



Legislative bulletin

February 13, 2023

Hot topics

Legislators show their love for cities by scheduling Valentine's Day hearing on property tax cap fix

Tying the cap on property taxes to inflation and population growth would help cities keep up with the increasing costs of services. A bill to revise the cap for local governments to account for inflation and population growth up to 3% is scheduled for a hearing on Tuesday. While your city is in town for City Action Days, talk to your legislators about your support for local revenue flexibility in **SB 5618** and **HB 1670**, a similar bill in the House.

Over 200 city leaders representing over 100 cities and towns urge the Legislature to act on police pursuit changes

Thank you to everyone who took the time to sign the letter and support this effort. Washingtonians need a reasonable suspicion standard fix to the vehicular pursuit law now, along with more funding and best practices for law enforcement departments to use.

Share your support for city budget priorities in AWC's letter to budget leaders

Shortly after the state's next revenue forecast on March 20, the House and Senate will release their proposed budgets for the 2023-25 biennium. That means discussions by budget leaders are taking place now. Read AWC's letter to budget leaders and share these budget priorities with your legislators.

Media time

AWC legislative update on public safety bills

Candice Bock, AWC's Government Relations Director shares what's needed to move forward with the police vehicle pursuits bill, **HB 1363** that allows for a reasonable suspicion standard, as well as response to the Blake decision (bills **SB 5536** and **SB 5467**), to increase treatment options in lieu of criminal charges. Watch now, and then make your voice heard on these important city priorities.

Action items

AWC city action calls

Fridays at 12:30 pm | Online

Join our city action calls each Friday to hear updates directly from your team of AWC lobbyists 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 for this Friday's call.

View from the hill

We love cities! Happy Valentine's Day – Share your love of cities with your legislators

This week we are celebrating Valentine's Day and cities! We are so excited to have 360 city officials from across Washington coming to Olympia for City Action Days. We will come together to share our love for cities and raise our collective city voice before the Legislature. You can still share your love for your city with your legislators even if you can't make it to Olympia this week. Take this opportunity to reach out and let them know which bills you love and how they help your city. AWC's weekly Bill Hot Sheet can help you pick out your favorite bills to share.

What you need to know

Affordable housing: Proposal on conversion of buildings to housing passes House. The innovative proposal we covered in the first week of session unanimously passed the House, receiving only minor amendments. The general idea behind **HB 1042** is to reduce barriers to building "reuse" – putting vacant buildings back into productive use to address the housing crises.

Budget & finance: Bill authorizing additional sales tax for police hiring steps up to the plate this week. The House version (**HB 1446**) of a bill that would allow cities to institute a new sales tax to fund police hiring and criminal justice activities is scheduled for a hearing and a vote this week in the House.

Cannabis: House introduces their version of social equity in cannabis bill. Both bills would allow new or additional social equity licenses to be issued in cities that allow cannabis businesses, incentivize licensees to submit a social equity plan, require a third party contractor to review and score applicants, amend definitions, and extend the program to July 2032.

Energy: Implementation of extreme heat utility shutoff proposal clarified, improved. After a productive stakeholder engagement process, **HB 1329** was successfully amended to reflect city input.

continued

Environment & natural resources: PFAS restrictions and cleanup levels for land application of biosolids. Recent years have shown that the PFAS chemical family are perniciously persistent bio-accumulative chemicals, referred to as “forever chemicals.” A bill proposes to establish PFAS pollutant limits for biosolids, and Ecology releases PFAS cleanup guidance that is out for public comment.

General government: Ban on police qualified immunity advances out of committee. HB 1025, an important bill that eliminates qualified immunity for police and increases liability for cities, was amended and moved out of its policy committee ahead of committee cutoffs. Read about some changes that were made.

Small city leaders – House looks to increase contract limits between cities and municipal officers. HB 1577 would double the allowed limit for contracts between cities and municipal officers, but only for first class cities. We need your help to fix the bill and bring updated contract limits to second class cities, towns, and noncharter optional code cities.

HR & labor relations: Bill to make pandemic-era COVID infections a presumptive occupational disease. A new bill, **HB 1785**, would make pandemic-era COVID-19 infections a presumptive occupational disease for workers’ comp. The bill is scheduled for a hearing this week.

House version of personnel records bill takes a swing this week. HB 1320, could set new requirements and deadlines for providing personnel records and is scheduled for action this week. The bill is a companion to **SB 5061**, which AWC has also been working on.

Union-privilege bill passes out of committee with new lineup of exceptions. The bill creating a new legal privilege between unions and union members, **HB 1187**, saw long-anticipated committee action late last week. The new amendments change the exceptions to the potential new privilege.

Land use & planning: Rulemaking for online case management system for land use appeals. The Washington State Environmental and Land Use Hearings Office (ELUHO) will launch an online case management system in spring 2023 that will allow people to file appeals, petitions, and other case documents with ELUHO’s three boards online. The ELUHO is updating its rules of practice and procedure to reflect the new way of doing business.

Public safety & criminal justice: U.S. Department of Justice Bureau of Justice Assistance (BJA) grant open for applications. Apply by May 1 for grant funding through the BJA’s Connect and Protect: Law Enforcement Behavioral Health Response Program.

One Blake bill to move forward. The Senate Law & Justice Committee heard four different *Blake*-related bills and opted to advance **SB 5536**. AWC supports this bill – as it creates a clear criminal penalty for drug possession while focusing on diverting individuals into treatment. Substantive amendments were included before passing the bill on to Senate Ways & Means.

Authorizing a second deferred prosecution for DUI. HB 1104 would alter the current requirements for deferred prosecution for those charged with multiple driving under the influence (DUI) or physical control of a vehicle under the influence (PC) charges in their lifetime.

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House votes on Missing and Murdered Indigenous Women and People cold case investigations unit. The House voted last week on **HB 1177**, which creates a Missing and Murdered Indigenous Women and People Cold Case Investigations Unit in the Attorney General's Office.

Bills attempt to crack down on illegal street racing. Companion bills **SB 5606** and **HB 1631** were drafted based on input specifically from the cities of Kent and Tacoma, which have experienced an increase in dangerous illegal street racing.

State may study creating pool of law enforcement applicants for police departments. A substitute version of **HB 1387** would create a study on a proposed program allowing the Criminal Justice Training Commission to recruit and train a pool of applicants who would be available for employment by a city law enforcement agency with a population of 100,000 or fewer.

Bill would allow use of traffic safety and toll system cameras for other criminal investigations. Images and data from traffic safety cameras and toll systems would be available to law enforcement agencies and officers with a warrant.

Public works & infrastructure: Separate prevailing wage proposals reappear, combine in a new bill with major impacts for cities. **SB 5726** addresses how the prevailing wage rate is set and contested under certain conditions, and when it is updated within a public works contract.

Transportation: Stakeholder input helps shape Freight Mobility Board's new path. **HB 1084** was further refined last week, clarifying the Board's new duties and guidelines.

Affordable housing

Bill on conversion of buildings to housing passes House

Contact: Carl Schroeder, Shannon McClelland

The innovative proposal that we covered in the first week of session unanimously passed the House, receiving only minor amendments. The idea behind **HB 1042** is to reduce barriers to building "reuse"—putting vacant buildings back into productive use to address the housing crises.

The original bill prohibited a city from imposing exterior design or architectural requirements on new housing units constructed within an existing building, beyond those necessary for health and safety. The substitute bill passed in committee adds an exception for buildings listed on a local, state, or national historic register.

On the House floor, the bill received another change before passage – it now requires the State Building Code Council to amend the state energy code to waive the requirement for an existing building to meet current energy code requirements solely due to the addition of new dwelling units in the building.

By our read, **HB 1042** appears to strike the balance in allowing regulation for health and safety. Please let us know if any of the city preemptions present a concern for your city.

continued

Budget & finance

Legislators show their love for cities by scheduling Valentine's Day hearing on property tax cap fix

Contact: Candice Bock, Sheila Gall

Changing the cap on property taxes to tie it to inflation and population growth, which AWC has supported for several years, would help cities keep up with the increasing costs of services. **SB 5618**, which revises the property tax cap for local governments to account for inflation and population growth up to three percent, is scheduled for a hearing in the Senate Local Government, Land Use & Tribal Affairs Committee on Tuesday. While your city is in town for City Action Days, we encourage you to talk to your legislators about your support for local revenue flexibility in **SB 5618** and a similar bill in the House (**HB 1670**) that also revises the cap up to three percent.

This proposal would allow local governments under 10,000 population to increase property tax by three percent. The cap for local governments over 10,000 population would be the lesser of growth in inflation and population or three percent, or up to three percent with a finding of substantial need.

Remind your legislators that this structural revenue fix was recommended by the State Tax Structure Work Group last fall and that 72 percent of respondents indicated support for a three percent cap on property taxes in a recent public opinion survey sponsored by AWC. Check out the fact sheet for more information.

Date to remember

SB 5618 is scheduled for public hearing in the Senate Local Government, Land Use & Tribal Affairs Committee on Valentine's Day, Tuesday, February 14 at 8 am.

Bill to authorize additional sales tax for police hiring steps up to the plate this week

Contact: Candice Bock, Matt Doumit, Katherine Walton

A bill that would allow cities to institute a new sales tax to fund police hiring and criminal justice activities is scheduled for a hearing and a vote this week in the House.

HB 1446, sponsored by Rep. Drew Stokesbary (R–Auburn), permits cities and counties to institute an additional 0.1% sales and use tax to fund hiring additional law enforcement officers. If both a city and county have implemented this tax, then the city tax is a credit against the state sales tax which means it would not actually increase the effective rate of the tax.

Under the bill, if a city or county hires enough officers that they hit a rate of local officers per 1,000 residents that exceeds the national rate, proceeds from the tax can also be used for other criminal justice purposes. The bill also requires Criminal Justice Training Commission (CJTC) to hold up to 25 basic law enforcement academy classes per year starting in 2024, prohibits CJTC from instituting a wait list for trainees until after at least 25 classes have been offered in a year, and removes requirements for local government cost sharing for CJTC training expenses.

There is also a Senate companion, **SB 5361**, that has already moved out of policy committee and is awaiting a hearing in the Senate Ways & Means Committee.

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Many cities are having a difficult time hiring new, qualified officers in the current job market. Having additional financial resources to put towards hiring new officers, as well as the capacity to train new-to-the-profession officers, could be a useful tool for staffing city police departments. In 2022, nearly a quarter of all local police officers were already eligible for retirement, and another 15% were near retirement eligibility, so resources to hire and capacity to train new officers is an important tool for local governments.

Dates to remember

HB 1446 is scheduled for public hearing in the House Local Government Committee on Wednesday, February 15 at 8 am. It is also scheduled for a committee vote on February 17 at 10:30 am.

Share your support for the city budget priorities in AWC's letter to budget leaders

Contact: Candice Bock, Sheila Gall

Shortly after the state's next revenue forecast on March 20, the House and Senate will release their proposed budgets for the 2023-05 biennium. That means discussions by budget leaders are taking place now.

AWC recently sent a letter (https://wacities.org/docs/default-source/legislative/021023budget23-25prioritiesletter.pdf?Status=Master&sfvrsn=c26264f_3) to budget leaders asking for funding on city priorities, which include the following:

- Full funding of \$400 million for the Public Works Assistance Account, as provided in the Governor's budget and honoring the sunset of diverted revenues scheduled to occur this year and return them back to the account.
- Funding for cities in response to the Blake decision.
- Public safety funding \$20 million in funding for cities to help offset the costs of new criminal justice legislation and funding for alternative response programs.
- Funding for the Criminal Justice Training Commission basic law enforcement academy (BLEA).
- Affordable housing and homelessness funding. This is poised to be a big year for our collective efforts around addressing homelessness and tackling the challenge of providing needed market rate and affordable housing. AWC is actively engaged in conversations, and we need to match progress on those issues with the resources needed to build affordable housing.
- Support for a systems approach to correct fish-blocking culverts.
- GMA and comprehensive planning support.
- Maintained investment in local government transportation systems.
- Funding for the Municipal Research and Services Center (MRSC) at the level provided in the Governor's budget.
- Funding for community-based access to behavioral health resources.

Read AWC's letter and share these budget priorities with your legislators. Ask them to talk to their budget leadership about the importance of funding these priorities.

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Cannabis

House introduces their version of social equity in cannabis bill

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

Rep. Debra Entenman (D–Kent) introduced **HB 1790**, the House version of the social equity in cannabis bill, which appears to be the same as the amended Senate bill. **SB 5080**, introduced by Rebecca Saldaña (D–Seattle), will be heard in the Senate Ways & Means Committee on February 13.

Both the House bill and the Senate substitute bill would:

- Allow new, additional social equity licensees to be issued for a location in a city, town, or county that allows cannabis retail or processing activity, regardless of the maximum number of retail cannabis licenses established by the LCB under current state law (RCW 69.50.345).
- Extend the program to July 1, 2032.
- Incentivize current cannabis licensees to submit a social equity plan to the Liquor and Cannabis Board (LCB).
- Require the LCB to select a third-party contractor to review and score applicants.
- Amend the following definitions:
 - “Disproportionately impacted area” – before, this term was defined by having a high poverty rate and high rate of participation in income based federal or state programs but would be expanded to be defined as a community that was likely to be impacted by the war on drugs, as determined by the board in consultation with the office of equity using a standardized statistical equation to identify areas with specific demographic indicators, including but not limited to a high rate of people living under the federal poverty level, a high rate of people who did not graduate from high school, a high rate of unemployment, or a high rate of people receiving public assistance.
 - “Social equity applicant” – someone who lived in a disproportionately impacted area for a minimum of five years between 1980 and 2010, has been or has a family member who has been arrested or convicted of a cannabis offense, has a household income less than the median household income, or is socially and economically disadvantaged as defined by the office of minority and women’s business enterprises.

Dates to remember

SB 5080 is scheduled for public hearing in the Senate Ways & Means committee at 4 pm on Monday, February 13.

HB 1790 is scheduled for public hearing in the House Regulated Substances & Gaming Committee at 8 am on Thursday, February 16.

continued

Energy

Implementation of extreme heat utility shutoff proposal clarified and improved

Contact: Brandy DeLange, Brianna Morin

A bill introduced earlier this session to prevent utility shutoffs during heat waves has been further refined after a productive stakeholder engagement process in which AWC took part. **HB 1329** (companion to **SB 5366**) prohibits water and electric utility shutoffs when temperatures are predicted to be 90 degrees or above. AWC describes the original proposal here (<https://wacities.org/news/2023/01/06/water-and-electric-utility-shutoff-during-extreme-heat-prohibited-under-new-bill>).

The House bill was considered last week in the House Environment & Energy Committee, where a substitute version was adopted. It includes the following changes:

- Utilities and landlords may not have electric or water utility service turned off for any residential user, including tenants of metered apartment buildings and residents of mobile homes, due to lack of payment of a utility bill, on a day for which the National Weather Service (NWS) has issued a heat related alert for the area in which the residence is located.
- A residential user whose service had previously been disconnected for lack of payment may request that service be reconnected on any day for which the NWS has issued a heat related alert for the area of the residence.
- Utilities and landlords must inform all customers in the notice of disconnection of the ability to seek reconnection and provide clear information on how to make that request.
 - Electric and water utilities and landlords must promptly make a reasonable attempt to reconnect the service upon receiving such a request.
- Utilities and landlords may require the residential user to enter into a payment plan prior to reconnecting service to the dwelling after the extreme heat shutoff.
 - If a utility or landlord requires such a repayment plan, the plan must comply with the following:
 - The repayment plan must be designed both to pay the past due bill by the following May 15, or as soon as possible after May 15 if needed to maintain monthly payments that are no greater than 6% of the customer's monthly income, and to pay for continued utility service.
 - The plan may not require monthly payments over 6% of the customer's monthly income.
 - A customer may agree to pay a higher percentage during the repayment period, but the customer will not be in default unless payment during the repayment period is less than 6% of the customer's monthly income.
 - If assistance payments are received by the customer after the implementation of the plan, the customer must contact the utility to reformulate the plan.
- Repayment plans during the period November 15 through March 15 may be no more than 6%, rather than 7%, of household income.
- The civil cause of action is removed from the original bill.

AWC thanks the bill sponsor and the Attorney General's Office for working to address concerns raised throughout the stakeholder process.

continued

Environment & natural resources

PFAS restrictions and cleanup levels for land application of biosolids

Contact: Carl Schroeder, Shannon McClelland

Recent years have shown us that the PFAS chemical family is perniciously persistent and bio-accumulative. They are even referred to as “forever chemicals.” Several cities in the state have found unacceptably high levels in their drinking water, most frequently when those cities are near areas where firefighting foam had been used in large amounts, such as at training locations.

Given that persistence, PFAS are found everywhere in the environment—and in ourselves. **SB 5245** from Sen. Jeff Wilson (R–Longview) proposes to further regulate PFAS in biosolids, the byproduct of wastewater treatment plants.

The focus of the bill directs the Department of Ecology (Ecology) to establish pollutant limits for PFAS in biosolids, and then prohibit land application of biosolids exceeding those limits.

Ecology must also map where land application has occurred and develop rules requiring notification of neighboring property owners when biosolids will be land applied.

This proposal is on the move. Please share any feedback.

Speaking of regulating PFAS, Ecology has developed draft guidance (<https://apps.ecology.wa.gov/publications/summarypages/2209058.html>) that is available for public comment (<https://ecology.wa.gov/Events/TCP/Program-and-Policy/Draft-guidance-for-investigating-remediating-PFAS>) until March 3, 2023. This guidance provides information and direction on:

- Known PFAS impacts across Washington
- Preliminary soil and groundwater cleanup levels
- Sampling options for PFAS compounds
- Approaches to minimize cross-contamination
- Protective concentrations for ecological receptors
- Field demonstrated treatment technologies

It also explains how the Ecology determined the cleanup levels and how they apply to individual sites.

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General government

Small city leaders – House looks to increase contract limits between cities and municipal officers

Contact: Candice Bock, Jacob Ewing

This week, the House will consider a bill raising the limit for city contracts given to municipal officers or their businesses for the first time since 1999. However, many small cities and towns are being left out of the change due to an inadvertent error in drafting the bill.

The State has always had strict rules regarding when and how municipal officers can directly or indirectly financially benefit from a contract with a local government. One exception to these rules is when the contract falls under a certain dollar limit. Since 1999, that limit has been \$1,500 a month for first class cities and \$18,000 annually for second class cities, towns, or noncharter optional code cities.

HB 1577, sponsored by Rep. Joe Schmick (R-Colfax), proposes to increase the contract limit to \$3,000 a month for first class cities. However, the bill does not make the same adjustment for second class cities, towns, or noncharter optional code cities. As currently drafted, these jurisdictions would still be held at the 1999 limit for contracts of less than \$18,000 annually.

We don't believe these jurisdictions were left out on purpose, but we do need your help to fix this bill.

If you are a small city leader, contact your state elected officials (<https://wacities.org/advocacy/legislator-directory>) or sign up to testify (<https://wacities.org/news/2023/01/23/learn-how-to-sign-in-and-testify>) in the House Local Government Committee on Tuesday, February 14 at 10:30 am. Ask your legislators to:

- Support the passage of **HB 1577**
- Support an amendment modifying section 6(b) of the bill to increase the annual contract limit for small cities from \$18,000 to \$36,000

We believe this fix will provide our small cities with more options to respond to challenges and issues that arise in their communities.

Dates to remember

HB 1577 is scheduled for public hearing in the House Local Government Committee on Tuesday, February 14 at 10:30 am. The bill is then scheduled for executive session in the same committee on Friday, February 17 at 10:30 am.

continued

Ban on police qualified immunity advances out of committee

Contact: Candice Bock, Matt Doumit

An important bill that eliminates qualified immunity for police and increases liability for cities was amended and moved out of its policy committee ahead of upcoming committee cutoffs.

Readers likely remember **HB 1025**, which we wrote about last month (<https://wacities.org/advocacy/News/advocacy-news/2023/01/20/bill-eliminates-qualified-immunity-for-police-and-increases-liability-for-cities>). The bill ends qualified immunity for police and creates a private cause of action against police officers and their employers for injuries caused under color of law, but in violation of state law or the constitution. Ending qualified immunity for police greatly exposes cities to additional liability. Washington is already an outlier with one of the most plaintiff-friendly governmental liability systems in the United States.

After a long wait, the bill was voted out of the House Civil Rights & Judiciary Committee on February 10 with several amendments. Some of those amendments include:

- Limiting the cause of action against police and their employers to conduct that is unlawful under the state constitution, immigration enforcement statutes, and use of force statutes.
- Making the bill apply to state police agencies in addition to local governments.
- Modifying employer liability for an officer's compliance with a practice or procedures by requiring the practice or procedure to have been established by the employer or approved/condoned by superiors.
- Limiting the employer defense of using an Attorney General-drafted model policy to only those model policies drafted at the specific request of the Legislature.
- Limiting the employer defense of inability to use reasonable care in retention or discipline of an officer to circumstances where disciplinary action was taken, and the action was appealed and reduced or overturned by an arbitrator or court.
- Removing the restriction on qualified immunity when the state of the law was such that the officer or employer couldn't have reasonably known whether the officer's conduct was lawful. It retains the ban of qualified immunity based on a person's rights, privileges, or immunities not being "clearly established."
- Adding additional notice and reporting requirements when qualifying training or model policy defenses are asserted.

The bill now heads to the House Appropriations Committee due to the fiscal impacts it will have on state and local governments. Unfortunately, even with the amendments, AWC continues to oppose **HB 1025** because of the impact increasing city liability exposure will have, including driving up litigation and settlement costs, increased claims (including meritless claims), increasing exposure to attorney fees, and increasing the cost of obtaining city liability insurance costs (potentially to the point of being cost-prohibitive) or driving insurers out of the Washington city liability insurance market altogether.

continued

HR & labor relations

Safety squeeze: Making pandemic-era COVID infections a presumptive occupational disease

Contact: Candice Bock, Matt Doumit

A new bill would make pandemic-era COVID-19 infections a presumptive occupational disease. The bill is scheduled for a hearing this week.

HB 1785 is sponsored by Rep. Liz Berry (D–Seattle). It creates a presumptive occupational disease (for the purposes of workers’ compensation) for infectious contagious respiratory diseases that are subject to a declared public health emergency (currently, only COVID-19, but theoretically others) if the worker can show their employment or work conditions proximately caused their infection. The bill permits workers or survivors of deceased workers who had a COVID-19 workers’ comp claim denied before the effective date of the bill to file a new claim. It contains an emergency clause and would take effect once passed and signed into law by the Governor.

As currently drafted, HB 1785 would only create a presumption for claims that arose from infections during either the state or federal declared public health emergencies during the COVID-19 pandemic. The state’s public health emergency for COVID-19 expired in October of last year (<https://wacities.org/advocacy/news/advocacy-news/2022/09/09/covid-19-state-of-emergency-to-end-october-31>) and President Biden recently announced (<https://apnews.com/article/biden-united-states-government-district-of-columbia-covid-public-health-2a80b547f6d55706a6986debc343b9fe>) he planned to end the federal public health emergency on May 11.

The bill’s stated intent is to overturn a recent pandemic-era Board of Industrial Insurance Appeals decision (http://www.biiia.wa.gov/DO/2115953_ORD_20220808_DO.PDF). In that case, the board denied workers’ compensation to an infected log yard worker because his job had no “distinctive conditions” that made it inherently higher risk for COVID-19 than otherwise existed in the general public during the pandemic. This was despite the fact that the log yard worker was likely infected at work.

It is important to ensure that high-risk workers are protected by presumptive occupational disease findings. However, AWC generally supports maintaining the integrity of the workers’ compensation system and its current decision-making process for claims appeals. AWC thinks the legislature should maintain a neutral system for making claims decisions and avoid legislating around individual cases or decisions.

Dates to remember

HB 1785 is scheduled for a public hearing in the House Labor & Workplace Standards Committee on Friday, February 17 at 10:30 am.

continued

House version of personnel records bill takes a swing this week

Contact: Candice Bock, Matt Doumit

Another bill that could set new requirements and deadlines for providing personnel records is scheduled for action this week in the House.

Over the last several weeks, we've been tracking a bill that would set new requirements and deadlines for employers to provide complete copies of personnel records to employees on request. We first wrote about the Senate version of the bill, **SB 5061**, here (<https://wacities.org/advocacy/news/advocacy-news/2023/01/06/senate-bills-on-employee-records-and-discrimination-in-hiring-for-cannabis-use-up-for-hearings-in-week-1>).

Now, the House version of the bill is scheduled for action this week ahead of the first policy committee cutoff. **HB 1320** is sponsored by Rep. Julia Reed (D–Seattle), and requires employers to turn over a complete, unredacted copy of an employee's personnel records (at no cost) on request by the employee or their authorized representative within 14 days of the request. The bill does permit public employers to redact certain information as required by law. It also creates a private cause of action to enforce access and establishes statutory damages for various degrees of violations.

In the Senate bill, AWC was successful in having amendments adopted to address our main concerns with the bill, including clarifying how the bill interacts with the Public Records Act and what records need to be included. AWC will likely make the same amendment requests for **HB 1320**.

Dates to remember

HB 1320 is scheduled for a public hearing in the House Labor & Workplace Standards Committee on Tuesday, February 14 at 10:30 am. It is also scheduled for a committee vote on February 15 at 8 am.

Union-privilege bill passes out of committee with new lineup of exceptions

Contact: Candice Bock, Matt Doumit

The bill creating a new legal privilege between unions and union members saw long-anticipated action on February 10.

HB 1187 creates a legal privilege between unions and union members for communications made during the course of union representation akin to attorney-client privilege and providing some enumerated exceptions. We previously wrote about the bill here.

On its way out of the House Civil Rights & Judiciary Committee last week, the bill received a few amendments, including some that came at AWC's request. The amendments include:

- Not applying the privilege to:
 - Communications subject to the Public Records Act.
 - Civil or criminal actions where the union member is accused of a crime, or assault or battery.
 - Civil or criminal actions where a union member is a party. The union member may obtain a copy of any statement previously given that concerns the subject matter of the action and may elicit testimony concerning such statements. However, this right does not render them discoverable over the objection of the union member.

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- Civil, criminal, or regulatory actions against the union or its affiliated, subordinate, or parent bodies.
- Retaining the exception to the privilege for preventing a future imminent, serious crime.
- Removing the provision that expressly allowed the union to unilaterally waive the privilege.
- Clarifying that “communication” includes oral, written, and electronic communications or documents containing such information.

AWC took a position of other on the bill because we agree that there should be some confidentiality protections for communications between unions and their members made during representation. However, we are still concerned what this broad union-member privilege could mean for cities. The bill could limit the cities’ ability to adequately investigate and take action in misconduct situations.

AWC is also concerned with the fairness of allowing a broad privilege against discovery for witnesses called to testify against a city at trial, hindering a city’s ability to effectively defend itself in court. In the attorney-client context, it is generally considered a partial waiver of privilege if a client calls their own attorney to testify, opening certain communications to disclosure. This bill would favor union representation communications more than an attorney-client relationship in some ways since a union could still testify on the union member’s behalf without being subject to discovery or effective cross examination. We also remain concerned that the privilege created by the bill runs with the union organization and not the employee, unlike most other privilege relationships where the privilege lies with the individual.

We do appreciate the amendments that address the public records concerns that we had raised.

Land use & planning

Rulemaking for online case management system for land use appeals

Contact: Carl Schroeder, Shannon McClelland

The Washington State Environmental and Land Use Hearings Office (ELUHO) will launch an online case management system in spring 2023 that will allow people to file appeals, petitions, and other case documents with ELUHO’s three boards online. The ELUHO is updating their rules of practice and procedure to reflect the new way of doing business.

The rulemaking (<https://eluh.wa.gov/content/27>) affects the Pollution Control Hearing Board, Shorelines Hearing Board, and the Growth Management Hearing Board. Questions or comments may be submitted by February 17, 2023, to Jamie Merely at Jamie.Merly@eluh.wa.gov.

continued

Public safety & criminal justice

One *Blake* bill to move forward

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

SB 5536, sponsored by Sen. June Robinson (D–Everett), appears to be the *Blake* bill that the Legislature has chosen to focus on this session. Last week the Senate Law & Justice Committee heard four different *Blake* related bills and opted to advance **SB 5536**. AWC supported both **SB 5536** and **SB 5467** because both created a clear criminal penalty for drug possession while focusing on diverting individuals into treatment. The Committee added substantive amendments to the original bill before passing the bill on to Ways & Means.

In short, the new, heavily amended bill:

- **Makes ‘knowing’ possession of prohibited substances a gross misdemeanor.** Law enforcement officers would be encouraged to offer an individual arrested for simple possession a referral to assessment, treatment, or other services in lieu of booking and referring the case for prosecution.
- **Creates a pretrial diversion program for individuals charged with possession.** The judge would be required to advise the individual of the diversion program. The program would require the defendant to agree to meaningfully engage in a substance use disorder treatment program in exchange for the court dismissing the simple possession charge.
- **Requires the court to vacate possession convictions for individuals who successfully complete substance use disorder treatment.**
- **Expands access to substance use disorder treatment programs in underserved and rural areas of Washington.** Opioid treatment programs would be recognized as essential public facilities (read more about essential public facilities on MSRC’s website (<https://mrsc.org/stay-informed/mrsc-insight/january-2023/what-is-an-essential-public-facility>)).
- Appropriates \$46.9 million dollars:
 - \$36.6 million from the state general fund to expand efforts to provide opioid use disorder medication in city, county, regional, and tribal jails;
 - Appropriates \$7 million from the state general fund for new and established clubhouses throughout the state;
 - Appropriates \$3.2 million from the state general fund to establish and expand 23-hour crisis relief centers; and
- Provides counsel for parents affected by substance use disorders in dependency and child custody cases.
- Establishes health engagement hubs – mobile or fixed-site opioid treatment program medication units, which would be open to youth and adults, and provide wound care, harm reduction supplies and services, and linkages to housing, transportation, and support services. The Healthcare Authority (HCA) would be required to make sure sufficient funding is available for one health engagement hub per 200,000 residents in Washington State no more than a two-hour drive for all communities.
- Provide training for parents of children with substance use disorders and their caseworkers at the Department of Children, Youth, and Families (DCYF).
- Provide data and evaluate the effectiveness of recovery navigator programs.
- Create education and employment pathways for people recovering from substance use disorders.
- Provide a statewide directory of recovery services.
- Streamline substance use disorder treatment intakes.

continued

- Establish a safe-supply work group.
- Repeal the statute requiring law enforcement and prosecutors to offer a referral to assessment and treatment for an individual's first two arrests for simple possession.

The bill now awaits a hearing in Ways & Means. AWC will continue to work with the bill sponsor to ensure that the final version works for cities and that the legislature includes sufficient funding to help cities implement these new requirements. AWC urges cities to reach out to their legislators to support this bill.

If you have questions or comments to share with AWC, please contact Candice Bock directly at candiceb@awcnet.org.

Over 200 city leaders representing over 100 cities and towns urge the legislature to take action on police pursuit changes

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

Officials from over 100 cities and towns signed on to AWC's letter (https://wacities.org/docs/default-source/legislative/021023hb1363signonletter.pdf?Status=Master&sfvrsn=2726264f_3) urging the Legislature to take action to revise the restrictions of police vehicle pursuits and provide funding to help ensure the public safety needs of Washington residents. Please share this letter with your legislators.

Thank you to everyone who took the time to sign the letter and support this effort. Washingtonians need a reasonable suspicion standard fix now to the vehicular pursuit law and more funding and best practices for law enforcement departments to use.

We need cities to continue to reach out to their legislators to urge action on both of these bills. It is not enough for the legislature to just adopt provisions for a model policy or to study the issue further, we need immediate action this session to revise the restrictions on pursuits.

AWC urges the legislature to pass both:

- **HB 1363** includes an appropriate balance between providing law enforcement with the tools need to pursue dangerous suspects, while focusing on appropriate and necessary safety standards.
- **SSB 5533** contains proposals to create a model policy around police pursuits and new grant funding to help police departments implement new technologies for tracking vehicles.

If you have questions or comments to share with AWC, please contact Candice Bock directly at candiceb@awcnet.org.

Need a refresher?

Check out AWC's article (<https://wacities.org/advocacy/news/advocacy-news/2023/01/27/bills-related-to-police-vehicle-pursuits-up-for-hearing-this-week>) that goes into more depth on both bills.

Dates to remember

HB 1363 is scheduled for executive session in the House Community Safety, Justice & Reentry committee on February 14 at 4 pm and February 16 at 8 am.

SB 5533 is scheduled for public hearing in the Senate Ways & Means committee on Tuesday, February 14 at 4 pm.

continued

House votes on Missing and Murdered Indigenous Women and People cold case investigations unit

Contact: Candice Bock, Sheila Gall, Lindsey Hueer, Katherine Walton

The House voted last week on **HB 1177**, sponsored by Rep. Debra Lekanoff (D–La Conner), which creates a missing and murdered indigenous women and people cold case investigations unit in the Attorney General's Office.

The House Community Safety, Justice, & Reentry Committee and Appropriations Committee passed out a substitute bill that changes the unit to a Cold Case Investigations Assistance Unit and provides that the Unit may proactively offer assistance to a law enforcement agency with primary jurisdiction over the case. The amendment clarifies that the unit may not investigate or assist with an investigation unless the law enforcement agency requests assistance or support.

This legislation was recommended by the Washington State Missing and Murdered Indigenous Women and People (MMIW/P) Task Force (<https://www.atg.wa.gov/washington-state-missing-and-murdered-indigenous-women-and-people-task-force>) and was just one of ten recommendations (<https://www.atg.wa.gov/news/news-releases/missing-and-murdered-indigenous-women-and-people-task-force-issues-first-report>) to the Governor and the Legislature to begin addressing gaps in services and response to violence against Indigenous people. The 25-member task force, facilitated by the Attorney General's Office, coordinates a statewide response to Indigenous people who go missing, are the victims of homicide, or experience other types of gender-based violence in urban and tribal communities. Other recommendations include:

- Standardizing the use of the National Missing & Unidentified Persons System
- Expanding the scope of MMIWP data and research to all genders
- Working with law enforcement agencies to expand coordination
- Promoting inclusive language
- Improving communication and transparency in MMIWP cases
- Updating the Missing Person's Resource (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2004/Missing_Persons_11_2004%5b1%5d.pdf)
- Reducing or waiving fees for MMIWP public events
- Continuing to support sovereignty and self-determination
- Extending the MMIWP Task Force timeline through June 30, 2025

AWC's representative on the Task Force was Rep. Chris Stearns (D–Auburn), former Auburn Councilmember. Thank you to Rep. Stearns for his time and dedication to this effort. AWC is in the process of selecting a replacement on the committee.

continued

Authorizing a second deferred prosecution for DUI

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

HB 1104, sponsored by Rep. Roger Goodman (D–Kirkland), would alter the current requirements for deferred prosecution for those charged with multiple driving under the influence (DUI) or physical control of a vehicle under the influence (PC) charges in their lifetime. Currently, an individual is eligible for only one deferred prosecution for DUI or PC in their lifetime. In practice, often, a first DUI charge may be pled down to a negligent driving or reckless driving charge, and it is only at a second DUI charge that an individual engages in deferred prosecution.

If enacted, **HB 1104** would allow a person charged with a subsequent additional DUI or PC that previously completed a deferred prosecution program to petition the court for a second deferred prosecution. Further, an individual would be allowed to petition the court for a second deferred prosecution even while they are currently participating in a deferred prosecution for a first DUI or PC charge, though the first deferred prosecution must be revoked.

Cities encourage pathways to treatment for people who are diagnosed with a substance use disorder; however, sufficient protections are necessary to ensure individuals are not simply provided multiple opportunities to evade a DUI conviction. AWC has not taken a position on this bill, but cities may want to consider how it could impact charging and prosecution of DUI and PC cases.

Dates to remember

HB 1104 is scheduled for public hearing in the House Transportation Committee on Monday, February 13 at 4 pm.

State may study creating pool of law enforcement applicants for police departments

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

A substitute version of **HB 1387**, sponsored by Rep. Bill Ramos (D–Issaquah), would create a study on a proposed program allowing the Criminal Justice Training Commission (CJTC) to recruit and train a pool of applicants who would be available to be employed by a law enforcement agency at a city with a population of 100,000 or fewer, or a county with a population of 300,000 or fewer.

The intent of this effort is to allow the state to create a diverse pool of applicants who meet the same requirements as a person who has received a conditional offer of employment from a law enforcement agency. Once an applicant is accepted into the pool, the person would go through basic law enforcement training and certification through the CJTC. Law enforcement agencies who hire an applicant from this pool would need to reimburse the CJTC for the costs of training that officer.

Dates to remember

HB 1387 is scheduled for public hearing in the House Community Safety, Justice & Reentry committee on Monday, February 13 at 1:30 pm and for a committee vote on Thursday, February 16 at 8 am.

continued

Bills attempt to crack down on illegal street racing

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

SB 5606, sponsored by Sen. John Lovick (D–Mill Creek) is an effort to curb illegal street racing. The Senate will hear this bill this week.

This bill was drafted based on input specifically from the cities of Kent and Tacoma where they have experienced an increase in dangerous illegal street racing. **SB 5606** creates definitions for “off-street facilities” and “drifting” and encourages law enforcement agencies to undertake a public education campaign to inform the public of the unlawful nature of illegal racing. The bill also allows law enforcement to impound vehicles used in street racing and creates procedures for impoundment. The bill would also allow law enforcement to take action in certain circumstances when individuals outside the city’s jurisdiction are encouraging or organizing street racing within the city.

AWC supports this effort to curb this unsafe and illegal activity.

Companion bill, **HB 1631**, sponsored by Rep. David Hackney (D–Seattle), has not yet been scheduled.

Dates to remember

SB 5606 is scheduled for public hearing in the Senate Law & Justice Committee on Tuesday, February 14 at 10:30 am and for executive session on Thursday, February 16 at 8 am.

Use of traffic safety and toll system cameras for other criminal investigations

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

Images and data from traffic safety cameras and toll systems may soon be available to law enforcement agencies and officers with a warrant. **SB 5722** is sponsored by Sen. Patty Kuderer (D–Bellevue) and is currently scheduled for a hearing and a vote this week.

Washington state law currently restricts the use of automated traffic safety cameras by local governments. Generally, automated traffic safety cameras may only be used for detecting driving violations (like breezing through stoplights, speeding, etc.) or for use in photo toll systems. Automated cameras may only take photos of the vehicle and license plate while an infraction is occurring and may not show the face of the driver or passengers. The images are not open to the public and cannot be used in a court unless the action relates to the traffic violation or toll collection penalties.

This bill would allow any photograph, microphotographs, electronic images, or records collected with an automated traffic safety camera or photo toll system to be made available to law enforcement provided they first obtain a warrant. Law enforcement has long sought this change to help when investigating other serious crimes where these images may be important evidence. AWC supports this thoughtful approach to making that possible.

Dates to remember

SB 5722 is scheduled for public hearing in the Senate Law & Justice Committee on Monday, February 13 at 10:30 am and executive session on Thursday, February 16 at 8 am.

continued

Public works & infrastructure

Separate prevailing wage proposals reappear, combine in a new bill with major impacts for cities

Contact: Brandy DeLange, Brianna Morin

This year has been a busy one for prevailing wage issues, with several proposals seeking to update and amend current law under consideration in the Legislature. Some of the bills have overlapping intentions or aim to achieve the same goal through varying means. Last week, Sen. Curtis King (R–Yakima) introduced **SB 5726**, which addresses how the prevailing wage rate is set and contested under certain conditions, and when it is updated within a public works contract.

Specifically, the bill proposes the following:

- When there is more than one collective bargaining agreement in a county, the industrial statistician must determine the prevailing wage using the majority rate from those agreements, or, when a majority rate is not present, the rate representing the preponderance of hours.
- An interested party may contest a determination by the industrial statistician to prove the actual rate used in the determination is less than the rate representing the majority number or preponderance of hours.
- Public works contracts must specify that wages paid to workers will be no less than the latest prevailing wage rate in effect *at the time the work is performed*.

The bill also requires payment for accrued and unused sick leave for certain construction workers separating from employment. However, during discussion of the bill in the Senate Labor & Commerce Committee last week, the bill sponsor communicated his intention to remove this provision.

Our regular *Bulletin* readers may recognize the language in **SB 5726** from two other bills introduced earlier this year. One of these is **HB 1099**, from Rep. Liz Berry (D–Seattle), which requires public works contracts to specify that wages paid to workers will not be less than the latest prevailing wage rate in effect at the time the work is performed. AWC has a write-up of the bill here. HB 1099 has moved quickly through the legislative process already; it is currently on its way to the House Capital Budget Committee for consideration.

Date to remember

HB 1099 is scheduled for public hearing in the House Capital Budget Committee on Thursday, Feb. 16, at 1:30 pm.

continued

Transportation

Stakeholder input helps shape Freight Mobility Board's new path

Contact: Brandy DeLange, Brianna Morin

As a result of the stakeholder process, in which AWC was actively engaged, the proposed changes to the state's Freight Mobility Strategic Investment Board (FMSIB) contained in **HB 1084** (Rep. Fey, D-Tacoma) were successfully amended last week in committee.

The bill proposes substantial changes to the Board. The FMSIB's primary duty of soliciting freight project applications and making freight project investments is changed to providing strategic guidance to the Governor and the Legislature regarding the highest priority freight mobility needs in the state. AWC published a summary the proposal here (<https://wacities.org/news/2023/01/16/proposal-to-reshape-the-freight-mobility-board-to-be-heard-in-committee>).

The adopted amendments include the following:

- The updated purpose of the Board includes the duty of recommending a program of high-priority strategic freight mobility investments.
- The Board's recommended six-year investment program should prioritize investments in zero-emissions freight movement corridors but is not required to do so.
- The Board must "seek input" from various public entities and tribes rather than "consult" with those entities.
- The Board must ensure that the investment program provides statewide inclusion and maximum federal funding options and must be developed consistent with the federally recognized state freight plan.
- Board membership is increased by an additional two members (for a total of five new members): a labor representative of the freight sector and a representative of the heavy highway construction industry.
- Expenditures from the Freight Mobility Investment Account and the Freight Mobility Multimodal Account may be used only for projects recommended by the Board.
- Port districts may adopt freight development plans. Port freight development plans must be submitted to the Board as well as the Washington State Department of Transportation and transportation planning organizations.

The bill as amended was approved by the House Transportation Committee last Friday and now heads to the Rules Committee.

continued

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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