auditors, treasurers, prosecutors, coroners, clerks, and sheriffs.

## WHAT WE DO

The Washington State Association of Counties is governed by a Board of Directors led by the Executive Committee. Each year an election is held prior to the Association's Annual Meeting to select officers for the next year. Counties appoint their representative(s) to the Board.

Along with the Board of Directors, WSAC has various committees that WSAC members (elected County Commissioners, Councilmembers and Councilors) participate in. Those include the Legislative Steering Committee, the Coastal Counties Caucus and the Timber County Program.

There are also several affiliate organizations that have formed with county leaders and of whom are supported by WSAC staff. Those included County Public Health Officials (WSALPHO), County Human Services Employees (ACHS), County Commission and Council Clerks (WACCC), Solid Waste Managers (WACSWM), County and City Information Systems Employees (ACCIS), County Administrators (WCAA), County Engineers (WSACE), County and Regional Planning Directors (WSACRPD), Emergency Managers (WSEMA) and the WSU Extension Programs.

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