



Legislative bulletin

January 9, 2023

Hot topics

Critical housing bond proposals will be heard the first week of session

Both the House and Senate have scheduled hearings for Governor Inslee's proposal to send a \$4 billion bond referendum to voters to fund and build affordable housing and provide associated services. As the AWC Housing Solutions Group highlighted, the state needs billions of additional investments in affordable housing if we are to meet the identified need. This proposal makes a significant starting investment towards that end.

Proposed state constitutional amendment aims to protect local government public works funding

A bipartisan bill would establish a public works revolving account in the state Treasury, to be used strictly for the purpose of providing loans and grants to local governments for infrastructure projects. The bill comes in the wake of repeated sweeps of the Public Works Assistance Account by the state Legislature. The proposal requires an amendment to the State Constitution, meaning if the bill is passed this legislative session, the measure would go before the public in the next general election.

Governor's 2023-25 budget proposals scheduled for hearings

Governor Inslee's proposed budgets for 2023-25 are scheduled for hearings on January 10 in the Senate and January 11 in the House. The proposals address key city priorities around housing, behavioral health, infrastructure funding, and expanding police training. See the article and city budget impact summary for more details.

Media time

Have you registered for City Action Days?

February 15-16 | Olympia

It's our first in-person City Action Days in three years and is already on track to sell out. If you haven't been to one before, or can't remember what it's like to attend, check out this video to catch those vibes and then register now before it's too late! We can't wait to see you there!

Read our updated fact sheets

We recently updated our legislative fact sheets in time for the legislative session. Learn more about each priority issue and find data and talking points that you can easily share with your legislators. Don't forget to schedule meetings with them—each fact sheet will help you understand the city standpoint and frame your legislative ask with a consistent, unified voice.

View from the hill

It's here! The 2023 session kicks off today!

After months of telling you that session was just around the corner, it's now actually here. The 105-day session kicks off today with some pomp and ceremony—and the rest of the week is filled with formalities like the Governor and Chief Justice's addresses to the Joint Legislature along with a plethora of committee meetings. Those committee meetings include sorting out logistics, work sessions on general topics, and public hearings on specific bills. Read the rest of this Bulletin for the download on some of the bills up for hearing this first week. Also, don't miss our first city action call on Friday, January 13 at 12:30pm.

Register for City Action Days!

February 15-16 | Olympia

City Action Days is back in person for 2023! Don't miss this critical opportunity to engage legislators and immerse yourself in the legislative process. It's your chance to interact with city colleagues and collectively educate statewide decision-makers about city legislative priorities. Enjoy informative sessions, networking opportunities, and a day of focused Capitol Campus meetings. Start making appointments to meet with your legislators while you are in Olympia. Register now!

Things you can do

Has your city received BIL funding? AWC would love to hear.

It's been one year since the Bipartisan Infrastructure Law was passed and notices of funding opportunities for federal infrastructure dollars began to open. Several Washington cities have applied to BIL funded programs, and some have even won. If your city or town has been awarded, or is in the process of applying for, BIL funding, AWC would like to learn about the project and share your story. Please contact Brianna Morin, Legislative & Policy Analyst, by February 1.

Improve local internet access—Engage your residents to report their broadband speeds by January 13

The Federal Communications Commission's (FCC) National Broadband Map shows where internet service is reportedly available or not—down to your residents' neighborhood and home levels. The information comes from internet service providers and might not be accurate. Your residents can look up their location and challenge any inaccuracies. These maps will ultimately impact where federal BIL broadband funding is allocated, so engaging residents to ensure accurate data on coverage is important.

continued

What you need to know

Affordable housing: Middle housing mandate is back and is even more restrictive. Companion bills have been introduced that propose to increase middle housing in areas traditionally dedicated to single-family detached housing by mandating specific upzoning and prohibiting a prescriptive list of development regulations.

Bill would eliminate external design review boards. However, cities would retain the ability to address housing development design standards administratively.

New requirement proposed for tree protection ordinances. With the goal of increasing housing development options in urban areas, a proposal would mandate any city that requires protection of trees during development to establish an option to meet obligations using a “tree bank.”

Innovative proposal to address our housing crisis has been introduced to facilitate the conversion of existing buildings for residential purposes. While adaptive reuse of existing buildings is intriguing, some elements of the bill overly restrict city authority.

Broadband & telecommunications: The FCC announced the opening of the next National Broadband Map data submission window for broadband access data as of December 31. The window is open through March 1 and local governments are eligible to participate.

Budget & finance: The House Finance Committee will be briefed on the recommendations of the State Tax Structure Work Group on January 12.

COVID-19: Your city may need to send tax forms to ARPA recipients. If your city provided direct financial support to businesses or nonprofits using ARPA funds, you may need to send out tax forms to those organizations.

Emergency management & cybersecurity: A bill that would create an Extreme Weather Response Grant program is scheduled for a hearing the first week of the 2023 legislative session.

Energy: Water and electric utility shutoff during extreme heat prohibited under new bill. Cities would be required to reconnect customers previously disconnected due to non-payment.

continued

General government: A bill to amend the Washington Voting Rights Act has been scheduled for public hearing this week.

HR & labor relations: Bills on providing employee records and discrimination in hiring for cannabis use are up for hearing in the Senate in Week 1 of session.

House labor committee begins session with hearings on recording independent medical exams and allowing some workers who voluntarily leave their jobs access to unemployment benefits.

Human services: Attorney General Bob Ferguson (AG) announced five resolutions with drug companies totaling over \$400 million for Washington state and eligible local governments.

Open government: A bill that aims to reduce administrative burden of redacting and releasing video from body worn cameras is scheduled for a hearing the first week of the 2023 legislative session.

A new bill impacting open public meeting requirements would penalize individuals for failing to notice comment deadlines.

Public safety & criminal justice: Blake fixes are top of mind for Legislators as session begins.

The Attorney General's (AG) Office has released a new opinion on use of "physical force" by law enforcement, interpreting laws passed in 2021 (HB 1310 and HB 1054) and clarified in 2022.

Public works & infrastructure: Send us your feedback on public works contracting proposals related to prevailing wage adjustments and responsible bidder criteria.

Transportation: Freight Mobility Board heads toward major bends in the road. A new bill proposes to modify the Board's size, purpose, and duties.

continued

Affordable housing

Critical housing bond proposals will be heard the first week of session

Contact: Carl Schroeder, Shannon McClelland

Both the House and Senate have scheduled hearings for Governor Inslee's proposal to send a \$4 billion bond referendum to voters to fund and build affordable housing and provide associated services.

HB 1149 and **SB 5202** are relatively short companion bills with a huge impact. As the AWC Housing Solutions Group highlighted, the state needs billions of additional investments in affordable housing if we are to meet the need that has been identified. This proposal makes a very significant starting investment in that effort.

If passed by the Legislature and approved by a public vote at the next general election, the proposal would authorize the issuance of \$4 billion in bonds over six years, the proceeds of which are to be appropriated by the Legislature. You can review (https://wacities.org/docs/default-source/legislative/2325budgetmatrix261a452a-45d9-4c4a-8e18-4d66c8409449.pdf?Status=Master&sfvrsn=6081264f_3) the AWC matrix of the Governor's budget proposal to see the proposed spending with these resources (See **Washington's Housing Crisis Response Act Bonds** starting at the bottom of pg. 12).

HB 1149 also creates the Workforce Housing Accelerator Revolving Loan Program to finance low-income housing. The referendum provision only applies to the bonding portion of the bill; so, if **HB 1149** is passed by the Legislature, this portion of the bill would go into effect without a public vote.

AWC strongly supports this proposal and encourages individual cities to indicate their support to their legislators.

Dates to remember

HB 1149 will be heard on Wednesday, January 12 at 1:30 pm in the House Capital Budget Committee.

SB 5202 will be heard on Wednesday, January 12 at 4 pm in the Senate Ways & Means Committee.

Bill would eliminate external design review boards

Contact: Carl Schroeder, Shannon McClelland

Proposed legislation would preclude cities from establishing or utilizing external design review boards for determining whether housing development meets design guidelines. However, cities would retain the ability to address design standards administratively. The bill is scheduled for a hearing the first week of the 2023 legislative session.

HB 1026, sponsored by Rep. Amy Walen (D-Kirkland), provides that cities planning under the Growth Management Act may only require administrative design review to determine compliance with local design standards for housing developments. The bill proposes the following two definitions:

- Administrative design review: "a determination of compliance with design-related development regulations conducted solely by local government employees without either a public meeting or review by an external board."

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- Housing development: “a proposed or existing structure that is used as a home, residence, or place to sleep by one or more persons including, but not limited to, single-family residences, manufactured homes, multifamily housing, group homes, and foster care facilities.” This appears to include hotels, which may not be intended.

The concept of eliminating external design review boards was advanced and supported by the AWC Housing Solutions Group to expedite housing development. AWC supports this proposal. We expect that there may still be refinement needed on some of the definitions—please provide comments to Carl or Shannon.

Date to remember

HB 1026 will be heard on Tuesday, January 10 at 4 pm in the House Committee on Housing.

Conversion of buildings to residential uses

Contact: Carl Schroeder, Shannon McClelland

Another innovative proposal to address our housing crisis has been introduced to facilitate the conversion of existing buildings for residential purposes. This interesting idea has been brought forward by Rep. Amy Walen (D–Kirkland).

While the concept of encouraging adaptive reuse of existing buildings in HB 1042 has some intriguing elements, there are also some restrictions on city regulatory authority that may be overly broad.

Major provisions that must be in place by July 1, 2024, include that cities may not:

- Impose a restriction on housing unit density that prevents the addition of housing units constructed entirely within an existing building envelope in a building located in a zone allowing multifamily housing. Cities may still apply generally applicable health and safety standards including building code and fire standards.
- Impose parking requirements on the addition of units.
- Impose permitting requirements that are beyond those that would be generally applicable to all residential development in the zone.
- Impose design standards – including setbacks, lot coverage, floor area ratio, etc. – that are not generally applicable to all residential development in the building’s zone.
- Prohibit housing units in a particular part of the building unless it would violate applicable building code or health safety standards.
- Require a building to meet current energy codes because of new dwelling units.
- Deny a building permit application for the addition of housing units to an existing building due to the nonconformity of the existing structure including, but not limited to, nonconformity regarding parking, height, setbacks, elevator size for gurney transport, or modulation, unless the legislative authority of the city makes written findings that the nonconformity is causing a significant detriment to the surrounding area.
- Require a transportation concurrency study or SEPA review on the additional units.

The bill has changed from drafts circulated during the interim, so please give it a fresh look and provide feedback even if you have reviewed this proposal before.

Date to remember

HB 1042 will be heard on Tuesday, January 10 in the House Housing Committee at 4 pm.

continued

Middle housing mandate is back, with changes

Contact: Carl Schroeder, Shannon McClelland

Companion bills have been introduced that propose to increase middle housing in areas traditionally dedicated to single-family detached housing by mandating zoning and prohibiting a prescriptive list of development regulations. The bills are broad in many aspects and very similar to **HB 1782** from last session – but even more restrictive.

HB 1110, sponsored by Rep. Jessica Bateman (D–Olympia), and its companion **SB 5190**, sponsored by Sen. Yasmin Trudeau (D–Tacoma), intends to “lift bans on the development of modest home choices in cities near job centers, transit, and amenity-rich neighborhoods.”

The key provisions are as follows for any city with 6,000 residents and any city within a contiguous UGA with a city with more than 200,000 in population:

Mandates

- Four units per residential lot.
- Six units if at least two are affordable for low-income for 50 years by recorded covenant.
- At least six units in all residential zones within a half mile of a major transit stop. The “major transit” definition is broad and appears to apply to most regular bus service routes. There is no clarification that the half mile is a walking half mile.

Prohibits

- Subjective development and design standards for middle housing, including unreasonable costs, fees, or delays.
- More restrictive standards for middle housing than detached, single-family housing.
- Different standards for middle housing on development permit or environmental review.
- Different application of critical areas regulations for middle housing.
- Requiring off-street parking for middle housing within half a mile of a major transit stop.
- Requiring more than one off street parking space per lot if 6,000 sq feet or less for middle housing development.
- Requiring more than two off-street parking spaces per lot if greater than 6,000 sq feet for middle housing development.

HB 1110/SB 5190 directs the Department of Commerce to provide technical assistance and develop model ordinances which will supersede any city ordinance that has not adopted the new requirements. The proposal allows the Commerce to grandfather in any city that has adopted “substantially similar” regulations by the effective date of the bill. In addition, Commerce may grant an extension for deficient infrastructure, which is only renewable once.

As AWC underwent our Housing Solutions Group process this summer, we identified a need for targeted zoning solutions, including minimum standards around key community assets, but also a need for flexibility in other areas. However, this proposal still paints the state with an incredibly broad brush. Putting the same responsibilities on Othello that are expected of Seattle does not seem appropriate. Importantly, this proposal also does not create new tools, incentives, or revenue to address the housing crises.

We heard strong objections from cities on **HB 1782** last year—and this goes further. Please provide feedback to Carl and Shannon about any additional concerns the specifics of this proposal would mean for your city. The bills have not yet been scheduled for a hearing.

continued

New requirement proposed for tree protection ordinances

Contact: Carl Schroeder, Shannon McClelland

With a goal of increasing housing development options in urban areas, a proposal would mandate that any city that requires protection of trees during development to establish an option to meet obligations using a “tree bank.”

HB 1078, sponsored by Rep. Davina Duerr (D–Bothell), intends to provide developers with an option to offset trees removed during housing development by planting trees elsewhere in the city – specifically, in a tree bank. The bill defines “tree banks” as “areas designated by a community wherein trees can be planted to compensate for the removal of trees elsewhere in order to enable development.”

The Department of Natural Resources is directed to provide technical assistance and capacity building support to cities and other entities to comply with this proposed law, including criteria on location of tree banks—such as areas with vulnerable populations and those experiencing urban heat island effect.

We expect there may be questions or concerns—please share any feedback before the hearing on January 11.

Dates to remember

HB 1078 will be heard on Wednesday, January 11 at 8 am in the House Local Government Committee and is scheduled for a vote in the same committee on Friday, January 13 at 10:30 am.

continued

Budget & finance

Governor's 2023-25 budget proposals scheduled for hearings

Contact: Candice Bock, Sheila Gall

Governor Inslee's proposed budgets for 2023-25 are scheduled for hearings on January 10 in the Senate and January 11 in the House. The proposals address key city priorities around housing, behavioral health, infrastructure funding, and expanding police training.

The **\$70 billion** operating budget proposal:

- Incorporates the state's positive November revenue forecast.
- Includes revenues from a proposed voter referendum to fund **\$4 billion bonds** for housing.
- Uses **\$2.1 billion** from the Washington Rescue Plan Transition Account funded from federal pandemic assistance.

See the article (<https://wacities.org/advocacy/news/advocacy-news/2022/12/21/governor-s-proposed-budget-for-2023-25-includes-funding-for-several-city-priorities>) and (https://wacities.org/docs/default-source/legislative/2325budgetmatrix261a452a-45d9-4c4a-8e18-4d66c8409449.pdf?Status=Master&sfvrsn=6081264f_3) city budget impact summary for more details.

One of the items AWC requested (https://wacities.org/docs/default-source/legislative/091622awc22-23budgetprioritiesletter.pdf?Status=Master&sfvrsn=c346254f_3) that was not funded was continuation of the **\$20 million** in public safety assistance funds to help offset the costs of implementing recent criminal justice changes and support cities in hiring and retaining law enforcement officers.

The Governor's proposed budgets are required by statute and start the Legislature's budget discussions for the 2023 session. The Legislature typically releases their budget proposals following the March state revenue forecast and must pass them before they adjourn in late April.

Dates to remember

The Senate Ways and Means Committee is scheduled to hear the budget proposals on Tuesday, January 10 at 4 pm. The House Appropriations Committee is scheduled to hear the budgets on Wednesday, January 11 at 4 pm.

Finance Committee briefing on State Tax Structure Work Group recommendations

Contact: Candice Bock, Sheila Gall

The House Finance Committee will be briefed on the recommendations of the State Tax Structure Work Group (<https://taxworkgroup.org/meetings>). Two of the recommendations moved forward at the December meeting may have implications for local governments: replacing the state B&O tax with a margins tax and lifting the one-percent limit on property taxes.

Changing the cap on property taxes to tie it to inflation and population growth is a proposal AWC has supported for several years.

A potential change from state B&O taxes to a margins tax could have implications on local B&O taxes. Because the committee's research focused on state tax implications, AWC has asked whether the state can assist local jurisdictions with local B&O taxes to understand potential local tax impacts.

These recommendations will be introduced as legislation in the 2023 session, but it is unclear which proposals may be acted on this year.

Dates to remember

The House Finance Committee work session is scheduled for Thursday, January 12 at 1:30 pm. *continued*

COVID-19

Did your city provide direct financial support using ARPA funds? You may need to send out tax forms

Contact: Jacob Ewing

Cities across Washington distributed millions of dollars in federal relief funds from the American Rescue Plan Act (ARPA) to businesses, non-profits, and residents. With the new year and tax season upon us, cities may need to send out tax reporting documents to those recipients.

Back in November 2021, the IRS published an FAQ (<https://www.irs.gov/newsroom/frequently-asked-questions-for-states-and-local-governments-on-taxability-and-reporting-of-payments-from-coronavirus-state-and-local-fiscal-recovery-funds>) for local governments on the taxability and reporting requirements of payments made from Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) allocated to cities under ARPA. In September of last year, the IRS updated those FAQs (<https://www.irs.gov/newsroom/irs-updates-frequently-asked-questions-for-states-and-local-governments-on-taxability-and-reporting-of-payments-from-coronavirus-state-and-local-fiscal-recovery-funds>) with additional information on taxability and reporting requirements in additional scenarios.

One area not covered in the IRS's FAQs concerns whether cities are required to provide tax forms to businesses or nonprofits who received assistance grants not meant for premium pay or bonuses. While this issue is not directly addressed in the most recent FAQ, back in 2020, the IRS did provide guidance to local governments who used CARES funds to provide business assistance grants. In that guidance (<https://www.irs.gov/newsroom/cares-act-coronavirus-relief-fund-frequently-asked-questions>) the IRS stated:

“The receipt of a government grant by a business generally is not excluded from the business's gross income under the Code and therefore is taxable.”

As CARES funds are like ARPA funds, in that they are meant to address the impacts of the COVID-19 pandemic, it may make sense for a local government to issue 1099s to businesses and nonprofits who received business assistance grants funded by city ARPA funds as those grants would be considered income.

Cities who have provided financial assistance to businesses, nonprofit organizations, or residents using ARPA funds should carefully review the FAQs to determine if they need to provide tax reporting information to those recipients. Recipients covered by the FAQ include:

- Premium pay grants for essential workers.
- Hiring or retention bonuses for essential workers.
- Direct cash assistance to qualifying individuals or families.
- Childcare assistance for qualifying individuals and families.
- Utility assistance for qualifying individuals and families.
- Down payment, closing costs, or PMI assistance for qualifying individuals and families.

We encourage cities to review IRS and Treasury guidance in determining how to issue tax forms.

continued

Emergency management & cybersecurity

Extreme Weather Response Grant bill reintroduced this session

Contact: Candice Bock, Katherine Walton

A bill that would create an extreme weather response grant program is scheduled for a hearing the first week of the 2023 legislative session.

HB 1012, sponsored by Representative Mari Leavitt (D–University Place), establishes a grant program for cities and federally recognized tribes to receive reimbursements for costs associated with activities such as establishing and operating emergency warming and cooling centers, purchasing supplies including food and water, transporting people and pets, and staffing.

HB 1012 is similar to **HB 1620** that was introduced during the 2022 session and made it through the House but failed to pass the House Rules Committee in time.

AWC supports this effort to provide assistance to cities in responding to extreme weather emergencies.

Dates to remember

HB 1012 is scheduled for public hearing and for an executive session in the House Committee on Innovation, Community & Economic Development, & Veterans on January 10 at 10:30 am.

Energy

Water and electric utility shutoff during extreme heat prohibited under new bill

Contact: Brandy DeLange, Brianna Morin

Following the extreme heatwave that hit the state in 2021 that claimed 157 lives, and the increase in extreme heat in recent years, Sen. Joe Nguyen (D–Seattle) and Rep-elect Sharlett Mena (D–Tacoma) are working with Attorney General Bob Ferguson to draft legislation that will prohibit water and electric utility shutoffs when temperatures are predicted to be 90 degrees or above.

According to the proposal, on any day or a day preceding a weekend and/or holiday, when the forecast is predicted to be 90 degrees or above, a city must make a reasonable attempt to contact and reconnect a customer who has been previously disconnected due to non-payment. After the expiration of the heat event, service may be disconnected if an appropriate payment plan has not been arranged. The bill also creates a civil cause of action which may be pursued by a customer if they are not re-connected during an extreme heat event. Individuals may seek up to \$1,000 per violation, per day or actual damages, whichever is greater, injunctive relief, reasonable attorneys' fees, and other relief that the court determines appropriate.

Cities support the policy goal to protect vulnerable populations, but the implementation of this policy may prove to be difficult. For instance, temperature variability across Washington should be considered. One recommendation is to consider a heat risk index, similar to the index used in Colorado. Additionally, connecting and disconnecting may be difficult for many jurisdictions without direct request from the utility customer. In some cases, the home may not be owned by the utility customer, may be shut off for maintenance, or may be vacant. Allowing the customer to request reconnection can help avoid any potential damage to a home or reconnection to a vacant property.

AWC is currently working with the AGO to address some of these concerns.

continued

General government

Bill to amend the Washington Voting Rights Act scheduled for hearing

Contact: Candice Bock, Katherine Walton

A bill to amend the Washington Voting Rights Act has been scheduled for public hearing this week.

HB 1048, sponsored by Sharlett Mena (D–Tacoma), offers a number of amendments to the Washington Voting Rights Act (WVRA) (<https://app.leg.wa.gov/RCW/default.aspx?cite=29A.92>), which seek to provide new routes for groups to bring suit against a jurisdiction, including cities, where they do not feel properly represented.

Among the proposed amendments, the bill seeks to:

- Define “cohesive” meaning that members of a group tend to prefer the same candidates or other electoral choices.
- Allow for a coalition of members of different protected classes to bring suit against a jurisdiction.
- Removes the section that states that members of a protected class are not geographically compact shall not preclude a finding of violation but may be a factor in determining a remedy.
- Courts are not required to consider explanations, including partisanship, for why polarized voting under this chapter exists.
- Requires courts to approve proposed district boundaries prior to their implementation.
- Allows for reimbursement of costs to the individual who filed suit.

AWC strongly supports voting rights; however, we have concerns about the potential liability impact on cities that could create significant legal costs. We will be working with legislators to try to minimize these impacts while supporting the overall goal of increasing access to voting and insuring representation.

Dates to remember

HB 1048 is scheduled for public hearing in the House Committee on State Government & Tribal Relations on January 13 at 8 am.

continued

HR & labor relations

House bills on recording independent medical exams and allowing “voluntary separations” access to unemployment benefits

Contact: Candice Bock, Matt Doumit

The House Labor & Workplace Standards Committee is opening week 1 of the 2023 session with hearings on bills that would allow the recording of independent medical exams (IMEs) and allow certain applicants access to unemployment benefits if they voluntarily quit their jobs due to family care needs.

Recording IMEs: HB 1068, sponsored by Rep. Dan Bronoske (D–Lakewood), permits workers who are required to submit to an independent medical exam (IME) for workers’ compensation purposes to audio or video record the IME or allow a non-attorney third party observer to witness the exam. Recording equipment and observers would not be allowed to interfere with the exam, and the worker would be responsible for the cost of the recording. The bill also changes references to such exams as “compelled examinations.” Workers who record their IME would be required to provide a copy of the recording to employers on request within 14 days of the request.

Versions of this IME recording/observer concept have been proposed in the 2022 and 2021 (<https://wacities.org/advocacy/news/advocacy-news/2022/01/08/new-bill-to-allow-recording-of-independent-medical-exams>) sessions, and none so far have passed the Legislature. AWC has concerns about **HB 1068** because of its potential impact on the availability of independent medical examiners and the neutrality of examinations. Allowing recording of IMEs could drive providers away for fear of malpractice liability, making it more difficult to get objective medical assessments in a timely fashion. We are also concerned that recording IMEs or allowing observers could result in biased exams as providers look to tell examinees or observers what they want to hear, eliminating the exam’s independence.

Voluntary separations: HB 1106, sponsored by Rep. Mary Fosse (D–Everett), permits certain individuals to be eligible for unemployment benefits if they voluntarily left employment due to death, illness, or disability of a family member or left work to care for a child or vulnerable adult. The bill includes circumstances where the former employee was unable to have care obligations be accommodated by their employer, or had a regular schedule unilaterally changed by the employer that interfered with at-home care obligations.

AWC does not have a position on **HB 1106**, though we do note that it could result in increased use of the unemployment insurance system that could increase costs. However, the bill exempts such additional use of the unemployment system from being counted against an employer when their insurance rates are calculated.

Dates to remember

HB 1068 and **HB 1106** are both scheduled for a public hearing in the House Labor & Workplace Standards Committee on Tuesday, January 10 at 10:30 am.

continued

Senate bills on employee records and discrimination in hiring for cannabis use up for hearings in week 1

Contact: Candice Bock, Matt Doumit

The Senate Labor & Commerce Committee is opening the first week of session hearing bills enhancing employees' access to employment records and preventing discrimination in hiring for cannabis use.

Personnel records: SB 5061, sponsored by Senator Patty Kuderer (D–Clyde Hill), requires employers to turn over a complete, unredacted copy of an employee's personnel records at no cost upon request by the employee or their authorized representative within 14 days of receiving a request. While current law does require employers to provide personnel records on request, employers must only do so within a "reasonable period," and only have to turn over files that are available locally. The bill does permit public employers to redact information in the personnel record as required by law.

As an enforcement mechanism, **SB 5061** creates a private cause of action for an employee or former employee to enforce access to the records. It also establishes various statutory damages for certain violations, including: \$250 for failure to provide records within 14 days of the records due date, \$500 for failure to provide records within 28 days of the due date, and \$1000 for failure to provide records more than 28 days after the due date.

Meeting these strict deadlines could be problematic for some cities if they are short-staffed and don't have the capacity to provide a complete set of records within 14 days. As public employers, cities would also be obligated to review personnel records to ensure they don't need to make legally required redactions before turning them over.

Cannabis use & hiring: SB 5123, sponsored by Senator Karen Keiser (D–Kent), prohibits employers from discriminating against a person in hiring for a person's legal, off-the-job cannabis use, or for a person's testing positive for cannabis in employer-required drug testing. Sen. Keiser offered a similar bill in the 2022 session.

The bill's discrimination protections don't apply to applicants for jobs in the building and construction trades, or positions that require federal background checks or security clearances. It also makes it clear that the bill only protects against discrimination for legal cannabis use, not for other non-cannabis drugs. The bill states it is not intended to interfere with an employer's rights or obligations to maintain a drug- and alcohol-free workplace.

As we noted on the 2022 session's version (<https://wacities.org/advocacy/News/advocacy-news/2022/01/15/legislation-introduced-to-prevent-employers-from-firing-employees-for-cannabis-use>) of this bill, most Washington cities receive various kinds of federal funding that could be imperiled if they could not follow federal drug laws in their employment practices. Unlike the 2022 bill, **SB 5123** does not explicitly exempt employers that could lose federal funding or licensing or are otherwise required to follow federal drug laws.

Dates to remember

SB 5123 is scheduled for a public hearing in the Senate Labor & Commerce Committee on Tuesday, January 10 at 10:30 am.

SB 5061 is scheduled for a public hearing in the Senate Labor & Commerce Committee on Thursday, January 12 at 8 am.

continued

Human services

Attorney General announces five new opioid agreements with drug companies

Contact: Candice Bock, Sheila Gall, Katherine Walton

Attorney General Bob Ferguson (AG) announced five resolutions with drug companies (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuits-against-three-national-pharmacy-chains-their-role>) totaling over \$400 million for Washington state and eligible local governments. Combined with the \$518 million from the 2022 agreement with three major opioid distributors (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-opioid-distributors-pay-518-million-washington>), the AG estimates that Washington's total opioid-related recovery will now be more than \$1.1 billion.

The AG's office estimates that Washington would receive \$434 million from five new settlements:

- \$110.6 million from CVS paid over 10 years.
- \$120.3 million from Walgreens over 15 years.
- \$62.6 million from Walmart (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-walmart-pay-626-million-washington-its-role-opioid-epidemic>), 97% of which would be paid in the first year.
- \$90.7 million from Teva over 13 years.
- \$50 million from Allergan over 7 years.

After legal fees, funds will go to state and eligible local governments for opioid remediation.

A sign-on package will be coming to eligible cities before the end of February 2023. After they receive the package, they will have 90 days to sign on to each of the five Participation Forms as well as another Allocation Agreement. The process is expected to be streamlined but modeled on the one used for the distributor settlement. Eligible cities include those with a population over 10,000 prior to 2018.

Other updates:

- The AG filed a lawsuit against Albertsons, Krogers, and Rite Aid (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuits-against-three-national-pharmacy-chains-their-role>) for their role in the state's opioid epidemic. We will keep you updated as this case evolves.
- Cities who signed on to the first agreement with the three major opioid distributors (McKesson Corp., Cardinal Health Inc., and AmerisourceBergen Drug Corp.) for \$518 million should have received their first payment in December (<https://wacities.org/advocacy/news/advocacy-news/2022/11/30/payments-for-opioid-settlement-distribution-beginning-this-month>). The settlement will be paid out over 17 years.
 - The Settlement Administrator paid \$11.7 million to Washington cities and counties on December 30, 2022. Additional cities will receive their payment in mid- or late- January.
 - A few eligible local governments still need to sign up on the administrator's payment portal to receive the initial payment and should reach out to the payment administrator with questions.
- Eligible cities should have received an email in December from the payment administrator with instructions on how to sign up. The State has received the full amount of its initial payments.
- The Governor's budget (<https://wacities.org/advocacy/News/advocacy-news/2022/12/21/governor-s-proposed-budget-for-2023-25-includes-funding-for-several-city-priorities>) proposed a focus on treatment and services (<https://wacities.org/advocacy/News/advocacy-news/2022/12/09/hca-and-doh-provide-recommendations-for-state-s-portion-of-opioid-settlement-distribution>) with the state's portion of the first settlement. The Legislature will be deciding whether to accept the governor's proposals or replace them with their own strategies for opioid remediation.

Continued

Open government

Proposal to reduce administrative burden of releasing body worn cameras recordings

Contact: Candice Bock, Katherine Walton

A bill that aims to reduce the administrative burden of redacting and releasing video from body worn cameras is scheduled for a hearing the first week of the 2023 legislative session.

HB 1080, sponsored by Jamila Taylor (D-Federal Way), would allow city staff to provide body worn camera footage to a defense attorney upon public records request without having to perform the currently required redactions.

Currently, defense attorneys will often request law enforcement body worn camera footage for a legal case through both a discovery process and the Public Records Act. Footage provided through the discovery process is unredacted while footage requested through the Public Records Act must be redacted. This law would allow city staff to provide unredacted footage requested through the Public Records Act if also requested as unredacted through a discovery process.

Dates to remember

HB 1080 is scheduled for public hearing and executive session in the House Committee on Civil Rights & Judiciary on January 13 at 8 am.

OPMA bill with new penalties for public comment deadlines

Contact: Candice Bock, Katherine Walton

A new proposal impacting open public meeting requirements would penalize individuals for failing to notice comment deadlines. **HB 1105** sponsored by Rep. Kloba (D-Kirkland) requires agencies to provide notice of the deadline for public comments and creates a new individual penalty for failing to do so.

AWC has heard from cities about concerns that public comment deadlines are not always clear under the Open Public Meetings Act (OPMA). Additionally, the individual penalty sets a new precedent and puts unnecessary liability on city clerks.

While AWC supports open and transparent meetings, this bill seems to create some unnecessary anxiety about deadlines for public comment.

Dates to remember

HB 1105 is scheduled for public hearing in the House State Government Committee on Wednesday, January 11 at 1:30pm.

continued

Public safety & criminal justice

Attorney General clarifies law enforcement use of “physical force”

Contact: Candice Bock, Sheila Gall, Katherine Walton

The Attorney General’s (AG) Office has released a new opinion (<https://www.atg.wa.gov/ago-opinions/use-physical-force-law-enforcement-0>) on use of “physical force” by law enforcement, interpreting laws passed in 2021 (**HB 1310** and **HB 1054**) and clarified in 2022 (<https://wacities.org/advocacy/News/advocacy-news/2022/04/04/legislature-clarifies-police-reform-laws-restricts-open-carry-in-local-government-buildings>). The opinion responds to liability questions posed after the passage of the new restrictions on use of force and tactics as they related to emergency aid, use of tactics in imminent threat situations, and the continued applicability of the “reasonable officer” precedent in *Graham v. O’Connor*.

The opinion states:

4. *[a] Peace officers may not use physical force when providing emergency aid unless a statutorily-enumerated circumstance allowing officers to use force applies, such as that there is an imminent threat of bodily injury to the officer, another person, or the person against whom force is being used. [b] Leaving the scene is an option officers can consider when attempting to de-escalate a situation, but not a statutory duty. [c] **E2SHB 1310** and subsequent amendments do not impact potential common law liability for officers who provide emergency aid.*
5. ***ESHB 1054** prohibits peace officers from using chokeholds and neck restraints. **E2SHB 1310** removes civil liability and other consequences for officers using otherwise prohibited tactics such as these to save human life from imminent threat, but that does not mean that such tactics are authorized.*
6. *The undefined terms “possible,” “available,” and “appropriate” in **E2SHB 1310** and subsequent amendments would likely be interpreted according to their plain meaning or commonly-understood definitions. Nothing in the text or legislative history of **E2SHB 1310** indicates that the legislature intended to incorporate the *Graham* “reasonable officer” standard into the terms of the law, and in fact the legislative history indicates the opposite.*

The previous opinion addressing questions 1-3 (<https://www.atg.wa.gov/ago-opinions/use-physical-force-law-enforcement-0>), related to the definition of physical force, Terry stops, and other statutes addressing physical custody, was released in January 2022 and clarified by the 2022 legislation.

Reminder: December 1, 2022 was the deadline (<https://wacities.org/advocacy/News/advocacy-news/2022/11/11/december-1-deadline-submit-use-of-force-policy-to-attorney-general-s-office>) for cities to submit their use of force policy to the Attorney General’s Office. You can find the AG’s model use of force policy here (<https://www.atg.wa.gov/law-enforcement-use-force-and-de-escalation>).

continued

Blake fixes are top of mind for Legislators as session begins

Contact: Candice Bock, Katherine Walton

Legislators are gearing up for a busy session and top of mind this year is a fix to the *Blake* decision.

In 2021, the Supreme Court determined that the statute that penalized possession of a controlled substance was unconstitutional because it lacked the requirement that a person “knowingly” possessed the substance. The statute had been in effect since 1971. During the 2021 session, the Legislature passed **SB 5476** to provide a temporary solution to the ruling. As a part of the bill, the Legislature must enact a permanent fix by July 1, 2023.

At this time, AWC has reviewed a draft proposal, but we expect a bill with these concepts to be introduced soon. The draft proposal would:

- Amend the ‘simple possession’ statutes to require **‘knowing’** possession of a usable amount of controlled substances and classify this as a **gross misdemeanor offense**.
- Prior to charging, **law enforcement and prosecutors would be encouraged to first offer individuals a referral to assessment and services**, repealing the requirement of two referrals. Courts would also be required to inform individuals of pretrial diversion programs:
 - If the individual successfully completes the program, the law would require a dismissal of the charge(s).
 - If the individual refuses assessment and services, or if the court determines that the individual will not successfully complete a pretrial diversion program, the court could terminate the program and proceed with a gross misdemeanor offense.
- Also included is:
 - Funding for treatment and services for indigent defendants.
 - Removing barriers to siting opioid treatment facilities by declaring them to be essential public facilities.

AWC’s 2023 legislative agenda (<https://wacities.org/advocacy/City-Legislative-Priorities>) includes supporting clarification around the crime of possessing a controlled substance so that individuals, law enforcement, and treatment providers can respond appropriately. For more information on AWC’s legislative position on *Blake*, please read our fact sheet (https://wacities.org/docs/default-source/legislative/factsheetblake2023.pdf?sfvrsn=ae3d254f_5).

continued

Public works & infrastructure

Send us your feedback on public works contracting proposals

Contact: Brandy DeLange, Brianna Morin

Public works contracting is set to receive attention this session through several bills. We provide brief summaries here of three proposals of interest to cities. **Please contact AWC staff if your city has concerns or other feedback about the bills.**

Prevailing wage adjustments

Rep. Liz Berry (D–Seattle) has introduced legislation intended to ensure workers are paid the prevailing rate of wage in effect at the time the work is performed.

Prevailing wages are frozen from the time bids are due for the duration of the project, regardless of how long it takes to complete the project, which can sometimes take years. This means that in some cases workers may not be paid current prevailing wage during the time the work is performed.

HB 1099 would require that wages paid to workers on public projects be adjusted in accordance with prevailing wage adjustments made since the time a bid was submitted. It adds to existing prevailing wage law that a public work contract must stipulate that the hourly minimum rate of wage for laborers, workers, or mechanics be adjusted as necessary to provide that such wage is not less than the latest prevailing wage in effect at the time the work is performed.

Please contact AWC staff if your city has concerns or other feedback on this legislation.

Responsible bidder criteria

Two bills from Sen. Karen Keiser (D–Kent) would make several changes to the responsible bidder criteria for public works projects.

SB 5133 aims to expand and clarify apprenticeship utilization requirements for bidding public works projects.

Before award of a public works contract, a bidder must meet several criteria to be considered a responsible bidder. The bill would add to the existing criteria that a bidder must be listed as an active training agent on the department of labor and industries' website.

Currently, bidders for projects subject to apprenticeship utilization requirements are unqualified if they have been found out of compliance by the Washington State Apprenticeship and Training Council. The bill takes the requirement one step further, stating that bidders are unqualified if found out of compliance by the Council for not achieving mandatory apprenticeship utilization requirements. Additionally, if the bidder has a demonstrated history of being out of compliance with apprenticeship utilization requirements, the bidder will have to submit a verifiable apprenticeship utilization plan for the awarding agency's review and acceptance prior to award of the public works project.

The bill adds to the training requirements for bidders, stating that, at the time of bid submittal, the bidder must have a designated person or persons trained within the previous three years on requirements related to public works and prevailing wage. It also removes the existing exemption from the training requirements for bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years.

continued

Concerning the Department of Labor & Industries (L&I), the bill directs L&I to keep records of contractors' compliance with the responsible bidder criteria and make records available on its website. Furthermore, before award of a public works contract, the contracting agency will need to verify that the bidder is listed on L&I's website as in compliance with the responsible bidder criteria.

SB 5088 expands the responsibility criteria in yet another way. It intends to bring responsible bidder legislation into alignment with existing contractor registration and licensing laws. Currently, at the time of bid submittal, a bidder must have a certificate of registration. This bill adds a plumbing contractor license, an elevator contractor license, or an electrical contractor license as further options for demonstrating responsibility.

Please contact AWC staff if your city has concerns or other feedback on the above legislation.

Dates to remember

HB 1099 is scheduled for public hearing in the House Labor & Workplace Standards Committee on January 11 at 8 am.

SB 5088 is scheduled for public hearing in the Senate Labor & Commerce Committee on January 12 at 8 am.

SB 5133 is scheduled for public hearing in the Senate State Government & Elections Committee on January 13 at 8 am.

Proposed state constitutional amendment aims to protect local government public works funding

Contact: Brandy DeLange, Brianna Morin

A new bill from Sens. Mark Mullet (D-Issaquah) and Judy Warnick (R-Moses Lake) would establish a public works revolving account in the state Treasury, to be used strictly for the purpose of providing loans and grants to local governments for infrastructure projects. Following repeated sweeps of the Public Works Assistance Account (PWAA) by the state Legislature in recent years, the proposal attempts to create a constitutional protection of public works funding for local governments.

According to **SB 8201**, the PWAA would remain intact. However, all moneys received from local governments in the repayment of loans made under the PWAA and the newly established revolving account would be paid into the revolving account. Repayments would no longer be paid into the PWAA.

The proposal requires an amendment to the Washington State Constitution; this means that if the bill is passed this legislative session, the measure would go before the public in the next general election. If approved by voters, the amendment would go into effect July 1, 2025.

AWC supports the bill and thanks Sens. Mullet and Warnick for their work to protect a critical source of funding for local infrastructure.

continued

Transportation

Freight Mobility Board heads toward major bends in the road

Contact: Brandy DeLange, Brianna Morin

Washington's Freight Mobility Strategic Investment Board, the body responsible for facilitating freight movement across the state and lessening the impact on local communities, may see significant changes this year in a proposal from Rep. Jake Fey (D-Tacoma).

Among the many changes proposed in **HB 1084**, the bill renames the Board as the Freight Mobility Strategy Board (FMSB). Additionally, it removes the Board's authority related to the selection and finance of freight projects, instead directing the Board to identify a six-year program of the highest priority freight mobility investments for the state and identify critical emerging freight issues. The bill also moves the Board's focus towards impacts of freight transportation on overburdened communities.

Other changes to the Board's purpose and duties include:

- Adding purposes for the Board:
 - Provide strategic guidance to the Governor and Legislature regarding highest priority freight mobility needs in the state;
 - Encourage policies that support a competitive, resilient, sustainable, and equitable freight system; and
 - Serve as a forum for discussion of state transportation decisions affecting freight mobility.
- Requiring the Board to:
 - Consult with local governments, other public entities, and Indian tribes to develop the six-year plan (which must be consistent with the state's freight mobility plan);
 - Report to the Governor and the Legislature every other year with the results of its efforts; and
 - Review and provide feedback to the Washington State Department of Transportation (WSDOT) on its periodic update to the state's freight mobility plan.

The bill allows the Secretary of WSDOT to appoint a designee to serve on the Board. It also increases the Board membership to 15 members, adding:

- A member representing the package delivery industry
- A member representing environmental protection interests
- A member representing the interests of overburdened communities

One provision requires a study of best practices for preventing or mitigating the impacts of investments in and the operation of freight systems in overburdened communities. Another provision amends the requirements for the state freight mobility plan and the state marine ports and navigation plan to direct WSDOT to engage FMSB in the development of the plans. A third amends the freight mobility accounts to direct that expenditures from the account only be used for projects that have been recommended, not approved, by the Board.

AWC is actively engaged with the House Transportation Chair and other freight mobility stakeholders on the changes being made to the Freight Mobility Board. We are working to ensure that cities will continue to benefit from the program.

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

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