



# Legislative Bulletin

July 24, 2017

## Hot topics!

### **Legislature leaves town without adopting a capital budget or addressing water issues**

The two remaining issues of the 2017 legislative session are unresolved at end of the third special session. Find out what happened and ask your legislators to keep working, to keep an open mind, and to find a way to get to a mutually-acceptable agreement.

## From the Director

### **Third special session ends without passage of a capital budget**

With session over, AWC is disappointed that the Legislature failed to approve critical funding for numerous infrastructure programs and projects cities rely on, including the possibility that Legislature would have appropriated funds for a Public Works Trust Fund loan list for the first time in four years.

## Things you can do

### **Work with your local media**

Are there projects in your community that are affected by the Legislature's inability to pass a capital budget? This could include things like specific projects halted or delayed, jobs lost, etc. that negatively impact your residents. Share the story with your local media. Give them specific examples. This will let your community members know how the issue impacts them at the local level.

## Media time

### **New public records laws and what you need to know**

If you missed our sold-out public records webinar on July 17, it's now available as an eLearning opportunity on our website. Hear AWC, MRSC, and WSAC staff discuss the new public records laws, legislative background, charging electronic fees, data tracking requirements, the process for clarifying requests, bot requests, training requirements, and other frequently asked questions.

## What you need to know

### **Budget & finance**

Business license bill goes into effect. Here is a summary of the three main provisions of the bill.

JLARC releases lodging tax report.

Department of Revenue releases updated marketplace fairness and streamlined sales tax mitigation estimates.

### **Infrastructure**

New law may require you to update responsible bidder forms.

### **Marijuana**

Liquor and Cannabis Board releases fact sheet outlining new signage and marketing restrictions for marijuana licensees.

### **Open government**

JLARC releases preliminary guidance on public records reporting.

### **Personnel**

Budget includes new LEOFF 2 state/employer contribution shift under special circumstances.

### **Public safety & criminal justice**

New distracted driving bill now in effect.

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# From the Legislative Director

## Third special session ends without passage of a capital budget

After a record-breaking 193 days, legislators adjourned their third special session on July 20 without passing a capital budget. AWC is disappointed that the Legislature failed to approve critical funding for numerous infrastructure programs and projects cities rely on, including the possibility that Legislature would have appropriated funds for a Public Works Trust Fund loan list for the first time in four years.

As we have been reporting, compromise agreement on the complex water issues created by the *Hirst* decision continued to elude legislators, and they held up the capital budget as a result. For more information, see the capital budget article at [awcnet.org/Advocacy/Newsandupdates/LegislativeIssues/TabId/677/ArtMID/1863/ArticleID/1851/Capital-budget-and-water-deal-eludes-Legislature.aspx](http://awcnet.org/Advocacy/Newsandupdates/LegislativeIssues/TabId/677/ArtMID/1863/ArticleID/1851/Capital-budget-and-water-deal-eludes-Legislature.aspx)

Legislators might still come back to negotiate an agreement in the coming days, weeks or months, but it remains uncertain if or when that might happen.

We also recognize that the previous regular and special sessions included passage of legislation addressing issues such as public records, a *McCleary* school funding fix, and a state version of Marketplace Fairness sales taxes on internet sales.

Meanwhile, we've begun the process of preparing ideas for our legislative priorities for the upcoming 60-day session in 2018. The AWC Legislative Committee is meeting later this week to begin reviewing ideas for their recommendation to the AWC Board in September.

Finally, this *Legislative Bulletin* concludes our reporting on the 2017 regular and special sessions, unless of course if legislators come back to address a capital budget and water issues. Next month, look for our annual *Final Bulletin* summarizing action on legislation in the 2017 session, and an invitation to attend AWC's Regional Meetings scheduled for October and November in ten locations around the state. We'll continue to keep you posted about important issues in Olympia and D.C. with articles in our weekly *CityVoice* newsletter and in our monthly *Bulletin* starting after Labor Day.

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# Budget & finance

## JLARC lodging tax report

On July 19, the Joint Legislative Audit & Review Committee (JLARC) heard a presentation on the use of lodging taxes by cities and counties in 2016. Their information showed 98 percent compliance by jurisdictions required to report, but also noted blanks in the detail of the data reported. See the report [here](#).

As we have previously reported, the proponents of **SSB 5827**, which would have limited city authority related to lodging tax use, were concerned about the completeness of reporting to JLARC in addition to concerns about lodging tax expenditures. While the bill did not pass, we expect to see this issue raised again next session.

## Implementation of business license bill

**EHB 2005** took effect on July 23, 2017. It has three main provisions:

**1. Requires all cities with business licenses to partner for administration of business licenses by 2022 with the state business licensing service (BLS) or by 2020 with FileLocal, the city licensing and local tax administration portal.**

AWC is planning several opportunities to provide cities more information on these options, including presentations by FileLocal ([awcnet.org/portals/0/documents/training/materials/conference/2017/40understandbuslicenserulesfitzpatrick.pdf](http://awcnet.org/portals/0/documents/training/materials/conference/2017/40understandbuslicenserulesfitzpatrick.pdf)) and BLS ([awcnet.org/portals/0/documents/training/materials/conference/2017/40understandbuslicenseruleswilson.pdf](http://awcnet.org/portals/0/documents/training/materials/conference/2017/40understandbuslicenseruleswilson.pdf)) at the AWC conference in June. A similar session is planned for the Washington Finance Officers Association conference in September.

**2. Requires cities to adopt a model business license threshold by January 2019.**

We are in the process of convening a group of cities to begin drafting a model license threshold next month. We plan to provide regular updates on the progress of this project as we work towards meeting the June 2018 deadline to develop the model.

**3. Creates a task force chaired by the Department of Revenue to recommend changes to the two-factor formula for service income apportionment for local B&O taxes.**

The first meeting of the task force is scheduled for August 16 at the Department of Revenue in Tumwater, and the task force will meet monthly through July 2018. We plan to provide regular updates to cities with a local B&O tax on their work.

Please contact Victoria Lincoln or Sheila Gall if you have questions.

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## Marketplace fairness and streamlined sales tax mitigation estimates updated

**EHB 2163** included a state version of a long-standing AWC priority, the Marketplace Fairness Act that takes effect on January 1, 2018. The Department of Revenue (DOR) recently released updated estimates of impacts to cities for the local sales tax revenues expected from out-of-state internet retailers, which are now estimated to be \$40.9 million for 2017-19.

These revised estimates also include updated estimates for Streamlined Sales Tax (SST) mitigation, which will include the new sales tax revenues in the existing calculation of net losses for jurisdictions impacted by the 2007 change to destination-based sourcing of sales taxes. For more information see the DOR spreadsheet at [awcnet.org/portals/0/documents/legislative/HB2163LocalImpactDetail.pdf](http://awcnet.org/portals/0/documents/legislative/HB2163LocalImpactDetail.pdf). Under **EHB 2163**, this mitigation will be phased out by October 2019.

The Mitigation Advisory Committee ([dor.wa.gov/content/findtaxesandrates/retailsalestax/destinationbased/sstmitigation.aspx](http://dor.wa.gov/content/findtaxesandrates/retailsalestax/destinationbased/sstmitigation.aspx)) will help DOR determine the impacts of **EHB 2163** on jurisdictions receiving SST mitigation. The committee had already scheduled its annual meeting on July 24 via conference call. AWC plans to participate in the meeting with the city representatives, and a review of **EHB 2163** has been added to the committee's agenda for discussion.

## Environment & land use

### Capital budget and water deal eludes Legislature

The two remaining issues of the 2017 legislative session are unresolved as legislators were unable to find common ground before the end of the third special session on July 20. Without an agreement on the *Hirst* water issue, the Senate appears prepared to hold to their position that they will not pass a capital budget. As of now, what promised to be a pretty positive capital budget for cities will stay on the shelf.

The water discussions progressed quite a bit throughout the session with general agreement that the Department of Ecology is the appropriate manager of water resources, that a new fee would be established on well drilling, and that resources from that fee would be spent on in-stream flow restoration to offset impacts from development. The House and Senate were unable to come to agreement about what role Tribal Governments would have in mandating the state close regions to well-dependent development if they were unhappy with the progress of restoration work. Ultimately the House wanted unilateral Tribal ability to shut down development if they were not satisfied with mitigation investments, while the Senate felt that authority to close basins for new water uses was appropriately the role of the state after a robust public process.

When it became clear that the sides were too far apart to reach agreement, House negotiators offered a two-year timeout on enforcement of the *Hirst* decision to give time to find an ultimate solution. The Senate rejected that approach expressing concerns that it would create too much uncertainty and negatively affect landowners and developers that need water and local governments that are trying to plan for future growth. The Senate wanted a permanent fix.

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There are glimmers of hope as water negotiators vowed to keep working. AWC continues to work with all parties to see if common ground can be reached, both for the sake of clarity around water management and to clear the way for the capital budget. Cities who are interested in either of those outcomes are encouraged to ask your legislators to keep working, to keep an open mind, and to find a way to get to a mutually-acceptable agreement.

Please contact Carl Schroeder if you have any questions.

## Infrastructure

### **New law may require you to update responsible bidder forms**

**SB 5301**, Sen. Miloscia (R-Federal Way), amends the state's responsible bidder criteria. Effective July 23, 2017, bidders are now required to submit a signed statement verifying, under penalty of perjury, that they comply with the new responsible bidder criteria requirement for the state's wage laws.

Under the new law, local governments and other agencies must consider whether a final and binding citation and notice of assessment has been issued by the Department of Labor and Industries or through a civil judgement that the bidder willfully violated any provision of the state's wage laws in three years before the date of the bid solicitation.

You may include this form in your bid documents. MRSC has developed a sample form you can access here.

## Marijuana

### **Liquor and Cannabis Board releases 2017 legislative factsheets**

The Liquor and Cannabis Board (LCB) recently released a set of factsheets on legislation that passed in the 2017 legislative session. Notably for local governments is a factsheet on the restrictions of marijuana licensees, available here at [lcb.wa.gov/sites/default/files/publications/Marijuana/5131-Advertising-Notice.pdf](http://lcb.wa.gov/sites/default/files/publications/Marijuana/5131-Advertising-Notice.pdf). The factsheet contains plain-language analysis on business signs, outdoor signs, billboards, and other restrictions.

More recently-released LCB factsheets can be found here at [lcb.wa.gov/laws/2017-fact-sheets](http://lcb.wa.gov/laws/2017-fact-sheets).

## Open government

### **Preliminary guidance on new public records reporting requirements**

**HB 1594** created a new reporting requirement for certain public records data from agencies that meet a \$100,000 threshold. The Joint Legislative Audit and Review Committee (JLARC) has been tasked with collecting this data and working with stakeholders (AWC is a member of the stakeholder group) to further define the reporting criteria and develop a common reporting methodology. JLARC has begun working with a group of stakeholders and has provided the following preliminary guidance.

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## **From JLARC**

Questions about new requirements for public records data reporting:

### **When and where can I find guidance about reporting data?**

In response to **ESHB 1594** Section 6 (5), JLARC staff are developing data standards and an approach to collecting information about public records requests. JLARC staff are working with an advisory group and consultants, and will reach out to additional stakeholders in the coming months.

Formal guidance will be available in the next few months for information that must be reported in July 2018. JLARC staff anticipate needing this time to develop definitions in order to ensure data will be as consistent as possible across multiple entities.

We realize that there will be uncertainty about what information to track internally until formal guidance is provided. We suggest entities make efforts to prepare for reporting in July but acknowledge that you may need to adjust your approach to align with forthcoming guidance. Please consult with your legal counsel if you are unsure about interim approaches. You should fully implement other provisions outside of Section 6(5) of the law effective July 23, 2017.

### **Do I have to report?**

You must report if your entity's public records costs exceed \$100,000. In determining whether you meet this threshold, please consider:

- Legal costs incurred in the course of responding to a records request. Do not include legal costs of litigation after responding to a records request.
- Whether you have one FTE or equivalent across multiple staff who are responsible for responding to records requests during the fiscal year. If so, your costs would likely approach \$100,000.

### **Where can I find more information?**

Check JLARC's webpage at [leg.wa.gov/jlarc/Pages/publicRecAdmin.aspx](http://leg.wa.gov/jlarc/Pages/publicRecAdmin.aspx) for updates and information. You may also contact AWC, WSAC, MRSC, or [JLARCPublicRecordsStudy@leg.wa.gov](mailto:JLARCPublicRecordsStudy@leg.wa.gov).

## **Webinar on new public records laws now available**

Last week AWC joined MRSC and the Washington State Association of Counties (WSAC) to host a webinar about the new public records laws.

The webinar covers what governments need to know in order to comply with the new law. Topics include legislative background, charging electronic fees, data tracking requirements, the process for clarifying requests, bot requests, training requirements, and more.

Watch the recorded webinar at [awcnet.org/DataResources/Resourcesbytopic/TabId/941/ArtMID/2423/ArticleID/1841/New-public-records-laws-and-what-you-need-to-know.aspx](http://awcnet.org/DataResources/Resourcesbytopic/TabId/941/ArtMID/2423/ArticleID/1841/New-public-records-laws-and-what-you-need-to-know.aspx) to find out what the new laws mean to you!

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# Personnel

## Budget includes new LEOFF 2 state/employer contribution shift under special circumstances

The state's newly-passed operating budget includes a new item of interest to LEOFF 2 employers. Section 963 of the budget bill states that "when an employer charges a fee or recovers costs for work performed by a plan member where: (a) the member receives compensation that is includable as basic salary... **and** (b) the service is provided, whether directly or indirectly, to an entity that is not an "employer"...; **the employer shall contribute both the employer and state shares of the cost of the retirement system contributions** for that compensation. Nothing... prevents an employer from recovering the cost of the contribution from the entity receiving services from the member."

The agency that administers the LEOFF 2 system, the Department of Retirement Systems (DRS), is working to interpret and implement this budget provision. AWC is working with DRS to ensure that all AWC members are duly informed of the changes. If you have questions or concerns, please contact Candice Bock or Logan Bahr.

# Public safety & criminal justice

## New distracted driving bill now in effect

A new law on distracted driving went into effect on July 23, 2017. The new law, **SB 5289**, states that a person operating a vehicle while using a cell phone or other electronic device is guilty of a traffic infraction. However, drivers may still use hands-free devices for calls and text messages.

The definition of "using a device" is greatly expanded from current law and includes:

- Holding a device in either hand;
- Using your hand or finger to read, write, or send email, text messages, instant messages, or other electronic data;
- Taking a picture; and
- Watching a video.

However, the minimal use of a finger to activate or initiate a function of a device is allowed.

There are two major exemptions included for:

1. Drivers using a device to contact emergency services; and
2. Emergency personnel, transit system employees, and commercial truck drivers.

The new law also expands the definition of "personal electronic device" as any portable electronic device that is capable of wireless communication or electronic data retrieval and is not manufactured primarily for hands-free use in a motor vehicle. This includes cell phones, tablets, laptops, two-way messaging devices, and electronic games. Excluded from this definition are two-way radios, citizens band (CB) radios, and amateur radio equipment.

The monetary penalty for the first distracted driving infraction is \$136 and the penalty increases to \$235 on the second and subsequent offenses. The law also included preemption language that preempts local governments from passing laws, ordinances, or rules on distracted driving.

For more information, the Washington Traffic Safety Commission has setup a website at [wadrivetozero.com/distracted-driving](http://wadrivetozero.com/distracted-driving) to assist in understanding the new law.

The Department of Licensing (DOL) has also initiated emergency rulemaking in order to update the Model Traffic Ordinance to include the new law. Visit the DOL rulemaking webpage at [dol.wa.gov/about/driversrules.html](http://dol.wa.gov/about/driversrules.html) for more information. *continued*

## **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.

Call AWC at (360) 753-4137 or 1-800-562-8981

### **Dave Williams**

Director of Government Relations  
davew@awcnet.org

### **Candice Bock**

Government Relations Advocate  
candiceb@awcnet.org  
Issue areas: Emergency management, law & justice, liability, marijuana, pensions, personnel & labor relations, public records

### **Victoria Lincoln**

Government Relations Advocate  
victorial@awcnet.org  
Issue areas: Energy, general government, municipal finance, state budget, telecommunications

### **Carl Schroeder**

Government Relations Advocate  
carls@awcnet.org  
Issue areas: Environment & water, housing, infrastructure, land use, state building codes

### **Jane Wall**

Government Relations Advocate  
janew@awcnet.org  
Issue areas: Economic development, human services, infrastructure, transportation

### **Logan Bahr**

Government Relations Advocate  
loganb@awcnet.org  
Issue areas: Emergency management, general government, health care (non-personnel issues), human services, law & justice, liability, marijuana, public records

### **Dave Catterson**

Government Relations Analyst  
davec@awcnet.org  
Issue areas: Economic development, energy, environment & water, housing, infrastructure, land use, state building codes, telecommunications, transportation

### **Vacant**

Government Relations Analyst  
Issues areas: Municipal finance, pensions, personnel & labor relations, state budget

### **Regina Adams**

Government Relations Coordinator  
reginaa@awcnet.org  
Issues area: Federal

### **AWC CEO**

Peter B. King, peterk@awcnet.org

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