



# Legislative Bulletin

April 24, 2017

## Hot topics!

### **AWC priority public records bills pass Legislature**

The Legislature passed **HB 1594** and **HB 1595** when the House voted to concur on the changes made by the Senate. The bills are headed to the Governor. Find out what the final bills do.

### **Business license bill passes Legislature**

The House voted on final passage of **EHB 2005** and it is headed to the Governor for signature. Learn what the final passed version of the bill does.

## From the Director

### **Session in overtime – now what for cities?**

The 105-day regular session came to a close April 23 and we're now in 30-day special session. Operating and capital budgets have not been adopted yet, and it may take more than 30 days. July 1 is when the state needs a new budget or else the government will shut down.

## Things you can do

### **Track the Governor's bill signing action**

Curious about when Governor Inslee will sign a certain bill passed by the Legislature? Visit the Governor's website at [governor.wa.gov/office-governor/official-actions/bill-action](http://governor.wa.gov/office-governor/official-actions/bill-action) to discover which bills have been scheduled for signing, and when. You can also scroll down to find the bill signing FAQ at [governor.wa.gov/office-governor/official-actions/bill-action#faq](http://governor.wa.gov/office-governor/official-actions/bill-action#faq) Take action. Learn how long the Governor has to sign a bill, how to attend a signing, and more.

## Take action

### **Basic Law Enforcement Academy needs supplemental funding**

Call your legislators now about the need for BLEA funding in both the supplemental budget and the next biennial budget. Both are critical to meet the training demands.

## What you need to know

### **Budget & finance**

State marketplace fairness provisions in HB 2186 and its impacts on cities.

### **Economic development**

Bill authorizing cities to designate creative districts headed for Governor's desk.

### **Open government**

Update on other notable public records bills.

### **Telecommunications**

Bill addressing the permitting of small cell telecommunications facilities likely to be considered during special session.

### **Transportation**

Legislature passes transportation budget.

Bill allows longer bike racks on transit buses.

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# From the Legislative Director

## Session in overtime – now what for cities?

The 105-day regular session came to a close April 23. Operating and capital budgets have not been adopted yet, and most legislators have returned home and are not likely to return until leadership and negotiators figure out a compromise. That may take more than the 30-day special session that Governor Inslee called on April 24. July 1 is when the state needs a new budget or else the government will shut down.

AWC has prepared a simple checklist of our budget priorities and which approach – House or Senate – that we prefer. We continue to share the checklist with key legislators. While many of them are back home, now is a great time for you to do the same with your legislators with a casual chat, either over coffee or by inviting them to talk with your council.

Our messages emphasize:

1. The value and importance of continued shared revenues, and that these revenues are not redirected or reduced;
2. The importance of bringing back the Public Works Trust Fund;
3. That now more than ever, we need programs and funds to address homelessness; and
4. They can help both the state and local economies by enacting a clear way to collect sales tax from online purchases.

AWC appreciates the work accomplished so far on the policy front, such as the passage of long-sought-after public records modernization. There are numerous other outstanding policy issues likely to be considered as budget discussions inch forward, and we will keep you informed as it becomes clearer what those might be. To that end, we are moving to a twice-monthly publication of this **Legislative Bulletin** during special session(s) and will provide updates in our weekly *CityVoice* e-newsletter or if needed, through special action alerts.

It is frustrating that legislators have not yet been able to reach budget agreement but, unfortunately, not unexpected. Eventually, they will agree and you can help by reminding them to ensure that the strong city/state partnership needed to keep our communities safe and strong is maintained.

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# Budget & finance

## Business license streamlining bill passes

The House voted on final passage of EHB 2005 last week, and it is headed to the Governor for signature.

The final passed version of the bill:

- Requires cities to partner with the state's business licensing system in the next five years, if funding is appropriated. The timeline is phased in over 10 years if funding is not provided;
- Provides an exemption for cities to choose FileLocal as an alternative for business license administration through 2020;
- Allows the Department of Revenue to grant up to a three-year delay for a city based on a fiscal or technical hardship;
- Requires cities to develop and implement by January 1, 2019, a model licensing ordinance that includes a minimum threshold; and
- Creates a work group on apportionment of service income under RCW 35.102.130 staffed by the Department of Revenue that will make recommendations by October 31, 2018.

Watch for further communications regarding these projects and task forces in future *Legislative Bulletins* and training sessions at events such as the AWC Annual Conference.

## Impacts of State Marketplace Fairness Act on cities

One of the provisions of the House revenue bill **HB 2186** includes a state version of long-time AWC federal legislative priority, a state version of "marketplace fairness." This section of the legislation requires collection of sales tax by out-of-state retailers, or reporting on customers for use tax collection -- "state marketplace fairness." The Department of Revenue (DOR) estimates that this will result in \$329 million for the state for 2017-19 (\$974 million for 2017-21, effective date January 1, 2018) and \$128.6 million for local governments for 2017-19 (\$380.5 million for 2017-21). Based on DOR's estimates, this would result in \$38 million for cities for 2017-19, and would grow each year the trend of retail activity moving to the internet continues.

The House budget also assumes a suspension of the streamlined sales tax (SST) mitigation program in 2019-21 for all local entities that receive these distributions, except the public facilities districts that receive mitigation based on a sales tax credit.

The special session will create unique opportunities to connect with your legislators and for you to provide your city's opinion on these proposals.

Messages to deliver:

- Cities support the provisions of **HB 2186** to implement marketplace fairness. It will help level the playing field between local brick and mortar businesses and out-of-state internet retailers in sales tax collections, a long-standing legislative priority for cities.
- Updating sales tax collections to reflect the growing reliance on internet sales makes sense in Washington, the most sales-tax-dependent state. Sales tax revenues account for almost 50 percent of Washington's revenues in the operating budget.
- Washington is following a number of other states that have taken state action to address this issue since Congress has failed to take action on federal marketplace fairness legislation.

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- This is not a new tax. Instead, it is collection of a tax already due on retail sales and use.
- The state should uphold the deal made in 2007 to provide mitigation to impacted jurisdictions when the Legislature implemented destination-based sourcing. SST mitigation funding should continue as was intended in the 2007 legislation. The mitigation formula is set to have mitigation end when an individual jurisdiction's gains from voluntary and new out-of-state retailers exceed the losses from the shift to destination sourcing.

For more information on other provisions of HB 2186 and the impacts of budget proposals, see the Hot Sheet.

### **SST mitigation history**

Washington State made changes to its sales tax system, including changing from an origin-based sales tax sourcing system to a destination-based sales tax sourcing in 2007 so that it could join the National Streamlined Sales Tax Agreement, a multi-state effort to streamline sales tax administration. This was intended as a step in implementing sales tax collection requirements on internet sales, convincing Congress to act on federal legislation requiring sales tax collection by internet retailers, and giving a voice to Washington on the governing board of the national agreement. Under the national agreement, companies can “voluntarily” join and collect tax on behalf of the member states in return for financial assistance in collection costs and liability protections for uncertain tax nexus status.

The sourcing change from original to destination resulted in cities, counties, and other local jurisdictions with negative and positive impacts, particularly negative impacts for those cities with large warehouses or a retail base that included delivery based items such as furniture that had previously sourced sales tax to those warehouse or store jurisdictions under origin-based sourcing.

As part of the agreement with impacted jurisdictions in implementing the change, the legislation included approximately \$49 million per biennium in SST mitigation. The program mitigates actual sales tax losses based on 2008 data, reduced by actual voluntary compliance new revenues. The calculation would also include new revenues if Congress acted on mainstreet fairness to require collection by internet retailers. Mitigation was designed to end for jurisdictions when voluntary compliance new revenues exceeded losses. In 2009, 86 jurisdictions, including 55 cities, received mitigation. In the first quarter of 2017, 57 jurisdictions, including 49 cities, received mitigation. The largest mitigation recipient is King County Metro. For cities, the largest mitigation recipients are Kent, Auburn, Tukwila, Issaquah, Spokane Valley, Fife, Woodinville, Sumner, Everett, Lynnwood, and Pasco.

Based on initial impact estimates for **HB 2186** state mainstreet fairness, for at least 11 of the mitigation jurisdictions, the new revenue resulting from new sales tax collections from out-of-state retailers in **HB 2186** would not exceed their expected SST mitigation payments.

### **Legal challenges related to sales tax collection**

In the 1992 case *Quill Corp. v. North Dakota* ([scholar.google.com/scholar\\_case?case=3434104472675031870&q=Quill+Corp.+v.+North+Dakota&hl=en&as\\_sdt=20006&as\\_vis=1](https://scholar.google.com/scholar_case?case=3434104472675031870&q=Quill+Corp.+v.+North+Dakota&hl=en&as_sdt=20006&as_vis=1)), the Court held that states cannot require retailers who do not have in-state physical presence to collect sale and use tax. As internet sales have increased, this case has become more problematic for states, and especially for Washington, which is almost 50 percent dependent on sales tax for general fund revenues.

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In 2015, Justice Kennedy wrote a concurrence in *Direct Marketing Association v. Brohl* ([www.supremecourt.gov/opinions/14pdf/13-1032\\_8759.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1032_8759.pdf)) in a case involving Colorado information reporting requirements stating that the “legal system should find an appropriate case for this Court to reexamine *Quill*.”

The concurrence recognized the changed circumstances of the last 20 years of *Quill* has had on state and local governments due to:

- Rise of internet purchases;
- Congress’s failure to pass the Marketplace Fairness Act; and
- States’ need to improve use tax collection.

Two states, South Dakota and Alabama, have enacted sales tax collection requirements that are moving through the local courts, with the expectation of review by the US Supreme Court as a “*Quill* challenge.”

Some states have taken other steps to improve collections by out of state businesses. Colorado, Oklahoma, South Dakota, and Vermont have enacted reporting requirements on remote sellers.

Several other states including Washington, Georgia, North Carolina, Illinois and New York have enacted click through or business-affiliate sales tax nexus requirements.

## Economic development

### Bill authorizing cities to designate creative districts headed for Governor’s desk

Local governments with limited access to economic development resources would be allowed to designate a portion of their territory as a “creative district” through a bill that has passed the Legislature and is on its way to Governor Inslee’s desk for signature.

**HB 1183** sponsored by Rep. Joan McBride (D-Kirkland), would grant authority to the Washington State Arts Commission to certify creative districts designated by local governments or tribes as areas that promote “cultural facilities, creative industries, or arts-related business.” The district must be geographically contiguous, include concentrations of artistic or cultural activity, and be distinguished by physical, artistic, or cultural resources that play a vital role in the quality and life of a community.

Earlier versions of the bill that limited appropriations for the program were removed. The House included \$156,000 in its budget for this program and are working to ensure funding is appropriated in the final budget.

## Open Government

### Update on other notable public records bills

Aside from AWC’s top priority public records bills, we have been following a few other notable bills on the topic.

**SB 5207** passed through both chambers and has been signed by the Governor. The bill exempts disclosure of GPS data that would indicate the location of any public employee or volunteer. The bill’s effective date is July 23, 2017.

**HB 1417** passed both chambers and is awaiting the Governor’s signature. If signed, the bill would allow governing boards and city councils to hold executive sessions to consider matters of information technology (IT) security and vulnerability.

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# Public safety & criminal justice

## Basic Law Enforcement Academy needs supplemental funding – Call your legislators

AWC has been advocating for full funding of additional Basic Law Enforcement Academy (BLEA) classes for new recruits. We have been successful getting the Legislature to acknowledge and fund the needed classes in the next biennium, 2017-19. However, it is also important for the Legislature to include additional funding in the supplemental operating budget for the current biennium, 2015-17, to cover the number of classes needed to keep up with training demand.

- BLEA needs \$2.4 million in the current supplemental operating budget. The House included this in their proposal, but the Senate did not. Without the funding, there will be an impact on the number of classes offered in the future creating a six-month backlog, or longer.
- BLEA also needs funding for 18 classes per year in the coming biennium, 2017-19, to keep up with the number of new recruits needed. The Senate budget funded the full 18 classes, but the House budget only covers 16 per year. Without funding for a full 18 classes, the Training Commission cannot run two classes in Spokane that are important for eastside jurisdictions.

**Please call your legislators now about the need for both the supplemental budget funding and the funding for the next biennium. Both are critical to meeting the training demands.**

Here are some important facts about BLEA. Washington is a national pioneer in centralized, state-mandated law enforcement training. To pay for the basic police officer training, a portion of local traffic ticket revenue is sent to the state – \$22.2 million in fiscal year 2016. Agencies are facing a wave of retirements, with 17 percent of officers eligible for retirement today, and an additional five percent becoming eligible in the next three years. A training backlog impacts public safety, lowering the potential number of officers on the street and costing cities more because they must pay overtime to backfill those positions while still paying salary and benefits to new recruits waiting for training.

Law enforcement training must be prioritized and the Legislature should support increased class funding for the Basic Law Enforcement Academy to ensure that public safety is not compromised.

For more background on BLEA check out this issue brief at [awcnet.org/portals/0/documents/legislative/issuebriefblea.pdf](http://awcnet.org/portals/0/documents/legislative/issuebriefblea.pdf).

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# Telecommunications

## Likely action on small cell telecommunications facility permitting “5G” bill

Normally the end of the legislative session means that either legislative proposals have survived and are headed to the Governor for his signature, or bills are considered dead for the year. Technically **SB 5711**, the bill informally known as the 5G bill, is dead for this year since it failed to pass the Senate prior to the cutoff for bills in the house of origin. However, cities, PUDs, Ports, and various telecommunications industry representatives have been in regular discussions with staff in the Governor’s office to talk about Part 1, siting and permitting small cell facilities; Part 2, pole attachment rates; and Part 3, rural broadband deployment. The Governor’s office has stated they have a strong interest in the development of more access to broadband services in unserved and under-served areas of our state. The telecommunications industry has an interest in lowering their cost of attaching telecommunications facilities on poles and speeding up the time it takes to site and permit their small cell equipment. In addition, cities are interested in protecting their responsibility to manage the public rights of way and city-owned property, while providing an efficient process for permitting and siting this infrastructure.

As mentioned in previous *Bulletin* articles, cities have offered an alternative to preemption of authority that was included in the original version of the bill. Under our proposal, cities with populations of more than 5,000 would enact a small cell facility deployment ordinance that outlines the standards and process for issuing small cell permits. Cities would also exempt small cell facilities from conditional use permits on existing poles, while retaining this option when new poles are needed. This proposal would have no effect on previously adopted franchises, permits or agreements for small cell facilities. The proposal calls for the ordinance process to address design standards, public process, fees and cost recovery, and standards for facilities outside the rights of way.

We anticipate the discussions will continue into the special session. Our goal has been to avoid preemption while being responsive to the new telecommunications infrastructure that many communities will be working to accommodate in the next couple of years.

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# Transportation

## Legislature passes transportation budget

While the Legislature was not able to pass an operating budget in the 105-day regular session, they were successful in passing a transportation budget. Although the large transportation package (known as Connecting Washington) was passed two years ago, the 2017-2019 budget is still significant for cities and contains several items of interest. These include:

- \$250,000 of city fuel taxes for the Department of Fish and Wildlife to identify city-owned fish passage barriers that share the same stream systems as state-owned fish passage barriers. This study will identify, map and provide a preliminary assessment of city-owned barriers that need correction. The study shall provide recommendations on: (a) How to prioritize city-owned barriers within the same stream system of state-owned barriers in the current six-year construction plan to maximize state investment; and (b) How future state six-year construction plans should incorporate city-owned barriers. A report must be provided to the Office of Financial Management (OFM) and the transportation committees of the Legislature by July 1, 2018.
- \$60,000 of city fuel taxes for the Freight Mobility Investment Board (FMSIB) to manage and update the road-rail conflicts database produced as a result of the Joint Transportation Committee's "Study of Road-rail Conflicts in Cities", in 2016. The board must update the database using data from the most recent versions of the Washington State freight and goods transportation system update, marine cargo forecast, and other relevant sources. The database must continue to identify prominent road-rail conflicts that will help to inform strategic state investment for freight mobility statewide. The proviso tasks FMSIB with forming a committee including, but not limited to, representatives from local governments, the department of transportation, the utilities and transportation commission, and relevant stakeholders to identify and recommend a statewide list of projects using a corridor-based approach. The board must provide the list to the transportation committees of the Legislature and OFM by September 1, 2018.
- \$43,800,000 of federal appropriations to National Highway Freight Network projects as identified on the Prioritized Freight Project list submitted to the Legislature in October of 2016. The list, completed by the Department of Transportation (DOT), prioritizes freight projects. Only the first tier of projects on the prioritized list that were validated by DOT may receive funding at this time. The DOT must continue to work with the WA Freight Advisory Committee to improve project screening and validation. DOT was not eligible to compete for funding in this first round, but will be for the 2019-2021 biennium.
- \$160,000 for the Joint Transportation Committee (JTC) to contract with the University of Minnesota to analyze and assess traffic data from the I-405 Express Toll Lanes.
- \$300,000 to the Transportation Commission to continue to evaluate a road usage charge (RUC) as an alternative to the motor vehicle fuel tax to fund investments in transportation. The Transportation Commission is piloting a project to study this alternative. You can learn more about the project [here](#).

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- Permission to the DOT to advance one or more of the following projects (on a pilot basis) from the 2015 Connecting Washington Transportation package if funding for a project within the current fiscal biennium cannot be used and DOT expects to have substantial reappropriations for the 2019-2021 biennium:
  - Sharpes Corner Vicinity Intersection;
  - I-5/Marvin Road/SR 510 Interchange;
  - I-5/Northbound On-ramp at Bakerview;
  - US 395/Ridgeline Intersection;
  - I-90/Eastside Restripe Shoulders;
  - SR 240/Richland Corridor Improvements;
  - SR 14/Bingen Overpass;
  - US Hwy 2 Safety;
  - SR 520/148th Ave NE Overlake Access Ramp;
  - SR 28/SR 285 North Wenatchee Area Improvements;
  - I-5/Rebuild Chambers Way Interchange Improvements;
  - SR 28 East Wenatchee Corridor Improvements;
  - SR 3/Belfair Bypass – New Alignment; or
  - SR 510/Yelm Loop Phase 2 (T32700R).

The budget now heads to Governor Inslee's desk for his signature. AWC would like to thank the members of the House and Senate transportation committees for all of their work this session to get this important budget passed. As we continue to comb through the budget, we will provide updates as necessary and needed.

## Bill allows longer bike racks on transit buses

**HB 1149** allows longer bike racks on transit buses. Governor Inslee signed the bill into law on April 20. **HB 1149** came out of the recognition that some transit vehicles were out of compliance with state law. The bill exempts public transit vehicles equipped with a bike rack that extends up to four feet off the front of the bus from the front extension limit of three feet.

## AWC Legislative Contacts

During the legislative session, AWC's lobbyists often are unable to return your phone calls immediately. If you have a legislative or specific issue question, please request AWC's analyst staff, or send them an email.

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