



Legislative bulletin

January 16, 2023

Hot topics

Early action supports AWC's Housing Solutions Group proposal elements

The Legislature is showing early support for the multi-prong policy package recommended by AWC's Housing Solutions Group (HSG). Three bills include four policy proposals so far. We know of other bills in support that will be introduced in the coming weeks. It is important to note that the proposal is a package with interdependent components. We can make progress on our housing crisis only by pursuing a holistic approach that truly results in affordable housing. We look forward to working with legislators to increase the number of bills that are listed on the proposal each week.

Producer responsibility for packaging—will Washington be next?

AWC has been working with stakeholders over the legislative interim to rework a bill that has been years in the making – extending producer responsibility to recover and recycle the packaging they send into our state to sell their consumer products. Companion bills on the proposal will be heard on Tuesday. Share the linked fact sheets with your legislators!

Clean energy siting coordinating council established in new bill

A Governor's request bill would establish an interagency clean energy siting coordinating council to facilitate and require better-coordinated, faster environmental review and permitting decisions on energy projects across the state. The bill includes new compliance requirements for cities. AWC seeks your input on the proposal. Please review the bill and contact AWC staff with your feedback.

View from the hill

Great energy as session starts and legislators get down to work

The first in-person legislative session since 2020 kicked off last week with a lot of great energy as people enjoy being back in person at the Capitol. New and returning legislators were getting back into the swing of things and, while they are back in person, there are still opportunities to participate virtually this session. You can testify remotely or in person by using this sign-up link, then choose the option you prefer. Make sure to sign up at least an hour in advance. As we begin the second week of this long session, legislative committees are really digging in with many bills up for hearings and even a few up for committee votes. You can check out which bills are hot this week with our first Bill Hot Sheet of the session.

AWC city action calls

Fridays at 12:30 pm | Online

Back by popular demand: Join our Friday lunchtime city action calls where you can get timely updates on the legislative session directly from our team of lobbyists. Each Friday at 12:30 pm, call in via Zoom to hear your AWC lobbyists provide updates on the latest action on the hill and progress on bills of importance to cities. Make sure to sign up in advance each week. After registering, you will receive a confirmation email containing the Zoom link for that week's call. Register now. The second call is on January 20.

Things you can do

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

It's been one year since the Bipartisan Infrastructure Law (BIL) 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 BIL funding, or is in the process of applying for it, AWC would like to learn about the project and share your story. Please contact Brianna Morin by February 1.

Attend a local Broadband Action Plan workshop

January 20 | Online

The Washington State Broadband Office and WSU Extension invite you to an online workshop on the process for developing local Broadband Action Plans (BATs) and Digital Equity Plans. Learn about the critical role of BATs, how to develop a BAT and digital equity plan, and how to align local efforts with the statewide planning for the Broadband, Equity, Access, and Deployment (BEAD) and Digital Equity Act programs. Register now.

continued

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!

Meet your AWC lobbyists!

Check out this brief video to hear from your AWC lobbyists and get a preview of the city issues they're working on this session. Be sure to note these three key ways to stay connected:

- *Legislative Bulletin* – Coming to your inbox every Monday afternoon during session
- City action calls – Every Friday at 12:30 pm during session
- City Action Days – In person in Olympia February 15-16!

11 hot advocacy tips and info for legislative session from the Mayors Exchange

We welcomed 40 mayors at AWC headquarters in Olympia on January 12 to connect, share stories, and learn together. Read some of the hot advocacy tips and information we learned. From major policy focuses, to revenue forecasts, to tips on how to tell your city story, find quick ideas to help you stay in the loop and make the most of this legislative session.

What you need to know

Affordable housing: Middle housing bill scheduled for a hearing in the House.

HB 1110 will be heard Tuesday afternoon. Meanwhile, the Senate version was initially sent to the wrong committee, so it's off to a slower start.

ADU proposals are back! Unfortunately, they look very similar to the prescriptive, preemptive bills from last year.

Housing grab bag bill contains mostly positive provisions for cities. HB

1167 contains a bit of a grab bag of policies and programs to facilitate housing development and address various regulatory arenas—including several concepts that match the proposal of the AWC Housing Solutions Group.

Bill proposes a housing benefit district grant pilot program. This bill is a far cry from a bill of a similar name from years past which created an optional local authority to generate revenue for affordable housing.

Budget & finance: Tax structure and transparency discussions in Senate Ways

& Means. SB 5158 would require cities and other local tax districts to report rate information to the Department of Revenue to create an online database of taxes.

COVID-19: In year-end move, Feds okay additional allowable uses of ARPA

funds. New rules set to be released in February will allow cities to use ARPA funds for roads and bridges, disaster relief, and federal matching.

General government: State looks to increase contract limits between cities and

community service organizations for the first time in over 30 years. In an effort to address inflation and other budget pressures, new legislation would increase contract limits from \$25,000 to \$75,000.

continued

HR & labor relations: “Union-member” privilege scheduled for action in the House. **HB 1187** creates a new legal privilege for communication between a union representative and a union member. It’s scheduled for a public hearing and committee vote in the House Civil Rights & Judiciary Committee this week. AWC is concerned about impacts to city liability, managing city staff, and the ability of cities to defend themselves in court.

Bill on fixing PFML premiums gets a hearing in the Senate. **SB 5286** is intended to fix the Paid Family and Medical Leave (PFML) program’s persistent solvency issues by changing the way premiums are calculated, raising the premiums cap, and creating a reserve fund. The bill is up for a hearing in the Senate Labor & Commerce Committee this week.

Open government: JLARC releases 2021 public records data. The Washington Joint Legislative Audit & Review Committee (JLARC) has published 2021 public agency public records data, which includes data from 78% of Washington cities and towns.

Pensions: Several pension bills scheduled for hearings in week two. Bills impacting city pensions are scheduled for hearings this week in the House Appropriations Committee. They include expanding military service credits, moving 911 operators to PSERS, expanding post-retirement rehiring, and a plan to sunset the Plan 2/3 unfunded liability surcharge.

Public safety & criminal justice: Jury diversity bill amended to add \$125 pay for low-income jurors. **SB 5128** contains proposals to promote more diverse juries and has been making its way through the Senate this week.

Office of Independent Investigations (OII) launches webpage. OII is not yet conducting investigations, but recently activated its hotline for law enforcement agencies to report incidents of deadly use-of-force cases.

Bill would allow cities to charge impact fees for law enforcement facilities. **SB 5289** adds law enforcement facilities to the list of public facilities needed to serve new growth and development and is scheduled for public hearing this week.

House to consider new ban on fentanyl manufacturing equipment. A bill restricting the possession, purchase, delivery, and sale of the kinds of equipment used to process fentanyl is set for a hearing in the House.

Public works & infrastructure: Prevailing wage proposal picks up its pace, will be heard this week in committee. Contact AWC with your feedback.

Workforce development a top priority for the Legislature. New requirements would expand apprentice utilization in public works contracting.

Transportation: A potential new use for transportation impact fees emerges. Cities would see increased spending flexibility for bicycle and pedestrian facilities.

A new proposal would modify the FMSIB’s size, purpose, and duties. Bill relating to the Freight Mobility and Strategic Investment Board (FMSIB) to be heard this week in committee.

Municipal airport commission authority could expand to include operations, management, and enlargement. Criteria for adding members and authority to the governing body also updated.

continued

Affordable housing

Housing grab bag bill contains mostly positive provisions for cities

Contact: Carl Schroeder, Shannon McClelland

Unique in a sea of housing proposals that have been worked and refined over the last several years is a concept from Rep. Davina Duerr (D–Bothell) with some intriguing new ideas. **HB 1167** contains a bit of a grab bag of policies and programs to facilitate housing development and address various regulatory arenas—including several concepts that match the proposal of the AWC Housing Solutions Group.

The proposal:

- Creates a new grant program to provide financial assistance to cities to help them adopt pre-approved middle housing architectural plans. Those plans, when submitted, may only be reviewed administratively.
- Directs the Washington State Building Code Council (SBCC) to convene a workgroup to recommend additions or amendments to apply the International Code Council residential code to “multiplexes” (defined as buildings with up to six units consolidated into a single structure with common floors and walls, or a building up to three stories with up to six units in a single structure). The workgroup is directed to report to the SBCC in time for them to take action to adopt recommendations by December 1, 2024.
- Creates new SEPA exemptions for governmental actions related to residential development within ¼ mile of “community core locations.” These are defined as high capacity and bus rapid transit, stops designated as “major transit stops” by a regional planning agency, near public and private schools, and public parks owned by state or local governments.

Finally, the bill restricts a variety of regulatory authority, including that a city:

- May not impose zoning, development, siting, parking, design review, or other standards for multiplex housing that are more restrictive than those for detached single family residences, except when necessary for fire and life safety.
- Must apply the same permit and environmental review processes to multiplexes as detached homes.
- May not mandate setbacks for residential buildings or prohibit building to the property line in areas within ¼ mile of community core locations, with the exception that buildings may be required to adhere to fire codes.
- With a municipal water supply and a professional fire department may not require more than a single stairway in residential buildings of six or fewer stories.

Please share any feedback with Carl Schroeder and Shannon McClelland.

Dates to remember

HB 1167 will be heard on Thursday, January 19 at 8 am in the House Housing Committee.

continued

Bill proposes a housing benefit district grant pilot program

Contact: Carl Schroeder, Shannon McClelland

For the avid readers out there, the phrase “housing benefit district” may sound familiar. Interestingly, the promising concept from last year shares very little with the bill introduced during the first week of the 2023 session.

Last session, a bill with the same name proposed to create an optional funding mechanism modeled after special purpose districts, such as a transportation benefit district. The bill allowed a city or county to create a housing benefit district (HBD) via ballot or councilmanic vote to levy a sales and use tax. In addition, the district could levy a property tax by ballot measure. The revenue must be used to create affordable low-income and middle-income housing and community development projects within the district.

This year, **HB 1111**, sponsored by Rep. Cindy Ryu (D–Shoreline), doesn’t provide cities with a new housing funding option, but instead creates a pilot grant program. Here’s how it would work:

- The Housing Finance Commission would create a new, pilot HBD grant program.
- A city that is selected to receive a new HBD grant would then create a HBD within a “station area.” “Station area” is defined as an area within one-half mile, including contiguous full and partial blocks as defined by the street grid, of a major transit stop that is zoned to have an average minimum density of at least 15 dwelling units per gross acre.
- Development within the HBD must roughly be equivalent to a third market rate, a third for moderate income, and a third for low to extremely low income.
- The city would need to create a governance structure for the HBD, including a board.
- The city also needs to audit the development that occurs within the HBD to ensure it complies with the affordability requirements.
- The state also creates a HBD Advisory Board.

It’s unclear how this proposal would incentivize a city or a builder to create new affordable housing, but it does seem to create a lot of local and state procedural structure. An alternative could be for the state to simply appropriate grant funding to the Housing Finance Commission to fund land acquisition or community land trusts, a proven structure that results in sustainable affordable housing.

Date to remember

HB 1111 will be heard in the House Committee on Housing on Thursday, January 19 at 8 am.

continued

ADU preemption proposal emerges

Contact: Carl Schroeder, Shannon McClelland

Those who were wondering if we would see another attempt to preempt cities to promote accessory dwelling units (ADUs) this legislative session, you can wonder no longer. **SB 5235** by Sen. Sharon Shewmake (D–Bellingham) and its companion, **HB 1276** sponsored by Rep. Gerry Pollet (D–Seattle), closely mirror a proposal from last year (**HB 1660**), one which cities registered significant concerns.

SB 5235 mandates that by the time of their next comprehensive plan update, cities:

- May not prohibit the construction of ADUs on residentially zoned lots.
- May not require any owner occupancy requirements unless:
 - the ADU is used as a short-term rental, or
 - the city offers a waiver or reduction of impact fees and costs associated with ADUs if they are “offered at or below 80% of the area median income.”
- May not require off-street parking requirements for any ADU within ¼ mile of a major transit stop (rail, bus rapid transit, regular bus operating at least every 15 minutes for five peak hours). Cities are authorized to make specific findings to allow for on-site parking.
- Must allow at least one attached and one detached ADU on all residentially zoned lots larger than 4,500 square feet, further requiring two additional dwelling units if the original zoning allowed two units. If the lot already allows three units, it does not have to further densify.
- Must allow at least one attached or detached ADU on all residential lots smaller than 4,500 square feet.
- May not prohibit the sale of a condominium unit solely because the unit was originally built as an ADU, so long as it is independently connected to utilities.
- Must not apply development regulations that are more restrictive than those for detached single-family construction.

The bill does reserve some areas for continued regulation by cities, including:

- Generally applicable development regulations.
- Public health, safety, building code, and environmental permitting requirements.
- Prohibition on ADUs that are not connected to public sewers.
- Prohibition on restriction of ADUs in zones with less than one unit per acre density that are within areas designated as wetlands, fish and wildlife habitat, floodplains, or geologically hazardous areas.

Additional elements include:

- Cities are authorized to waive or defer fees, impact fees, tax payments or specific regulations, but only if the ADU is subject to binding covenants that the ADU will not be regularly used as a short-term rental.
- Restricts future private covenants from limiting or restricting ADUs and attempts to indemnify cities from civil liability for approving an ADU that runs counter to a covenant entered after the passage of this proposal which contains unenforceable provisions.

Please share any feedback with Carl Schroeder and Shannon McClelland.

Date to remember

SB 5235 will be heard on Thursday, January 19 at 10:30 am in the Senate Local Government, Land Use & Tribal Affairs Committee.

continued

Budget & finance

Tax structure and transparency discussions in Senate Ways & Means

Contact: Candice Bock, Sheila Gall

A bill, like one introduced last session, that would require local tax districts to report rate information to the Department of Revenue to create an online database to estimate taxes is scheduled for a hearing. **SB 5158**, sponsored by Sen. Lynda Wilson (R-Vancouver), would require DOR to develop an online searchable database of all taxes and tax rates in the state for each taxing district by January 1, 2024. Cities and all other local tax districts would be required to report all rates by September 30, 2023, and within 30 days of making any rate changes.

The committee will also hold a briefing on the recommendations of the State Tax Structure Work Group, similar to the one held in the House Finance Committee.

Date to remember

The Senate Ways & Means Committee hearing is scheduled for Tuesday, January 17 at 4 pm.

COVID-19

Feds okay additional allowable uses of ARPA funds

Contact: Jacob Ewing

As a part of the recently passed spending bill for the federal 2023 budget year, Congress expanded allowable uses of federal COVID relief funds to include roads and bridges as well as aid to people impacted by natural disasters.

The exact details and rules of the expanded uses are still in development and should be released by Treasury in late February. However, the revised rules passed in the federal spending bill provided some early idea of how funds could be used. Under the revised rules, cities would be allowed to:

1. Use up to \$10 million or 30% of their ARPA allocation for transportation projects funded by the Infrastructure Investment and Jobs Act (IIJA).
2. Use ARPA funds to provide local matching amount necessary to access federal grants for road and transportation projects created under IIJA.
3. Provide natural disaster relief, such as temporary housing, food, and financial assistance.

While the changes are welcomed, the newly released rules will only truly benefit cities who received more than \$10 million in ARPA funds or cities that chose not to claim the standard allowance for general government services created under the final rule released in January 2022 (<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf#page=9>). Cities who elected to claim the standard allowance for general government services were already able to use their ARPA funds for similar projects and programs.

In Washington state, investments in infrastructure are top spending categories for cities with tens of millions of dollars flowing to water and sewer system upgrades, road and sidewalk improvements, and public works equipment.

To learn more about how Washington cities are investing ARPA funds, check out our latest issue of the *Cityvision* magazine (<https://wacities.org/data-resources/cityvision#close>).

continued

Energy

Clean energy siting coordinating council established in new bill – Contact AWC with your feedback

Contact: Brandy DeLange, Brianna Morin

A Governor request bill would establish an interagency clean energy siting coordinating council and create new requirements for cities.

HB 1216, from Rep. Joe Fitzgibbon (D–Burien), intends to facilitate and require better coordinated, faster environmental review and permitting decisions on energy projects within the state. The coordinating council would be cochaired by the Departments of Commerce and Ecology, with representation from the Governor’s office and various state agencies, but not Washington cities.

In addition to establishing a new siting council, the bill updates processes for review of clean energy projects under the state environmental policy act. The council would advise Commerce in:

- Evaluating the state agency siting and permitting processes.
- Identifying successful models for siting and permitting clean energy projects.
- Developing recommendations for improving such processes in Washington.
- Developing consolidated clean energy application and permit through Ecology.

The proposal also creates a designation for clean energy projects of statewide significance, tasking Commerce and Ecology with designing an application and application process to achieve the designation. Applicants must demonstrate:

- How the project is expected to limit greenhouse gas emissions and meet other clean energy goals.
- How the project will contribute to economic development within the state.
- A plan for meaningful community engagement, including with tribes.
- A description of community benefits and impacts.

Section 209 of the bill requires that cities with development projects designated as clean energy projects of statewide significance within their jurisdictions must enter into an agreement with Ecology and the project proponents for expediting the completion of projects. The agreement obligates cities to:

- Expedite permit processing for the design and construction of the project.
- Expedite environmental review processing.
- Expedite processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project.
- Make local officials or planning staff available to serve on the team.
- Develop and follow a plan for consultation with potentially affected federally recognized Indian tribes with interests on or near a proposed site.
- Carry out such other actions identified by Ecology as needed.

During review of a project to construct or improve facilities for the generation, transmission, or distribution of electricity, a local government may not require a project applicant to demonstrate the necessity or utility of the project other than to require submission of any publicly available documentation required by the Federal Energy Regulatory Commission or the Utilities and Transportation Commission, or from any other federal agency with regulatory authority over the assessment of electric power transmission and distribution needs.

AWC seeks city feedback on Sec. 209 of the bill. **Please contact AWC staff if your city has concerns or other input.**

Date to remember

HB 1216 is scheduled for public hearing in the House Environment & Energy Committee on Thursday, January 19 at 8 am. *continued*

Environment & natural resources

Producer responsibility for packaging—will Washington be next?

Contact: Carl Schroeder, Shannon McClelland

AWC has been working over the interim with stakeholders to rework a bill that has been years in the making – extending producer responsibility to recover and recycle the packaging they send into our state to sell their consumer products. In Washington, this represents over 2.3 million tons of packaging and printed paper each year. Of this total, 1.3 million tons (54%) are recycled. The percentage of materials recycled has plateaued despite the fact that curbside recycling programs have expanded and are now available to 80% of Washington residents and drop-off recycling is available to the other 20%.

The policy aimed to address this problem is known as EPR – extended producer responsibility and is nothing new. Washington has EPR programs for e-waste and mercury containing lights. Western Europe has had EPR for packaging for decades; and our neighbor to the north, British Columbia, also has EPR for packaging—all provided by the same companies that sell the products lining your fridge and pantries. Shouldn't they be held accountable in the U.S., as well? The state legislators in Maine, Oregon, California, and Colorado thought so and passed EPR for packaging laws for their states in the last two years.

The proposal before our state legislators, companion bills **HB 1131** sponsored by Rep. Liz Berry (D–Seattle) and **SB 5154** sponsored by Sen. Christine Rolfes (D–Bainbridge Is.), is a behemoth and is referred to as the Washington Recycling and Packaging (WRAP) Act. Here are some fact sheets that cover the key provisions of the WRAP Act and EPR, in general:

- WRAP Act handout with key provisions (https://wacities.org/docs/default-source/legislative/010323wrapactfactsheet.pdf?Status=Master&sfvrsn=a6ef264f_3)
- EPR local government fact sheet (https://wacities.org/docs/default-source/legislative/010323eplocalgovfactsheet.pdf?Status=Master&sfvrsn=4fee264f_3)
- EPR outreach fact sheet (https://wacities.org/docs/default-source/legislative/010323epoutreachhandout.pdf?Status=Master&sfvrsn=57ee264f_3)

Please share the above fact sheets with your legislators in advance of the committee hearings below!

AWC appreciates the leadership by the sponsors and the lengthy list of legislators signing on to the bills in support. Every state study in recent memory points to EPR for packaging as the solution to modernize our recycling system. This bill has been worked and reworked by stakeholders over the last few years. AWC, on behalf of cities across the state and the residents who fund our recycling system, asks you to carry this proposal across the finish line in 2023.

Dates to remember

HB 1131 will be heard Tuesday, January 17 at 4 pm in the House Environment & Energy Committee.

SB 5154 will be heard Tuesday, January 17 at 1:30 pm Senate Environment, Energy & Technology Committee.

continued

General government

State to consider increasing contract limits between cities and community service organizations

Contact: Candice Bock, Jacob Ewing

Since 1988, cities have been limited to a \$25,000 limit in working with community service organizations on certain projects; however, a new bill could triple that limit.

Under RCW 35.21.278, cities have had the ability to bypass competitive bidding laws and contract directly with community service organizations on projects to preserve, maintain, and enhance local parks, trails, and open spaces. Currently, these contracts are limited to \$25,000 or two dollars per resident within the city limits, whichever is greater.

HB 1086, sponsored by Reps. Clyde Shavers (D–Oak Harbor) and Cindy Ryu (D–Shoreline), acknowledges the impact of inflation and population growth on the current \$25,000 limit and proposes that the limit be increased to \$75,000. This increase will be beneficial to cities with a population under 12,500 as it will greatly expand the scope of projects which with they can partner with community service organizations.

Examples of allowable projects under RCE 25.21.278 include:

- Drawing design plans
- Improving parks and public spaces
- Installing equipment or artwork
- Providing maintenance services for a facility
- Building tiny houses for low-income housing

Dates to remember:

HB 1086 is scheduled for public hearing in the House Local Government Committee on Tuesday, January 17 at 10:30 am. The bill is also scheduled for executive session in the same committee on Friday, January 20 at 10:30 am.

continued

HR & labor relations

Bill on fixing PFML premiums gets a hearing in the Senate

Contact: Candice Bock, Matt Doumit

A bill adopting the recommendations of the Paid Family & Medical Leave (PFML) Insurance Premiums Task Force intended to fix the program's persistent solvency issues is scheduled for a hearing in the Senate Labor & Commerce Committee this week.

SB 5286 is sponsored by Sen. June Robinson (D–Everett) and includes a bi-partisan list of co-sponsors. The bill changes the way that PFML premium rates are calculated each year by replacing the current method with a specified rate formula. The new formula would require the Employment Security Department (ESD) to:

- Calculate an amount that equals 140% of the prior fiscal year's program expenses (including the total amount of benefits paid plus administrative costs).
- Subtract the Account balance as of September 30 from the amount determined above.
- Divide the difference above by the prior fiscal year's taxable wages.

The 140% of the prior year's expenses is partially intended to help the new rates account for maintaining a three-month reserve fund to guard against cash shortfalls. The current rate setting system does not allow a reserve fund. The bill also requires ESD to determine if the new total premium rate calculated is more than necessary to maintain a three-month reserve, and if so, it requires ESD to lower the rate to the minimum necessary to maintain the reserve throughout the year.

In addition to changing the way premiums are calculated, **SB 5286** also raises the current total premium rate cap from 0.8% to 1.2%.

We last wrote about the Task Force after it formally adopted its recommendations here (<https://wacities.org/advocacy/news/advocacy-news/2022/12/07/pfml-premiums-task-force-recommends-proposal-to-fix-program-solvency-issues>).

You can read the final report from the Task Force here (<https://leg.wa.gov/JointCommittees/PFMLIP/Documents/PFML-TaskForce-FinalReport.pdf>). As readers may be familiar, the PFML program has seen regular cash shortfalls each quarter for much of the past year, as benefits payments during each quarter have outpaced the premiums deposited into the account at the beginning of each quarter.

Dates to remember

SB 5286 is scheduled for a public hearing in the Senate Labor & Commerce Committee on Monday, January 16 at 10:30 am.

continued

Bill creating a new “Union-member” legal privilege scheduled for action in the House

Contact: Candice Bock, Matt Doumit

A bill that would create a new legal privilege for communications between a union representative and a union member is scheduled for a public hearing in the House Civil Rights & Judiciary Committee this week. The bill is also scheduled for a committee vote at the end of the week.

Readers are likely familiar with well-known legal privileges that protect certain communications like attorney-client privilege, spousal privilege, clergy-penitent privilege, doctor-patient confidentiality, and others protecting sensitive communications where privacy is critical to the work or relationship involved.

HB 1187, sponsored by Rep. David Hackney (D–Seattle), creates a new legal privilege between a union representative and a union member. The privilege would prevent both the union representative and the union member from being examined in court about, or otherwise being required to disclose, any communications made between the representative and the member in the course of the union representation. The bill includes exceptions for preventing crimes with imminent risk of serious physical injury and if a member sues their union. Unlike most other legal privileges, the exceptions also allow the union to expressly waive the privilege unilaterally for any reason. The bill does not allow the union member to unilaterally waive privilege.

The bill is likely a response to recent cases where courts found that communications between a union member and their union were not protected from discovery. In those cases, when a union member identified their union representative as a witness in employment claims, attorneys for the employer were able to use union records to cross examine the witness about the union’s internal thoughts about the member or the strength of their claim.

HB 1187 is concerning for several reasons. Creating a union-member privilege could make it impossible for public employers to ask questions about what their employees are talking about on paid time. This is important because employers are liable for many kinds of conduct that take place between employees while at work, including discrimination or harassment. As a matter of fairness, employers should also be allowed to cross examine a union representative when an employee chooses to call them as a witness against the employer in court. Additionally, most people know they have no reasonable expectation of privacy when they are on the job (outside those well-known areas where confidentiality is protected) and on the jobsite during working hours is where many employees meet with their unions.

Dates to remember

HB 1187 is scheduled for public hearing in the House Civil Rights & Judiciary Committee on Wednesday, January 18 at 8 am. It is also scheduled for a committee vote on Friday, January 20 at 10:30 am.

continued

Open government

Check it out! JLARC releases 2021 public records data

Contact: Candice Bock, Katherine Walton

The Washington Joint Legislative Audit & Review Committee (JLARC) has published 2021 public agency public records data (<https://leg.wa.gov/jlarc/reports/2023/PubRecordsDataCollection/default.html>), which includes data from 78% of Washington cities and towns.

In 2017, the Legislature passed RCW 40.14.026, which requires agencies that spend over \$100,000 in staff and legal costs associated with maintaining public records and responding to records requests to report on these metrics to JLARC (<https://wacities.org/advocacy/news/advocacy-news/2022/06/10/public-records-report-due-to-jlarc-by-july-1>).

During a JLARC meeting on January 4 (<https://tvw.org/video/jlarc-joint-legislative-audit-review-committee-2023011012/>), JLARC staff presented (<https://leg.wa.gov/jlarc/reports/2023/PubRecordsDataCollection/Presentation.pdf>) the 2021 public records data that includes reporting from state, local, and special district agencies. In total, 22% of cities and towns met the \$100,000 threshold and submitted data to JLARC.

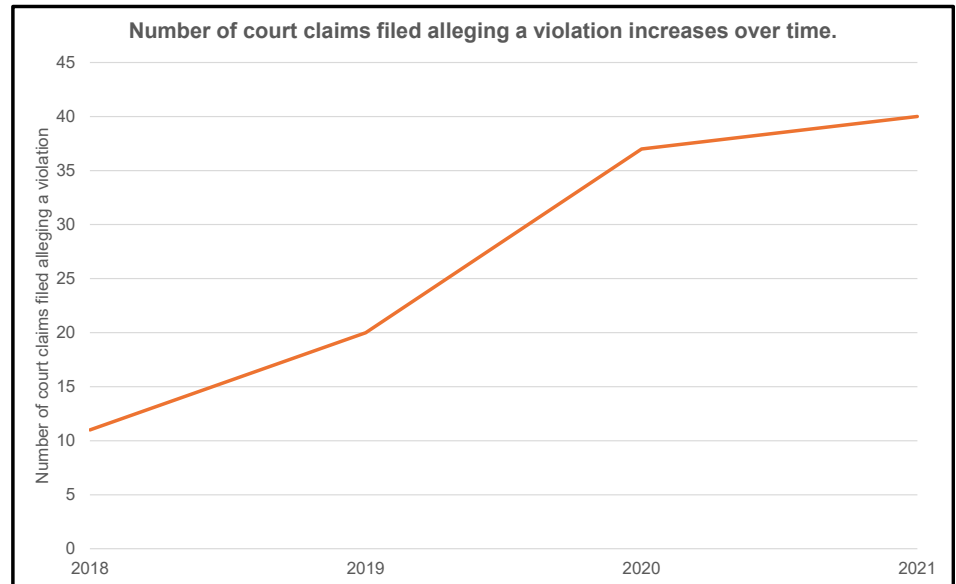
According to the report, cities received a whopping **127,503 public records requests in 2021**, up from 118,622 in 2020. The cost to cities of fulfilling records requests was \$25,648,644 and cities spent \$55,830,186 on managing and retaining records.

	2020	2021
Total requests received (Jan. 1 – Dec. 31)	118,622	127,503
Costs of fulfilling records requests	\$24,497,200	\$25,648,644
Costs incurred for managing and retaining records	\$64,561,768	\$55,830,186

Many agencies reported anecdotally (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fjlarc.blob.core.windows.net%2Fpublicrecordsreporting%2F2021%2520JLARC%2520Public%2520Records%2520Full%2520Dataset.xlsx&wdOrigin=BROWSELINK>) that they have received a higher volume of requests and that requests are now requesting higher volumes of information or are more complicated in nature.

continued

Cities also reported **40 court claims filed alleging a violation**, which has increased every year since 2018.



Cities spent \$2,237,679 on litigation costs associated with public records requests in 2021 (31% of statewide total).

If you have questions or concerns about registering an account or reporting data, please feel free to review the agency guidance (<http://leg.wa.gov/jlarc/Documents/PubRecordsAdmin/AgencyGuidance.pdf>) document, revisions to the agency guidance (<http://leg.wa.gov/jlarc/Documents/PubRecordsAdmin/GuidanceRevisionsandUpdates.pdf>) document, or the FAQ document (<http://leg.wa.gov/jlarc/Documents/PubRecordsAdmin/FAQAgencyGuidance.pdf>). Additional questions may be directed to JLARCPublicRecStudy@leg.wa.gov.

Pensions

Several pension bills scheduled for hearings in week two

Contact: Candice Bock, Matt Doumit

Four pension bills that will impact city employee pensions are scheduled for hearings this week in the House Appropriations Committee. The bills include ones that would expand military service credit, move 911 operators from PERS to PSERS, expand post-retirement re-employment, and put a sunset on the current Plan 2/3 unfunded liability surcharge that is used to pay for Plan 1 COLAs.

Interruptive military service

HB 1007, sponsored by Rep. Dave Paul (D–Oak Harbor), expands the definition of “veteran” to include those receiving an expeditionary badge for participation in an armed conflict, for the purposes of civil service laws and military service credit in pensions for LEOFF 2 firefighters and law enforcement, as well as PERS employees.

continued

Interruptive military service credits refers to when a public employee is called away from their job to serve in the armed forces (for example National Guard, or US military reserve) that interrupts their regular employment, and the pension system counts the employee's time away towards their pension if they qualify as a "veteran." Current law limits "veterans" to those serving during a period of war in certain listed conflicts or those awarded a campaign badge or medal in any conflict, but not those only awarded an expeditionary badge.

911 operators to PSERS

HB 1055, sponsored by Rep. Drew Stokesbary (R–Auburn), expands the scope of PSERS to include jobs with a high degree of psychological risk and permits current public safety telecommunicators (like 911 operators) to choose to remain in PERS, or join PSERS 2 as a dual member of PERS and PSERS. Current public safety telecommunicators would have from January 1, 2024 to March 1, 2024 to elect to join PSERS. New public safety telecommunicators will automatically be enrolled in PSERS.

For 911 operators, an advantage of PSERS would be the lower early retirement age and vesting requirements compared to PERS. A disadvantage is that both employer and employee contribution rates tend to be higher in PSERS than in PERS.

Retire/Re-hire

HB 1056, also sponsored by Rep. Stokesbary, permits PERS 2 & 3 retirees to return to public employment as an employee or contractor for up to 867 hours per year without losing their PERS retirement benefits, starting in 2024. Currently, a PERS 2 & 3 retiree that returns to public employment would lose their retirement benefits.

UAAL sunset

HB 1201, sponsored by Rep. Timm Ormsby (D–Spokane), establishes a June 30, 2025 sunset (i.e. end date) for the PERS 1 unfunded actuarial accrued liability surcharge (UAAL). After that date, the bill establishes a UAAL employer contribution rate of 0% until June 30, 2029 to supersede all other references to the UAAL in various other pensions statutes.

The UAAL is an additional employer-paid surcharge added to Plan 2 and 3 pension contribution rates. It is used to pay for additional unfunded costs to PERS 1 that have accumulated over the years, partly due to ad hoc cost-of-living-adjustments that the Legislature has approved. Unlike Plans 2 and 3, Plan 1 pensions did not include regular COLAs in their contribution rates when Plan 1 employees were still working, so any COLAs are fully funded by employers after the fact.

Dates to remember

HB 1007, **HB 1055**, and **HB 1056** are all scheduled for public hearings in the House Appropriations Committee on Monday, January 16 at 4 pm.

HB 1201 is scheduled for public hearing in the House Appropriations Committee on Wednesday, January 18 at 4 pm.

continued

Public safety & criminal justice

House to consider new ban on fentanyl manufacturing equipment

Contact: Candice Bock, Katherine Walton

A bill restricting the possession, purchase, delivery, and sale of the kinds of equipment used to process fentanyl is set for a hearing in the House.

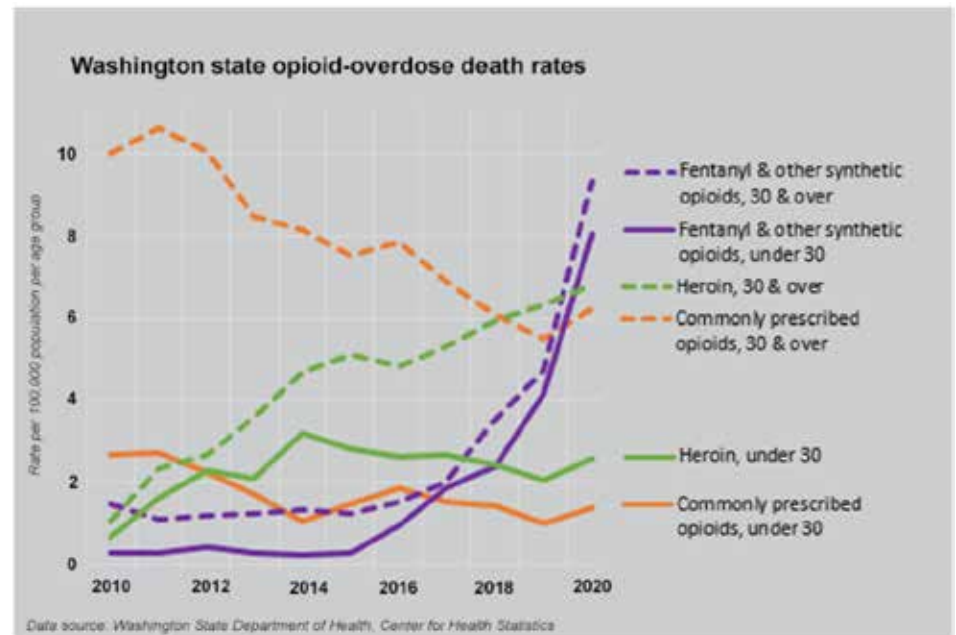
HB 1209 is being sponsored by Rep. Mari Leavitt (D–University Place), would make it a class C felony for any person to possess, purchase, deliver, sell, or possess with intent to sell a tableting machine or encapsulating machine knowing that it could be used for controlled substances.

The use of illicitly manufactured fentanyl has caused a spike in opioid overdose deaths in Washington and particularly affects younger people. Most illicit fentanyl in Washington is in tablet form and made to look like legal prescription opioid pills. The Addictions, Drug & Alcohol Institute (ADAI) at the University of Washington recently released a report (<https://adai.uw.edu/new-report-youth-fentanyl/>) showing dramatic increases in opioid overdose deaths due to fentanyl among young people in Washington, doubling in four years among people under 30 to eight per 100,000. Most cases of opioid overdose and death are now linked to the use of fentanyl, according to the WA Department of Health (DOH) (<https://doh.wa.gov/you-and-your-family/injury-and-violence-prevention/opioid-overdose-prevention>).

Source: <https://adai.uw.edu/new-report-youth-fentanyl/>

Dates to remember

HB 1209 is scheduled for public hearing in the House Safety, Justice, & Reentry



Committee on Tuesday, January 17 at 4 pm.

Bill would allow cities to charge impact fees for law enforcement facilities

Contact: Candice Bock, Katherine Walton

SB 5289, sponsored by Sen. Sharon Shewmake (D–Bellingham), gives cities the authority to charge for impact fees for law enforcement facilities and is scheduled for public hearing this week.

Impact fees can be charged to new development to pay for public facilities needed to serve new growth and development. Currently, cities and counties have the statutory authority to charge impact fees for:

- Public streets and roads
- Publicly owned parks, open space, and recreation facilities
- School facilities
- Fire protection facilities

This bill, if passed, would add law enforcement facilities to that list of options.

Dates to remember

SB 5289 is scheduled for public hearing in the Senate Local Government, Land Use & Tribal Affairs Committee on Thursday, January 19 at 10:30 am.

Jury diversity bill amended to add \$125 pay for low-income jurors

Contact: Candice Bock, Katherine Walton

SB 5128, sponsored by Yasmin Trudeau (D–Tacoma), contains a number of proposals to promote more diverse juries and has been making its way through the Washington State Senate this week.

The bill would require the Administrative Office of the Courts (AOC) to:

- Provide all courts with a method to collect anonymous data on juror demographics, including race, ethnicity, age, sex, employment status, educational attainment, and income;
- Establish a workgroup to make recommendations for the creation of a childcare assistance program for individuals to eliminate the absence of childcare as a barrier to performing jury service.

The Senate Law & Justice Committee adopted an amendment, proposed by Sen. Trudeau, that would require a jury service payment to low-income jurors who qualify. This payment would be up to \$125 per day in municipal courts, in addition to superior and district courts. The rate of pay for jurors is set by state law – currently, jurors must be paid between \$10 and \$25 per day by the local jurisdiction, which determines the rates and bears the cost of paying jurors.

While potential jurors are selected randomly from a list of all eligible local adults, the legislators proposing this bill seek to promote jury diversity by addressing some of the issues that face jurors who are women, minorities, LGBTQ, and low-income individuals who are underrepresented on juries because of the financial or childcare hardships of jury duty.

This bill was referred to Ways & Means.

continued

Office of Independent Investigations launches webpage

Contact: Candice Bock, Katherine Walton

The Office of Independent Investigations (OII) has launched their webpage, which can be found at oii.wa.gov. OII is not yet conducting investigations, but recently activated its hotline for law enforcement agencies (<https://ofm.wa.gov/sites/default/files/public/publications/OIITransitionPlanReport.pdf>) to report incidents of deadly use-of-force cases.

The bill creating OII (<https://wacities.org/news/2021/04/16/legislation-establishing-office-of-independent-investigations-waits-governor-s-signature>) was part of a suite of police reform bills that the Legislature passed in 2021. A key recommendation from the Governor's Task Force on Independent Investigations of Police Use of Force (<https://www.governor.wa.gov/boards-commissions/workgroups-task-forces/governor%E2%80%99s-task-force-independent-investigations-police>), the office's purpose is to conduct thorough, transparent, and unbiased investigations of police use of force and other incidents involving law enforcement.

Public works & infrastructure

Workforce development a top priority for the Legislature as it eyes requirements to expand apprentice utilization in public works contracting

Contact: Brandy DeLange, Brianna Morin

Rep. Marcus Riccelli (D–Spokane) has introduced legislation (**HB 1050**) that will require contractors hired for municipal public works projects estimated to cost \$1,000,000 or more to have at least 15% of the labor hours performed by apprentices.

The bill also requires subcontractors for public works projects with a subcontract of \$200,000 or more to have at least 15% of the labor hours performed by apprentices; however, a local jurisdiction may adopt more stringent requirements than set by the legislation. In addition to minimum utilization requirements, municipalities must monitor public works contractors and subcontractors for compliance with apprenticeship utilization rates. Finally, the bill directs the Department of Enterprise Services, with assistance from the Department of Labor and Industries, to provide technical assistance to municipalities in collecting apprenticeship data.

If your city has specific concerns or other feedback about the bill, please contact AWC staff.

Date to remember

HB 1050 is scheduled for public hearing in the House Capital Budget on January 19 at 1:30 pm.

continued

Prevailing wage proposal with impacts for cities picks up its pace

Contact: Brandy DeLange, Brianna Morin

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.

Date to remember

HB 1099 is scheduled for executive session in the House Labor & Workplace Standards Committee on Friday, January 20 at 10:30 am.

continued

Transportation

Proposal to reshape the Freight Mobility Board to be heard in committee

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.
- 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.
- 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.

Date to remember

HB 1084 is scheduled for public hearing in the House Transportation Committee on Thursday, January 19 19 at 4 pm.

continued

A potential new use for transportation impact fees emerges

Contact: Brandy DeLange, Brianna Morin

A new proposal from Rep. Vandana Slatter (D–Bellevue) would provide new authority to fund improvements to bicycle and pedestrian facilities. **HB 1135** would allow cities to use transportation impact fees on bicycle and pedestrian facilities that are not within road right-of-way.

Recognizing that increasing numbers of people are utilizing transportation and commuting options not on public roadways, and that the resources local governments can use for these facilities are limited, the bill aims to provide local governments with increased flexibility in utilizing the fee for the funding and facilities necessary for the continued growth and success of alternative commuting options.

AWC supports this bill.

Date to remember

HB 1135 is scheduled for public hearing in the House Local Government Committee on Thursday, January 19 at 8 am.

Municipal airport commission authority could expand to include operations, management, and enlargement

Contact: Brandy DeLange, Brianna Morin

The authority provided to municipal airport commissions, and the conditions governing their formation, would grow and change according to a new proposal from Rep. Tom Dent (R–Moses Lake).

HB 1243 expands municipal airport commission authority from industrial and commercial development, to construction, enlargement, improvement, maintenance, equipment, operation, management, and regulation of a municipal airport.

The bill also delineates criteria for adding members and authority to the governing body. The commission must consist of at least five members appointed by the governing body of the municipality, subject to the following:

- In a municipality with a population of 35,000 or greater, members must be residents of the municipality.
- In a municipality with a population of fewer than 35,000, at least two members must be residents of the municipality or the county in which the municipality is located, with any remaining members residents of a county or counties adjoining the municipality or the county in which the municipality is located
- A majority of the commissioners must have expertise in the aviation industry, business administration or operations, finance, accounting, marketing, economic development, commercial real estate development, engineering, planning and construction, law, utilities, or other related experience from industries that have a logical nexus with airport administration, operations, and development.

Finally, a municipality may vest authority in a commission to apply for loans through the public use general aviation airport loan program.

AWC supports these expansions and thanks the sponsor.

Date to remember

HB 1243 is scheduled to for public hearing in the House Local Government Committee on Tuesday, January 17 at 10:30 am.

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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