



Legislative bulletin

February 20, 2023

Hot topics

Priority housing revenue bill amended as it passes the first hurdle

It will take significant new revenue to address half of our underproduced housing need – housing that requires public subsidy. While we are hopeful that the Governor's bold \$4 trillion bonding bill gains the traction it deserves, we are also supporting another proposal that aligns with the direct funding pillar of AWC's Housing Solutions Group proposal using new real estate excise tax (REET) dollars to fund housing. An amended version passed out of the policy committee and contains improvements that AWC advocated for.

Cities spoke and legislators listened on vehicular pursuits

HB 1363 was voted out of committee last week and, while the amended version is not the full solution we are requesting, this is a significant step forward. The amended version includes a sunset provision of July 1, 2025, and would allow pursuits when there is reasonable suspicion that a person in the vehicle has committed a selected list of crimes, poses a serious risk of harm to others, and the pursuit is necessary to identify them. Although we are encouraged that **HB 1363** is moving forward, **cities still need to reach out to legislators and ask them to support this bill.** It still faces opposition and a difficult path to full passage.

Action needed: Property tax cap fix gets holiday hearing in the House and needs city support to advance out of committee by this week's deadline

HB 1670, which changes the arbitrary 1% property tax cap to tie it to your city's cost drivers – inflation and population up to 3% – was heard in the House Finance Committee. City support is needed to encourage passing the bill out of committee before the committee's vote scheduled for February 21. **Please talk to your legislators and ask them to urge members of the House Finance Committee to pass the bill before Friday's fiscal committee cutoff deadline.**

View from the hill

City Action Days full of fun and momentum to carry us into the intense cutoff week

We had a great time connecting with more than 350 city officials at last week's City Action Days here in Olympia. It was an excellent opportunity to share the latest updates on legislative action and encourage cities to use your voices to be heard throughout the legislative process. Remember that your city voice is powerful!

As we enter week seven of session, many bills are up against the Friday fiscal committee cutoff. This will be a hectic week of last-minute maneuvering to keep bills alive. Nevertheless, there is still much work to be done. There are about two months of session remaining, with some of the biggest decision points ahead. Make sure you continue engaging with your legislators using this weekly *Legislative Bulletin* and our weekly Bill Hot Sheet to stay current on the issues impacting cities.

Media time

Nine things we learned at City Action Days

If you didn't have the chance to attend City Action Days this year, rest assured your colleagues represented cities around the state with energy and enthusiasm. It was a sold-out event with more than 350 participants representing almost half the cities in the state. With appearances from Governor Inslee and a cadre of legislators, it's clear that the opportunity to talk with cities is a strong draw. Attendees networked with one another throughout the event and had a great afternoon on the hill—launching the second half of legislative session with a strong city voice. Catch up on these top nine takeaways!

Lawmakers explore "Missing Middle" to address housing shortage

To tackle the lack of affordable housing, state lawmakers are considering a controversial zoning mandate. If the middle housing bill (**HB 1110**) passes, many cities will have to accept duplexes, triplexes and fourplexes in single-family zones. Listen to this Seattle Channel story to explore whether the bill "measures up or misses the mark" with guests Nancy Backus, Mayor of Auburn; Representative Jessica Bateman, (D-Olympia); Michael Pollard, VP of Entitlements, Shelter Homes; Keith Scully, Mayor of Shoreline; and Nadine Woodward, Mayor of Spokane.

continued

Action items

AWC city action calls – Members only

Fridays at 12:30 pm | Online

Join our city action calls for AWC members each Friday to hear updates directly from your team of 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.

AWC Lobby Day

March 16 | Olympia

City officials are invited to Olympia during a crucial time in the legislative session to tell legislators that strong cities are the key to a great state. Add your voice and let legislators know how they can help support and enhance strong cities.

After a major legislative cutoff date, legislators begin negotiating their differences in earnest while aiming to conclude work by April 23. Lobby Day is a key time to meet legislators face-to-face and on the floor to share the positive or negative city impacts of the difficult budget or policy decisions they face.

Register to join us for as much of the day as you can and start making appointments with your legislators now.

What you need to know

Budget & finance: House hears State Tax Structure Work Group proposal to replace state B&O tax with margin tax. The House Finance Committee heard the State Tax Structure Work Group's proposal to replace the state B&O tax with a new margin tax. AWC continues to monitor these discussions due to the potential for impacts on local tax authority.

DOR begins implementing capital gains tax while awaiting decision by the Washington Supreme Court. The Department of Revenue (DOR) has begun implementing collection of the new state capital gains tax approved by the Legislature in 2021. Meanwhile, it is awaiting a decision on the constitutionality of the tax by the Washington Supreme Court, which heard oral arguments on January 26.

Cannabis: Bill requiring new voter approval on bans of local cannabis establishments and impacting local regulatory authority passes out of committee. HB 1650 would prevent local governments from prohibiting cannabis retail businesses in their jurisdiction after July 1, 2027, unless the prohibition was approved by voters after July 1, 2023.

General government: Keep contacting your legislators to oppose these expensive and problematic bills. Problematic and expensive liability bills, **HB 1025** and **SB 5059** advanced out of their policy committees. Cities have been opposing them, and there is still a chance to stop them ahead of Friday's fiscal committee cutoff. Keep an eye out for these bills to get scheduled for last-minute action this week.

continued

A prescription for going to the park – Legislature considers funding pilot programs to get people outside. Parks Rx programs provide no-cost and low-cost interventions to connect doctors and patients to local park resources to influence positive health outcomes.

Wait, what does this bill do? Senate proposes restrictions on automated decision systems. SB 5356 addresses software or other computer programs used by both public and private agencies to aid in the decision-making process.

HR & labor relations: Bills imposing “good faith” on self-insured cities and third-party administrators amended, voted out of committee. Two bills that create a duty of “good faith and fair dealing” in workers’ compensation programs managed by self-insured cities or their third-party administrators each passed out of their policy committees with amendments last week.

Human services: Trueblood and a new potential costly role for local jails. As amended, **SB 5440** allows the Department of Social and Health Services to contract with willing jails to fund construction and operational costs for clinical intervention units that will provide enhanced oversight, monitoring, and support to in-custody defendants while they await services related to competency to stand trial.

Pensions: Pre-cutoff pensions roundup. Here are reminders of a few of the pensions bills that AWC has highlighted so far this session and a summary of where those bills stand as we approach Friday’s fiscal committee cutoff.

Public safety & criminal justice: Bill expanding victims’ services heard last week. AWC submitted written testimony supporting the intent of the bill but with concerns about costs.

HB 1445 gives Attorney General investigative power over law enforcement misconduct. AWC opposes the bill and has asked sponsors to balance punitive measures with voluntary compliance, focusing on technical assistance.

Public works & infrastructure: Washington’s disposable wipes labeling law updated to align with federal requirements. Since its enactment in 2020, a discrepancy in the law was identified, revealing a mismatch in timing with federal legislation. **HB 1213** fixes the incongruity.

Bill to expand the definition of public work not ready for “prime time.” The meaning of “public work” will remain unchanged for now after a proposal to significantly amend the definition died in committee last week.

Utility connection waiver proposal fixed to save costs for ratepayers. A bill aiming to lessen the cost of providing services for low-income persons was amended and improved as it hurtled through the House and passed into the Senate.

Transportation: Voluntary road usage charge program proposed by House Transportation chair, up for hearing on Tuesday. The bill takes Washington one step closer to a statewide road usage charge (RUC) system and signals to the federal government that we’re contemplating an RUC as an alternative revenue source to the gas tax.

continued

Affordable housing

Housing priority revenue bill is amended as it passes the first hurdle

Contact: Carl Schroeder, Shannon McClelland

As AWC and other stakeholders working to increase affordable housing in the state have shown, it's going to take significant new revenue to address half of our underproduced housing need—housing that requires public subsidy. While we are hopeful that the Governor's bold \$4 trillion bonding bill gains the traction it deserves, we are also supporting another proposal that aligns with the direct funding pillar of AWC's Housing Solutions Group proposal – using new real estate excise tax (REET) dollars to fund housing.

In brief, **HB 1628**, provides two new REET sources:

- 1. Local** – Creates a new .25% councilmanic local option REET (REET 3) that can be used to fund affordable rentals, affordable home ownership, and infrastructure to support housing. It also allows cities to convert local REET taxes to “progressive tiers” mirroring the state.
- 2. State** – Creates a new state REET tier, increasing the current tax for the portions of property value exceeding \$5 million from 3% to 4%. That provision is projected to raise \$200 million per year for state housing programs.

An amended version passed out of the policy committee and contains the following improvements that AWC advocated for:

- Allows revenue from REET 3 to be used for infrastructure costs associated with eligible affordable housing and facilities.
- Allows counties that are not required to plan under the GMA, but that have chosen to do so, and the cities within those counties, to impose REET 3 with councilmanic authority, rather than with voter approval.
- Allows revenue from REET 2 to be used for any capital project for which REET 1 could be used and vice versa, including for facilities for those experiencing homelessness and affordable housing projects.
- Removes differences in allowed uses of REET 1 based on the size and GMA planning-status of the county or city.
- Repeals the December 31, 2023, deadline and spending caps for maintenance, operation, or service support of existing capital projects, including the provision of services to residents of affordable housing or shelter units.

If you haven't already shared what this would mean for your city (https://wacities.org/docs/default-source/legislative/reetincreasebycity.pdf?Status=Master&sfvrsn=4b14264f_3) with your legislative delegation (<https://wacities.org/advocacy/legislator-directory>), now is the time! To sign in support of the bill without testifying, go to this page (<https://app.leg.wa.gov/csi/Testifier/Add?chamber=House&mId=30829&ald=152092&cald=21632&tId=3>) and submit no later than one hour before the hearing starts.

Date to remember:

HB 1628 will be heard on Tuesday, February 21 at 8 am in the House Finance Committee.

continued

Budget & finance

Property tax cap fix gets holiday hearing in the House and needs city support to advance out of committee by this week's deadline

Contact: Candice Bock, Sheila Gall

HB 1670, which changes the arbitrary 1% property tax cap to tie it to your city's cost drivers – inflation and population (up to three percent) – was heard in the House Finance Committee (<https://leg.wa.gov/House/Committees/FIN/Pages/MembersStaff.aspx>) on Monday, February 20. AWC supports this modest change to allow city elected officials to adjust this major revenue source in response to community needs and increasing expenses.

City support is needed before the committee's vote scheduled for February 21 to encourage passing the bill out of committee before Friday's fiscal committee cutoff deadline. **Please talk to your legislators** (<https://wacities.org/advocacy/legislator-directory>) **and ask them to urge members of the House Finance committee to pass the bill before the deadline.**

Remind your legislators that:

- Property taxes are about 22% of all city revenues.
- The current 1% cap is an arbitrary number that does not keep pace with city expenses.
- The average CPI over the last ten years 2011-2021 was 2.6%. The things cities buy tend to increase even faster than inflation.
- In addition, by keeping property tax rates arbitrarily constrained, it results in more reliance on other more regressive tax options, which the State Tax Structure Work Group recognized when it recommended this change to property taxes for local governments.
- City elected officials need this local option authority to adjust this major revenue source in response to their communities' needs and can be trusted to make both revenue and expenditure decisions that reflect those community needs.

Thanks to all of the city officials who took time to testify or express support for **HB 1670** at Monday's hearing and at the hearing last week in the Senate on a similar proposal **SB 5618**. **SB 5618** did not pass out of the Senate Local Government Committee before the policy committee deadline on February 17.

See AWC's property tax fact sheet (https://wacities.org/docs/default-source/legislative/factsheetpropertytax2023e1284649b78160ed9eadff0000bbe4eb.pdf?sfvrsn=a9a9264f_3) for more information.

Date to remember

HB 1670 is scheduled for executive action in the House Finance Committee on Tuesday, February 21 at 8 am.

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House hears State Tax Structure Work Group proposal to replace state B&O tax with margin tax

Contact: Candice Bock, Sheila Gall

The House Finance Committee heard the State Tax Structure Work Group's proposal to replace the state B&O tax with a new margin tax on Monday, February 20. **HB 1644**, sponsored by Rep. Walen (D–Kirkland), is one of the recommendations of the State Tax Structure Work Group, in addition to **HB 1670** the property tax cap fix also heard in the committee on Monday.

AWC continues to monitor these discussions due to the potential for impacts on local tax authority. The proposed bill would not directly impact tax authority for cities that impose a local B&O tax, other than updating references to state B&O tax provisions that would be repealed by the new margin tax system.

The margin tax would impose a 3.1966 percent tax on the gross revenues of businesses, less an allowed deduction, beginning in 2027. Businesses would be able to choose one of several deductions in calculating the tax on gross revenues:

- Cost of goods sold
- Amount of employee compensation
- A standard margin of 30 percent of gross revenues
- A standard deduction of \$1 million gross revenues

Existing state B&O tax exemptions and deductions would be repealed.

Smaller businesses with revenues less than \$5 million per year could elect to pay a reduced easy computation and rate of 1.75 percent on their gross revenues if they chose not to use the deductions.

DOR begins implementing capital gains tax while awaiting decision by Washington State Supreme Court

Contact: Candice Bock, Sheila Gall

The Department of Revenue (DOR) has begun implementing collection of the new state capital gains tax (<https://dor.wa.gov/taxes-rates/other-taxes/capital-gains-tax>) approved by the Legislature in 2021. Meanwhile, it is awaiting a decision on the constitutionality of the tax by the Washington State Supreme Court, which heard oral arguments on January 26. The capital gains tax is a seven percent tax on the gains over \$250,000 per year from the sale or exchange of long-term capital assets such as stocks and bonds and due on April 15 for the previous year.

In early 2022, a Douglas County superior court found the capital gains tax unconstitutional, and the decision was appealed directly to the Washington State Supreme Court. The supreme court issued a stay of the lower court decision to allow the state to begin collecting the tax this year, pending the outcome of the case. The court will determine if the tax was an income tax or an excise tax, and whether it violates the property tax uniformity clause of the Washington State Constitution because the tax only applies to gains over \$250,000.

The court's ruling is not expected to affect the operating budget currently being drafted for 2023-25, unless the court issues a ruling prior to the end of the session. However, if the court upholds the lower court's decision, the revenues collected this year would need to be refunded. Revenues from the new tax are dedicated to funding for education, early learning, and childcare programs.

continued

Cannabis

Bill requiring new voter approval on local cannabis bans and impacting local regulatory authority passes out of committee

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

HB 1650 passed out of the House Regulated Substances & Gaming Committee just before the cut-off on a party line vote. It would prevent local governments from prohibiting cannabis retail businesses in their jurisdiction after July 1, 2027, unless the prohibition was approved by voters after July 1, 2023.

This means that even cities that had previously submitted the issue to voters would need to resubmit the ban to a vote after July 1, 2023. Currently about 80 cities out of 281 have some kind of prohibition on cannabis retail businesses.

The bill also impacts regulatory authority for cities that currently allow siting of cannabis retailers. It functionally prohibits cannabis-specific siting regulations. Regulations would still be allowed if they apply generally to all retailers, or if the regulations are part of a voter-approved ban.

Finally, revenue generated by the new cannabis retail outlets located in jurisdictions that formerly prohibited cannabis retail outlets, would be directed to support substance abuse disorder prevention and treatment services, and to cannabis research. This revenue provision would expire in 2032.

AWC opposes **HB 1650** due to the preemption and revenue provisions. AWC encourages cities with a prohibition to reach out to your legislators to express concerns regarding this bill. AWC also encourages cities to review the new regulatory restrictions to see if they impact your cities current cannabis retailer regulations.

General government

Wait, what does this bill do...? Senate proposes restrictions on automated decision systems

Contact: Candice Bock, Katherine Walton

A bill that establishes “guidelines for government procurement and use of automated decision systems in order to protect consumers, improve transparency, and create more market predictability” was heard in the Senate last week.

SB 5356, sponsored by Sen. Bob Hasegawa (D–Seattle), addresses software or other computer programs used by both public and private agencies to aid in the decision-making process. Public agencies may use such systems in courts to determine a defendant's risk of skipping bail, by law enforcement to decide where to set patrols, or even by human resource departments as they screen candidates for open positions.

We've seen this bill (<https://wacities.org/news/2022/01/22/senate-looks-to-create-new-requirements-for-automated-decision-systems>) before. Similar versions have been introduced in the past few years but never made it to the other chamber.

We want to know what Washington cities are doing with this kind of technology! Please reach out to Candice Bock or Katherine Walton directly to let us know if your city is using automated decision systems and how.

continued

A prescription for going to the park? Legislature considers funding pilot programs to get people outside

Contact: Candice Bock, Jacob Ewing

A national movement to connect doctors, patients, and local parks is making moves in Washington state which could mean funding for three pilot programs across the state.

SB 5095, sponsored by Sens. Twina Nobles (D–Fircrest) & Liz Lovelett (D–Anacortes), creates the Parks Rx Health and Wellness Pilot Program Advisory Committee and tasks the committee with funding three two-year pilot programs in the Puget Sound, Eastern Washington, and Southwest Washington regions.

Parks Rx programs (<https://www.parks.wa.gov/1137/ParkRx>) provide no- and low-cost interventions using existing park systems to influence positive health outcomes. The goal of the programs is to connect doctors and patients to local park resources to influence positive health outcomes. Using this program, a doctor could discuss a patient’s interests, use a searchable database for information on parks and programs in their zip code, and then write the patient a prescription for a specific activity. This could include taking a 10-minute walk three times a week in a local park, reading a book while sitting next to a body of water, or taking part in a local parks and recreation yoga class once a week. Parks Rx programs already exist in several states across the country.

The committee created under SB 5095 would be tasked with connecting with local Parks & Recreation agencies to determine what resources and programs exist around the state. Additionally, the committee would be required to develop a program to solicit and launch three pilot programs across the state. Calls for pilot program proposals would go out by or before February 1, 2024.

SB 5095 passed through the Senate Health & Long Term Care Committee in late January and now awaits executive action in the Senate Ways & Means Committee.

Keep contacting your legislators to oppose these expensive and problematic bills, HB 1025 & SB 5059

Contact: Candice Bock, Matt Doumit

Problematic and expensive liability bills advanced out of their respective policy committees prior to last week’s policy committee cutoff deadline. But cities have been opposing **HB 1025** and **SB 5059**, and there is still a chance to stop them in the fiscal committees ahead of this week’s fiscal committee cutoff. Both bills would dramatically increase cities’ liability exposure, lead to more litigation, and drive costs should they pass. Cities should contact their legislators about their opposition to these bills, as they have been scheduled for last minute action ahead of Friday’s fiscal committee cutoff deadline.

Taken together, these bills would dramatically increase city liability and make it harder for cities to afford or even obtain city liability insurance, increase settlement amounts, and incentivize trial attorneys to bring more actions against cities. Washington already is an outlier with one of the most plaintiff-friendly governmental liability regimes in the country.

Let your House members know that you oppose **HB 1025** and contact your Senators about your opposition to **SB 5059**. Ask them to urge their colleagues not to advance these bills.

continued

Police qualified immunity

Readers know that **HB 1025** was amended on February 10 and voted out of the House Civil Rights & Judiciary Committee. We wrote about those amendments here (<https://wacities.org/advocacy/News/advocacy-news/2023/02/10/ban-on-police-qualified-immunity-advances-out-of-committee>). Some of the amendments were steps in the right direction for cities, including restricting the cause of action to a more limited (albeit still too broad) set of violations, treating state and local police departments similarly, and removing the restriction on qualified immunity in cases where the officer or their employer couldn't have reasonably known whether or not certain conduct was lawful. That said, the amended bill would still result in a lot of new liability exposure for cities, and other adopted amendments further limited the availability of certain legal defenses for police and police departments. **AWC still opposes this bill and we encourage you to reach out to your House members** (<https://wacities.org/advocacy/legislator-directory>) **(especially any members on the House Appropriations Committee** (<https://leg.wa.gov/House/Committees/APP/Pages/MembersStaff.aspx>)) **to let them know about your city's concerns and to not pass HB 1025.**

HB 1025 is scheduled for a public hearing in the House Appropriations Committee on Tuesday, February 21 at 1:30 pm, and is scheduled for a committee vote on February 23.

Prejudgment interest

SB 5059 establishes prejudgment interest on tort claims going all the way back to when the cause of action accrued, which in some cases could be years before a claim was even filed and a city was even aware there had been an injury. We last wrote about the bill here. It passed out of the Senate Law & Justice Committee on a party-line vote without any amendments and had a hearing in the Senate Ways & Means Committee on February 7. We appreciate all the cities that showed up and joined public entities from across the state opposing the bill. We encourage you to **continue reaching out to your Senators** (<https://wacities.org/advocacy/legislator-directory>) **about your city's opposition to the bill. We also encourage you to reach out to the Senate Ways & Means Committee** (<https://leg.wa.gov/Senate/Committees/WM/Pages/MembersStaff.aspx>) **to urge them not to vote out SB 5059.**

SB 5059 is scheduled for a committee vote in the Senate Ways & Means Committee on February 23.

continued

HR & labor relations

Bills imposing “good faith” on self-insured cities and third-party administrators amended, voted out of committee

Contact: Candice Bock, Matt Doumit

Two pieces of legislation that create a duty of “good faith and fair dealing” in workers’ compensation programs managed by self-insured cities or their third-party administrators each passed out of their policy committees with amendments last week.

We wrote about **HB 1521** and **SB 5524** in *Legislative Bulletin* a few weeks ago (<https://wacities.org/advocacy/news/advocacy-news/2023/01/27/bill-requires-new-workers-compensation-standards-for-self-insured-employers>). The bills create a duty of “good faith and fair dealing” for self-insured employers and self-insured employers’ third-party administrators (TPA) towards workers in self-insured workers’ compensation programs. The bills also allow the Department of Labor & Industries (L&I) to write rules outlining “good faith” duties and requiring L&I to investigate and order resolution of claims. Both bills were heard in their respective chambers’ labor committees in early February and were voted out of committee with amendments last week.

AWC has concerns about these proposals. These bills arose out of some cases of first responders having presumptive occupational illness claims denied or questioned by a city’s TPA. At least part of this issue is due to recent additions to the list of presumptive occupational illnesses. While many employees view presumptive claims as “automatic” approvals, employers still have the right to exercise due process on examining claims and rebut them if necessary. AWC understands that this can be frustrating to claimants, but it is important for self-insured employers to conduct due diligence and ensure legitimate claims receive adequate benefits.

There is also a misperception that self-insured employers (like some large cities) are not subject to oversight, when in fact they are subject to the full gambit of oversight by L&I – including agency approval of claim denials. Many changes to TPA licensing and regulation have taken place over the past two years, and L&I has not had a chance to fully implement those changes, let alone know if they would’ve prevented the anecdotal cases of improper denials that were testified to in committee.

HB 1521 received quite a few amendments on a near party-line vote in the House Labor & Workplace Standards Committee, including:

- Specifying that self-insured employers or third-party administrators violate the duty to a worker if it “coerces” (rather than “wrongfully induces”) a worker to accept less than the compensation due under law.
- Reducing the timeline for employers or TPAs to respond to complaints by permitting the employer or TPA to file a written response within 10 working days after receiving notice and request from L&I (rather than requiring a response within 15 working days).
- Specifying that if the employer or TPA fails to file a timely response, then L&I must issue an order based on available information.
- Requiring L&I to issue an order determining whether a violation has occurred within 30 calendar days of receipt of a complete complaint or on L&I’s own motion.
- Increasing the maximum penalty for violating the duty of good faith from 10x the average weekly wage to 52x the average weekly wage.
- Delaying the effective date until July 1, 2024.

continued

SB 5524 received similar (though sometimes different) amendments, also on a near party-line vote:

- Limiting the duty of good faith and fair dealing to apply only to self-insured municipal employers and their TPAs.
- Increasing the deadline for an employer or its TPA to respond to an L&I notice related to a violation be due to 30 calendar days.
- Requiring L&I to withdraw certification of a self-insured municipal employer if they have been found to have violated the duty of good faith three times in a three-year period (three strikes and you're out).
- L&I may delay withdrawing the certification while the employer has an enforceable contract with a TPA that may not be legally terminated. However, the employer may not renew or extend the contract.
- Making similar amendments as **SB 1521** regarding increased penalties, delayed implementation until 2024, requiring L&I to issue an order on available information if it doesn't receive a timely response from the employer or TPA, and requiring L&I to issue an order within 30 days of receiving a complaint or on L&I's own motion.

Most of these amendments are not positive developments for self-insured cities. Reducing timelines and increasing penalties both raises the stakes of inadvertent mistakes and makes them more likely as there is less time to comply with the law with strict deadlines. In addition, permitting L&I to issue orders after only receiving one side of the story is not a fair way to handle investigations or safeguard the public dollars funding self-insured employers' workers' comp plans for legitimate claims. The Senate bill's direct targeting of self-insured cities is also only based on one-sided, anecdotal claims made against some city TPAs during the bill's public hearing, and are not based on data showing systemic violations of L&I rules by self-insured cities. If any self-insured employer has a pattern of violations they should be subject to revocation of their self-insured status, not just cities.

Both **HB 1521** and **SB 5524** are awaiting scheduling for floor votes in their respective chambers.

continued

Human services

***Trueblood* and a new potential role for local jails**

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

A defendant is constitutionally prohibited from standing trial for a crime if the defendant is not competent to understand the nature of the proceedings against them or is unable to assist in their own defense. Any party or the court may raise the issue of the defendant's competency to stand trial, and the defendant will be evaluated by the Department of Social and Health Services (DSHS) as to whether they are competent to stand trial. For cities, the primary concern is misdemeanor prosecutions. If the defendant is found to be not competent and is charged with a misdemeanor "serious offense" as defined in RCW 10.77.092, then either (1) the case is dismissed; or (2) the defendant will undergo involuntary competency restoration if the prosecutor establishes there is a compelling state interest in pursuing competency restoration. Currently, DSHS is fiscally and procedurally responsible for competency restoration evaluation and treatment services.

SB 5440, sponsored by Sen. Manka Dhingra (D-Redmond), was amended significantly in the Senate Law & Justice Committee this past week. As amended, **SB 5440** allows DSHS to contract with willing jails to fund construction and operational costs for clinical intervention units that will provide enhanced oversight, monitoring, and support to in-custody defendants while they are waiting for services related to competency to stand trial.

Additionally, the bill requires DSHS to coordinate with cities and counties to identify locations that may be commissioned or renovated to provide inpatient services for forensic patients.

AWC is concerned of a potential cost increase to cities to provide medical services to individuals awaiting DSHS competency evaluations and competency restoration treatment in one of the proposed jail-based clinical intervention units. In particular, if services are provided at a county jail, the county may seek to pass along costs to the cities for care provided to misdemeanor defendants. DSHS has historically been responsible for these costs, and AWC supports DSHS remaining responsible for these costs.

AWC encourages cities to evaluate SB 5440 as amended and the potential cost impacts if the county jail in your area were to establish a clinical intervention unit.

Dates to remember

SB 5440 is scheduled for public hearing in the Senate Ways & Means Committee on Tuesday, February 21 at 9 am.

continued

Pensions

Pre-cutoff pensions roundup

Contact: Candice Bock, Matt Doumit

We wanted to remind you of a few of the pensions bills we've highlighted so far this session and to let you know where they stand as we approach Friday's fiscal committee cutoff. At the time of this writing, some of these bills haven't yet been scheduled for a hearing but could get last minute hearings scheduled later this week. However, because these bills have budgetary impacts, they may be considered *necessary to implement the budget* (NTIB) and be exempt from the typical cut-off deadlines.

PERS 1 COLAs

UAAL sunset

HB 1201 establishes a June 30, 2025 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 to pay for additional unfunded costs to PERS 1 that have accumulated over the years. AWC supports ending the UAAL and the extra costs it imposes on cities. **HB 1201** is scheduled for a committee vote on February 23.

PERS 1 COLA (ad hoc & permanent)

Several bills would offer either a one-time, ad hoc COLA for PERS 1, and one would impose an ongoing automatic PERS 1 COLA. You can read more about these bills and AWC's position on them here (<https://wacities.org/advocacy/news/advocacy-news/2023/01/20/pers-1-colas-on-the-schedule-for-week-three>).

HB 1057/SB 5350 are companion bills that authorize a one-time, ad hoc 3% COLA for PERS 1 retirees, capped at \$110 per month. The bills include legislative findings that PERS 1 retirees have lost purchasing power due to inflation, but that an automatic COLA could be cost prohibitive until the UAAL is reduced or no longer required. Both have been heard in their respective chambers. **HB 1057** is scheduled for a committee vote on February 23 and **SB 5350** is scheduled for a committee vote on February 20.

HB 1459 establishes an automatic annual COLA for PERS 1 retirees capped at 3% and \$110 per month starting in July 2023. It also reduces the statutory investment rate of return assumption to 7.2% and makes legislative findings that reducing the investment rate of return assumption, coupled with expected extraordinary investment returns, will balance the benefit increases with PERS 1's future funding needs. The bill was scheduled for a committee vote in the House Appropriations Committee on February 2, but no action was taken, and it has not yet been rescheduled.

continued

First responders pensions

LEO flexible work

Companion bills in the House and Senate (**SB 5424** and **HB 1413**) remove references to “full time” from the definitions of “officers” in the Mutual Aid Peace Officer's Powers Act and the LEOFF retirement system, allowing part-time officers to participate in LEOFF 2 and exercise full mutual aid powers. The bills also allow police departments to adopt flexible work policies, including allowing officers to work less than full time and use alternative shifts and schedules. You can read more about the bills here (<https://wacities.org/advocacy/news/advocacy-news/2023/01/20/new-bill-on-flexible-work-hours-for-police>). Both bills passed out of their respective policy committees, and the Senate bill has been scheduled for a public hearing in the Senate Ways & Means Committee on February 22.

911 operators to PSERS

HB 1055/SB 5328 expand 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. Both bills had hearings in January, and the Senate version had a committee vote in the Senate Ways & Means Committee on February 7 and is waiting for a floor vote. The House version passed out of the House Appropriations Committee on February 13 and is also waiting for a floor vote.

Other bills

Interruptive military service

HB 1007/SB 5296 expand 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. Interruptive military service refers to where a public employee is called away from their regular job for military service. A service credit credits certain “veterans” pensions for their time away from their regular employment while in military service. The House bill was passed out of the House on a unanimous vote is now waiting to be scheduled for a hearing in the Senate Ways & Means Committee. The Senate bill is currently on the Senate floor consent calendar (<https://leg.wa.gov/legislature/Pages/Overview.aspx#:~:text=Calendars/Bill%20Report%20Books%3A>) and is awaiting a floor vote.

Retire/Rehire

HB 1056/SB 5349 permit 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. The House bill received a minor amendment in the House Appropriations Committee, was voted out of the House, and is now waiting for a hearing in the Senate Ways & Means Committee. The Senate bill was passed out of the Senate Ways & Means Committee unchanged and is waiting for a vote on the Senate floor.

continued

Public safety & criminal justice

Cities spoke and legislators listened on vehicular pursuits reasonable suspicion standard

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

Earlier this month, officials from over 100 Washington cities and towns signed on to AWC's letter urging the Legislature to take action to revise the restrictions of police pursuits, and legislators heard your voices. **HB 1363**, sponsored by Alicia Rule (D-Blaine) was voted out of committee last week. While the amended version of **HB 1363** is not the full solution we are requesting, this is a significant step forward in this issue.

The House Community Safety, Justice, & Reentry Committee amended **HB 1363** to allow vehicular pursuits when there is reasonable suspicion that a person in the vehicle has committed or is committing one of the following crimes:

- A violent offense
- A sex offense
- A vehicular assault
- Assault involving domestic violence
- An escape
- A DUI

Further, as amended, **HB 1363** would limit vehicular pursuits to situations when the person being pursued poses a serious risk of harm to others and is necessary for the purpose of identifying or apprehending the person being pursued. Additionally, the amended bill requires jurisdictions with 10 or more commissioned officers to notify and coordinate with a supervising officer. Jurisdictions with less than 10 commissioned officers would be required to notify the on-call supervisor.

Importantly, the bill was amended to add a sunset provision. All provisions in **HB 1363** related to vehicular pursuits would sunset on July 1, 2025. While this means the debate will resume in Olympia in two years, this provides an immediate fix to the issue and allows for two years to collect data demonstrating that this fix works.

AWC is encouraged **HB 1363** is continuing to move forward. **Cities still need to reach out to legislators and ask them to support this bill because it still faces opposition and a difficult path to full passage.**

Meanwhile, **HB 1586**, which creates a work group in the Criminal Justice Training Commission (CJTC) to establish a model vehicular pursuit policy, was also passed out of the House Community Safety, Justice, & Reentry Committee. A similar Senate version, **SB 5533**, creating a model policy as well as a grant program, was heard in the Senate Ways & Means Committee last week. AWC supports **SB 5533** as companion effort to **HB 1363**, but not as a standalone solution.

Dates to remember

HB 1363 is scheduled for public hearing in the House Transportation Committee on Monday, February 20 at 1:30 pm.

HB 1586 is scheduled for public hearing in the House Appropriations Committee on Wednesday, February 22 at 1:30 pm and for executive session in the same committee on Friday, February 24 at 9 am.

continued

Bill expanding victims' services heard last week

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

A bipartisan victim's rights bill that would expand the rights of crime victims as well provide additional protections passed through the Senate Law & Justice Committee last week. Notably the bill expands these provisions to impact misdemeanor cases in municipal courts.

SB 5635, sponsored by John Braun (R-Centralia), intends to ensure all crime victims are provided with necessary and relevant assistance throughout the judicial process while providing crime advocates and prosecutors with sufficient funds to do so. While we appreciate the language in Section 2 requiring the state to provide sufficient funding to the office of crime victims advocacy, AWC is concerned regarding potential unfunded costs as well as time constraints on misdemeanor cases in municipal and district courts.

The bill:

- Expands the rights of victims and survivors of victims to be informed of the trial and sentencing hearing **in any case** (not just felony and domestic violence misdemeanor, as stands currently), and to present a statement personally or by representation at the sentencing **in any case**.
- Provides additional rights to have the victims' safety considered in bail considerations, to be heard when the court sets a date for trial, and to be informed of the offender's place of incarceration, release from confinement, and any escape.
- Requires the state to **provide funding sufficient to support crime victim advocates and prosecutors** in their work to ensure the rights granted to victims, survivors of victims, and witnesses of crimes are protected.

AWC submitted written testimony supporting the intent of the bill but with concerns about costs. We are currently trying to get a better sense of what "funding sufficient to support crime victim advocates and prosecutors" might actually look like. Please reach out to Lindsey Hueer or Katherine Walton with information regarding victim advocate services that you anticipate would be required if this legislation were to be enacted.

continued

Attorney General investigative power over law enforcement misconduct

Contact: Candice Bock, Lindsey Hueer, Katherine Walton

HB 1445, giving the Washington Attorney General (AG) the authority to investigate and address law enforcement and local corrections agency misconduct through investigations and legal actions, was heard in the House Appropriations committee last week.

The bill would permit the Washington State Attorney General to investigate and bring action against law enforcement or local corrections agencies for violation of WA laws or constitution, including allowing civil actions for insufficient accountability systems, training, and policies leading to violations. It also requires the AG's office to develop and publish model policies.

AWC opposes HB 1445 because of the punitive nature of the bill. AWC asks bill sponsors to balance punitive measures with voluntary compliance, focusing on technical assistance to law enforcement agencies to assist in making necessary policy changes to remedy any concerning patterns or practices that the AG's office believes are in violation of the state law or inconsistent with model policies.

AWC also asks for a technical change in Section 3 of the bill that refers to a violation, clarifying that the law applies to a pattern or practice rather than just an individual violation.

Read more: Bill would grant Attorney General greater authority to investigate law enforcement misconduct (<https://wacities.org/news/2023/01/20/bill-would-grant-attorney-general-greater-authority-to-investigate-law-enforcement-misconduct>).

Dates to remember

HB 1445 is scheduled for executive session in the House Appropriations Committee on Wednesday, February 22 at 1:30 pm.

continued

Public works & infrastructure

Bill to expand the definition of public work not ready for “prime time”

Contact: Brandy DeLange, Brianna Morin

The meaning of “public work” will remain unchanged, for now, after a proposal to significantly amend the definition died in committee last week.

Earlier this session, Sen. Steve Conway (D–Tacoma) introduced **SB 5418**, which expands “public work” to include work supported by grants or loans of public dollars, or by tax deferral or reimbursement. AWC wrote briefly about the bill here (<https://wacities.org/news/2023/01/20/bill-proposes-to-expand-definition-of-public-work>).

With the help of feedback provided by cities, AWC staff testified against **SB 5418**, identifying several adverse impacts of the bill. Specifically, cities cited concerns that the bill would have impacted efforts to deliver affordable housing projects within their communities. For example, jurisdictions attempting to use historic preservation incentives, tax deferrals, or other tax credits to incentivize affordable housing would be subject to prevailing wage and other public works requirements. In many cases, it would be difficult to meet those requirements and still deliver a substantive project. Similarly, the bill would have impacted “ordinary maintenance,” requiring cities to take lowest bid over best value, resulting in an unintended consequence of disproportionately impacting small, minority, rural, and women owned contracting businesses.

SB 5418 was scheduled for executive session last week in the Senate State Government & Elections Committee but was not considered. It therefore did not pass the policy cutoff deadline required to continue its path through this year’s session.

Utility connection waiver proposal fixed to save costs for ratepayers

Contact: Brandy DeLange, Brianna Morin

A bill aiming to lessen the cost of providing services for low-income persons was amended and improved as it hurtled through the House and passed into the Senate Chamber.

HB 1326, from Rep. Julio Cortes (D–Everett), permits municipal utilities to waive connection charges for designated properties. AWC wrote about the bill here (<https://wacities.org/news/2023/01/20/waivers-for-municipal-utility-connection-charges-would-be-allowed-under-new-bill>).

Thanks in part to AWC’s advocacy work, a substitute version of the bill was adopted, with a few fixes of benefit to cities. The bill now requires that any waived connection charges be funded through general funds, grant dollars, or another identified revenue stream. This ensures that utilities would not need to recoup the loss in revenues from the waiver by adjusting customer rates, thereby saving the same customers that are intended to benefit from the waived connection costs from experiencing increased utility rates.

The bill was also amended to clarify eligible entities who may apply for connection waivers.

AWC would like to thank the bill sponsor and proponents for their collaborative work to address city feedback.

Substitute HB 1326 has passed the House Chamber and awaits a hearing in the Senate Local Government, Land Use & Tribal Affairs Committee.

continued

WA's disposable wipes labeling law updated to align with federal requirements

Contact: Brandy DeLange, Brianna Morin

Bulletin readers may remember all the way back in 2020 when the Legislature acted to address the problem of disposable wipes wreaking havoc for sewer systems across the state. AWC wrote about the legislation here (<https://wacities.org/news/2020/03/07/legislation-requiring-labeling-of-disposable-wipe-products-passes-house-senate>).

Under that legislation, the packaging for disposable wipes must be labeled clearly and conspicuously with a "Do Not Flush" label that meets several specifications. The labeling requirements took effect for most non-flushable, non-woven disposable wipes last July. However, some non-flushable, non-woven disposable wipes are required to be registered by the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The requirements for those are set to take effect July of this year.

Since enactment of the Washington law, a discrepancy has been identified: the timing of the law is misaligned to federal law and, as a result, is unenforceable. A stakeholder group including city leaders has been working to fix the issue. The result is **HB 1213**, introduced this year by Rep. Alex Ybarra (R–Quincy). The bill amends current law by:

- Eliminating the 2023 deadline for products subject to the labeling requirements of the FIFRA to also meet labeling requirements for non-flushable, non-woven disposable wipes.
- Instituting a process whereby FIFRA regulated wipes must achieve compliance with labeling requirements by the later of 2025 or 24 months after a product receives label approval under FIFRA from EPA.
- Clarifying that non-flushable, nonwoven disposable wipes manufactured prior to July 1, 2022, may be sold if the product is labeled consistent with requirements.

The bill contains an emergency clause and takes effect immediately upon enactment.

HB 1213 has moved quickly through the Legislature. It has passed the House Chamber and has been referred to the Senate Environment, Energy & Technology Committee.

continued

Transportation

Voluntary road usage charge program proposed by House Transportation Chair, up for hearing this week

Contact: Brandy DeLange, Brianna Morin

Following years of research, stakeholder work and two pilot studies, a road usage charge (RUC) system is closer than ever to becoming a reality in Washington. Last week, Rep. Jake Fey (D-Tacoma) introduced a proposal for implementing a voluntary RUC program, bringing the state one step closer to a statewide road usage charge system, and signaling to the federal government that our state is ready to contemplate a RUC as an alternative revenue source to the gas tax.

HB 1832 establishes a voluntary road usage charge program that imposes a per mile fee for the use of public roads. It also creates the Road Usage Charge Account in the state Treasury. The revenues from the program will flow into the account and must be used for transportation preservation and maintenance purposes only.

The Department of Licensing (DOL) will administer the program. DOL must offer participants the option to report miles driven through periodic odometer mileage submissions. It may also offer other options of automated reporting methods. Participants in the program do not have to pay for miles driven off of public roadways in Washington.

The proposed rate for the program is 2.5 cents per mile. The amount owed is due at the time of vehicle registration renewal, 12-months after enrollment. Eligible vehicles are those that can travel faster than 35 mph and weigh 10,000 pounds or less.

Existing electric and hybrid-electric vehicle registration fees are waived for program participants. The RUC due on a vehicle cannot exceed the amount of fees that would have been owed had they not been waived. Currently, the Transportation Improvement Board (TIB) receives 15% of the proceeds of the electric vehicle fee after the first \$1 million is collected; however, the waiver would reduce these proceeds. Unfortunately, as written, the bill does not contemplate an adjustment to ensure that investments into TIB are maintained. Cities rely heavily on TIB to support and fund transportation projects like pavement preservation.

continued

Concerns about privacy, particularly regarding location data, are addressed in the bill. It prohibits DOL from collecting “personally identifying information beyond what is necessary to calculate, report, and collect the per mile fee.” Through written consent, however, vehicle owners may provide additional information. The Department may record and report general location data under certain circumstances; it may not report specific location data without consent from the vehicle owner.

Finally, the bill sets a target date for implementation of a comprehensive, mandatory RUC program for January 2030.

To learn more about the state’s RUC research and pilot programs, visit waroadusagecharge.org. AWC has previously written about RUC here (<https://wacities.org/news/2017/09/08/road-mile-usage-charge-study-underway>) and here (<https://wacities.org/news/2019/12/14/state-s-road-usage-charge-recommendations-move-forward>). Rep. Fey’s bill is not the only proposal for a statewide RUC to have come before the Legislature. Last year, Rep. Emily Wick (D–Everett) introduced such a bill (<https://wacities.org/news/2022/02/04/washington-s-first-road-usage-charge-program-impacts-city-funding-source>), which died early in the legislative session.

Date to remember

HB 1832 is scheduled for public hearing in the House Transportation Committee on Tuesday, February 21 at 1:30 pm.

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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