



## Week 4 Legislative Update

The first cutoff of the session was 2/7, and we now quickly pivot to the fiscal cutoff on 2/11. Bills not passing by the cutoffs will be dead for the session unless they are necessary to implement the budget. Thus, as we move forward, the Legislature will continue to narrow the scope of bills it considers. The revenue forecast will be updated on 2/19. The House and Senate budgets will be released a few days after the revenue forecast.

### **Rep. DeBolt not running for re-election.**

Another legislator has announced his retirement after this session. Rep. Richard DeBolt (R, 20th LD), the former House Minority Leader announced his retirement on Thursday after serving for 24 years in the House of Representatives. This announcement comes on the heels of several other members that will be moving on from the Legislature in 2020.

### **Highlights**

#### **Housing & Homelessness Policy**

Affordable housing and homelessness issues continue to be a top policy priority for legislators across the state. This can be clearly reflected in the number of bills that are being introduced to address the crisis. Proposed solutions include land-use changes, as well as tax incentives and landlord tenant act policy changes.

- **HB 2343/SB 6334**—a trailer bill to HB 1923 that passed last session which incentivizes certain cities to increase residential building capacity. The Senate bill passed out of the Senate Housing Stability & Affordability Committee on 2/5 and has been passed to Rules. The House bill passed out of the House Environment & Energy Committee on 1/28 and has been referred to Rules.
- **HB 2620/SB 6411**—Governor Inslee’s proposal to authorize cities to extend a property tax exemption program on multifamily housing developments for an additional 12 years in exchange for providing a certain proportion of income restricted units. The Senate bill passed out of the Senate Housing Stability & Affordability Committee on 2/5. The House bill had a public hearing on 2/7 and is scheduled executive action in the Finance Committee on 2/10. Additionally, **HB 2746** would change the existing multifamily tax exemption requirements, including adding affordability requirements to the program focused on multifamily development, and mandating that a portion of the affordable units in the properties contain at least two bedrooms. This bill does not provide for an extension of the program and does not address the units that will fall out of affordability after 12 years. This bill also had a public hearing on 2/7 and is scheduled for executive action in the Finance Committee on 2/10.
- **HB 2453**—prohibits a landlord from evicting tenants unless there is good cause for eviction. The bill sets forth the activities that would be deemed good cause, including nonpayment of rent, substantial breach of a lease, the owner seeks to repossess the property, or the owner seeks to take the property off the rental market. The bill had a public hearing in the House Civil Rights & Judiciary Committee on 1/24. The bill passed out of the committee on 2/7.
- **HB 2570**—this proposal requires covered jurisdictions that are planning under the Growth Management Act (GMA) to adopt specified policies relating to accessory dwelling units (ADUs). The bill also provides that these policies are exempt from appeals under the GMA and the state environmental policy act (SEPA). The bill had a public hearing on 1/28 in the House Environment & Energy Committee and passed out of the committee on 2/4. There was one vote against (Rep. Fey). The bill has been referred to the Rules committee.

- **SB 6388**—a part of the policy discussion has turned toward a growing use of impact fees by local governments and its impacts on development and housing affordability. SB 6388 prohibits local ordinances from charging a higher per unit impact fee for multifamily residential construction than is charged for single-family residential construction. The bill had a public hearing in the Senate Housing Stability & Affordability Committee on 1/27 but did not pass by the cutoff so is likely dead for the session.
- **HB 2797/SB 6631**—a trailer bill to HB 1406 (which passed in 2019 and provides a sale and use tax credit against the state sales tax to fund affordable housing projects), would clean up how counties and cities qualify for the local tax and extend the deadlines to impose the optional taxes. The house bill has a public hearing on 2/7 in the Finance committee and has been scheduled for executive action on 2/10. The Senate bill has a public hearing on 2/3 and executive action on 2/5 in the Housing Stability & Affordability Committee. The bill has been referred to the Ways & Means Committee.
- **SB 6126 / HB 1590** would allow local sale and use tax for affordable housing to be imposed by councilmanic authority rather than requiring a majority of public voters. The Senate bill had a hearing in the Senate Local Government Committee on 1/14 and passed out of the committee on 1/23. The bill has been sent to the Rules committee. The House bill was placed on the second reading calendar on 2/4. There have been indications that the local governments have worked through their concerns and the bill is likely to gain momentum.

### **Cyber/Data Privacy**

While a significant amount of activity has occurred on data privacy and cybersecurity over the last several years, the volume of proposals in 2020 has increased significantly, making it unclear which proposals have viability. Here is a summary of some of the proposals to date:

- Senator Carlyle’s legislation (**SB 6281/HB 2742**) is similar to last year’s proposal, putting the EU’s GDPR privacy standard into Washington statute. The Senate proposal had a public hearing on 1/15, and passed out of the committee unanimously on 1/23. The Senate bill has been scheduled for a public hearing on 1/30 in the Ways & Means Committee. And passed out of Ways and Means on 2/6. 2SSB 6281 is in the rules committee and is expected to be passed out of the Senate next week.

The HB 2742 had a public hearing on 1/22 in the Innovation, Technology & Economic Development Committee and executive action on 2/7. Representative Hudgins proposed a Substitute bill, and there were 29 amendments considered by the committee to the proposed substitute. Ten of the proposed amendments passed. The proposed substitute: makes substantive changes to the jurisdictional scope, consumer rights, responsibilities of controllers and processors, facial recognition, and liability and enforcement provisions of the bill, including adding a private right of action. Most in the business community have serious concerns with this version of the bill.

- **HB 1342/SB 5799**—is a proposal requiring the ability for third party servicing on digital electronic products. The bill would require digital electronic product manufacturers to make available certain information, parts, and tools related to independent repair. The bill also prohibits digital electronic product manufacturers from requiring the purchase of proprietary information, excluding certain information, or preventing specified functions related to independent repair. Finally, the bill sets forth an alternative to the requirement to provide repair information and parts by allowing manufacturers to provide a training and certification program and by requiring manufacturers to have a certain minimum number of certified repair facilities. The bill had a public hearing on 1/21 in the Senate Committee on Environment, Energy

& Technology. There was significant business opposition to the bill, and the bills are both dead for the session.

- **SB 6280**—proposal that would require state or local government agencies to develop an accountability report on the use of facial recognition. The bill would also prohibit the use of facial recognition for ongoing surveillance, except in support of law enforcement and pursuant to a search warrant. The bill had a public hearing in the Senate Environment, Energy & Technology Committee on 1/15, and passed out of the committee on 1/23. The bill has been referred to Rules. **HB 2856** would prohibit the use of facial recognition technology by state and local government agencies until July 2023. The bill had executive action on 2/4 and was referred to the Rules committee.
- **HB 2644**—this proposal would prohibit the use of artificial intelligence-enabled profiling in public places, and provides a private right of action for violations. The bill had a public hearing in the House Innovation, Technology & Economic Development Committee on 1/28. The bill was scheduled for executive action on 2/4 but no action was taken.
- **HB 2363**—this Rep. Smith and Hudgins proposal states that “[e]ach person owns and has an exclusive property right in the person’s biometric identifiers.” The bill would convene a taskforce to study “issues related to infringement by biometric surveillance technology” and a majority of the members must be consumer/civil liberties advocates. The bill had a public hearing 1/14 in the House Innovation, Technology & Economic Development Committee. The bill had executive action on 2/4 and has been referred to Rules.
- **HB 2364**—another proposal by Reps. Smith, Hudgins, etc., this bill would grant consumers privacy rights and impose some obligations on companies. The bill provides no exceptions at all, even for things like complying with other laws. It was heard on 1/21 in the House Committee on Innovation, Technology & Economic Development. The bill did not pass before cutoff so is dead for the session.
- **HB 2365**—another Rep. Smith/Hudgins bill, would require the state’s chief privacy officer to develop a user data transmission sticker for the purpose of notifying Washington consumers that a connected device has the capability to transmit user data to the device manufacturer or any separate business entity. That would mean literally every computer, smart phone, etc., that connects to the Internet would need to be labeled with a data transmission sticker. The bill was heard in the House Committee on Innovation, Technology and Economic Development on 1/15. Executive action was taken on 1/24 and the bill is currently in the Rules committee.
- **HB 2399**—a bill proposal by Reps. Hudgins, Smith and Kloba would require a manufacturer of a device with a “voice recognition feature” to prominently inform a consumer of the feature, and prohibit the retention and use of voice recordings unless the manufacturer obtains consent via a very clunky, prescriptive process. The bill was heard on 1/24 in the House Committee on Innovation, Technology & Economic Development. The bill was scheduled for executive session on 2/4 but no action was taken. The bill is dead for the session.
- **HB 2442**—a proposal that would ban websites who have actual knowledge a user is a minor (under 18) or that are directed/targeted to minors from advertising certain products (e.g., alcohol, tobacco, firearms) to the user. The proposal also requires websites to allow minors to delete posted content. The bill had a public hearing on 1/21 and was passed out of committee on 1/24. It is currently in the Rules Committee.

- **HB 2366**—this proposal would make the state’s chief privacy officer an elected position. The bill was heard on 1/15 the State Government & Tribal Relations Committee. It was passed out of committee on 1/28 and is currently in the rules committee.
- **SB 2396** would make it illegal “to use a bot to communicate or interact with another person in Washington online, with the intent to mislead the other person about its artificial identity for the purpose of knowingly deceiving the person about the content of the communication to incentivize a purchase or sale of goods or services in a commercial transaction.” The bill would also require online platforms to allow consumers to report bots suspecting of violating that requirement and to “expeditiously investigate” reported bots. The bill was heard in the House Committee on Innovation, Technology & Economic Development on 1/15 was passed out of the committee on 1/21. The proposal had a public hearing in House Appropriations on 2/6.
- **HB 2414**—this proposal would create a digital equity grant program for local governments to expand broadband access. The bill was heard on 1/17 in House Committee on Innovation, Technology & Economic Development. Executive action was taken on 1/31 and the bill has been referred to Appropriations.

#### Taxes

- **HB 2907/SB 6669**—a proposal to authorize King County to impose an excise tax on employee payroll to fund homelessness programs. The tax rates, imposed by a county council, may be a graduated rate based on employee compensation, with deductions allowed for payrolls of less than \$150,000 and attributable to grocery workers. There are also specified exemptions in the proposal for certain businesses, such as small businesses. The bill had a public hearing in the Finance committee on 2/4 and executive action on 2/7.
- **SB 6445**—a proposal to eliminate the first mortgage interest B&O deduction for financial institutions was introduced this week. The bill would fund affordable housing projects in the Housing Trust Fund. The bill had a public hearing on 1/23 in the Financial Institutions, Economic Development & Trade Committee. The chair of the committee has indicated that he does not plan to move the bill further and it is likely dead for the session.
- **HB 2452**—a proposal to reduce the real estate excise tax on multi-unit housing to 1.28%. This would reverse the increase in the real estate excise tax that passed in 2019. The bill had a public hearing in the House Finance Committee on 1/23. The fiscal impact is roughly \$200 million a biennium. The bill is not likely to pass this session.
- **SB 6126**—would allow local sale and use tax for affordable housing to be imposed by councilmanic authority rather than by a majority of the voters. The bill had a hearing in the Senate Local Government Committee on 1/14 and passed out of the committee on 1/23. The bill has been sent to the Rules committee.
- **SB 6328**—would allow cities and counties to establish a local infrastructure investment program to support affordable housing, and apply for a remittance of a portion of the state sales and use tax on the construction of affordable or workforce housing. The bill had a public hearing on 1/20 in the Senate Committee on Housing Stability & Affordability, and has been scheduled for executive action on 2/3.
- **HB 1679/SB 5676**—would allow cities to impose certain real estate excise taxes by councilmanic approval. The House bill had a public hearing on 1/30 in the Finance Committee and has been scheduled for executive action on 2/10. The Senate bill passed out of the Local Government Committee on 1/23 and has been passed to Rules.

- **HB 2634/SB 6366**—providing a real estate excise tax exemption for sales to nonprofit housing providers or housing authorities. The Senate bill had a public hearing in the Housing Stability & Affordability Committee on 1/20, and passed out of the committee on 2/3. The bill has been referred to the Ways & Means Committee. The House bill had a public hearing on 2/7 and has been scheduled for executive action on 2/10.
- **HB 2734**—creating pathways to recovery from addiction by eliminating the tax preference for wholesaling prescription drugs, is scheduled for public hearing 2/10 in the House Finance Committee.

A number of bills were introduced making modifications to the revenue structure for the new Workforce Education Investment Account (WEIA) that was passed in 2019. The WEIA was created in 2019 to provide a dedicated funding stream for higher education, with revenues raised through a 0.3% B&O tax increase based on 44 NAICs codes within the "service and other" category. The financing structure as passed by the Legislature last year leaves an estimated \$160 million deficit in the WEIA in 2021-23 (note, the WEIA is outside of the general fund and thus not subject to the state's four-year balanced budget requirement).

The bill that ultimately passed was **SSB 6492**—sponsored by Senator Pedersen. The bill has an emergency clause and applies prospectively and retroactively to January 2020. However, the new service B&O rate takes effect April 1, 2020. The bill has been sent to the Governor and was scheduled for signature into law on 2/10.

The bill:

- Increases the B&O Service and Other rate to 1.75 percent.
- Eliminates the surcharge on the 43 NAICs codes last year in HB 2158.
- Exempts businesses from the higher B&O rate if their previous gross receipts are below \$1 million.
- The Engrossed SSB 6492 no longer increases the B&O credit for small businesses.
- The bill included an advanced computing surcharge at 1.22-percent for advanced computing businesses with a gross income in excess of \$25 billion, and
- Caps the advanced computing tax at \$9 million annually. After two days of deliberation, the bill passed the Senate on 1/30 with a vote of 28 to 21.

#### Labor

- **HB 2409**—increases the penalties on self-insured employers for certain violations. The bill also creates a new fiduciary duty of good faith and fair dealing on employers and employers' lay representatives relating to workers' compensation claims. This proposal had a public hearing in the House Labor & Workplace Standards Committee on 1/21 and executive action on 2/6. The bill was amended but does not address the concerns of the business community. The bill has been referred to Rules.
- **SB 6053**—creates a statutory wage lien for claims on unpaid wages. The bill would also set the procedures for establishing, foreclosing, extinguishing and prioritizing wage liens. The bill had a public hearing in the Senate Labor & Commerce Committee on 1/16, and passed out of the committee on 1/27. The bill had a public hearing in the Ways & Means Committee on 2/5. The bill was scheduled for executive action on 2/6, but no action was taken.
- **HB 2689/SB 6440**—would limit independent medical examinations required by a self-insured employer for unemployment insurance claims. The bill would also require employers to contact attending physicians, advising them of their rights to schedule a consultation with a specialist, only authorizing an independent medical examination should the attending physician school not to facilitate a consultation. The Senate bill had a public hearing in the Labor & Commerce

Committee on 1/28 and executive action on 2/6. The bill has been referred to Ways & Means. The bill continues to be opposed by the business community. The House bill has not had a hearing so is dead for the session.

- **HB 2516/SB 5740**—the secure choice retirement savings act sets up a voluntary individual retirement account program for workers at companies that do not offer a savings plan. The Senate bill passed the Senate on 1/17 with a party line vote of 26:20:3. The House bill had a public hearing in the Consumer & Business Services Committee on 1/28 and passed out of the committee on 2/7. The bill has been referred to the Appropriations Committee.
- **SB 5717**—known as predictive scheduling, this bill creates a program for certain employee work schedules. Employees covered under the program include hospitality, food services, retail with more than 250 employees worldwide, full-service restaurants with more than 40 employees worldwide, and chains and franchises with more than 250 employees. Covered employees must receive 14 days' notice of work schedules. If schedules change, employees are entitled to receive compensation. The bill had a public hearing in the Senate Labor & Commerce Committee on 1/30. The public hearing continued on 2/3; however the bill has not moved out of the committee so is likely dead for the session.
- **HB 1965**—known as the Qui Tam bill, this proposal would allow individuals to bring legal actions on behalf of the state for alleged violations of workplace protections when an agency chooses to not move forward with an enforcement action. Individuals may seek any relief the specified state agency may seek, including penalties, equitable relief, and any relief specified in rule. This is similar to California's PAGA (private attorneys general act), which has led to countless class actions (many meritless, or over extremely minor violations that previously would not have made a class action reasonable). HB 1965 is in the House rules committee.
- **SB 5226**—prohibits an employer from adverse action against prospective employee or employee who has participated in off-duty, off-premises conduct that is lawful under state law or the 1<sup>st</sup> amendment (free speech, peaceful assembly). An employer may restrict off-duty conduct if the restriction: Relates to a bona fide occupational requirement, or is reasonably and rationally related to the employment activities and responsibilities of a particular employee; or is necessary to avoid an apparent or actual conflict of interest with any responsibilities to the employer. SB 5226 is the Senate Committee on Law and Justice, but no action has been taken so far this legislative session so it is likely dead for the session.
- **HB 2401**—Use of Artificial Intelligence in Hiring. An employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos must: (a) Notify each applicant before the interview that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the position. (b) explain how the artificial intelligence works and what general types of characteristics it uses to evaluate applicants. (c) Obtain consent from the applicant. An employer may not reject an applicant solely for refusing to consent to the use of artificial intelligence analysis. 30-day destruction required after applicant's request. There was a public hearing in the House Committee on Labor and Workplace Standards on 1/20. The bill passed out of the committee on 2/3 and has now been referred to Rules.
- **SB6247 / HB 2511**— Provides labor protections for domestic workers including requiring employers of domestic workers, and individuals who pay wages for services of domestic workers, to provide minimum wages, overtime, and meal and rest breaks, and to have terms and expectations of employment in written agreements. Both bills are at the request of the

Governor and Attorney General Ferguson. HB 2511 had a public hearing on 1/27 and had executive action on 2/4 in the House Committee on Labor and Workplace Standards. The bill has been referred to the Appropriations Committee. The Senate bill had a public hearing in the Labor & Commerce Committee on 1/27 and passed out of the committee on 2/6. The bill has been referred to the Rules Committee.

### Environment

- **SB 5412/HB 1110**—would direct the Department of Ecology to establish a Clean Fuels Program to limit greenhouse gas emissions for fuel to 10% below 2017 levels by 2028, and 20% by 2035. The Senate bill received a hearing in the Senate Environment, Energy & Technology Committee on 1/16 but did not pass out by the cutoff so is likely dead for the session. The House bill passed the House with a vote of 52 to 44, and has now been referred to the Environment, Energy & Technology.
- **HB 2311/SB 6272**—the Governor’s bill that would amend the state’s greenhouse gas emission reduction targets to 45% below 1990 levels by 2030, 70% by 2040, and 95% by 2050. The bill would also establish a net zero greenhouse gas emissions target for the state by 2050. The House bill had a public hearing on 1/14 in the Environment & Energy Committee and passed out of the committee on 1/23 on a party line vote. The bill had a public hearing in the Appropriations Committee on 2/3 and has been scheduled for executive action on 2/8. The Senate bill had a public hearing on 1/21 in the Environment, Energy & Technology Committee.
- **HB 2248/SB 6223**—establishes a community solar expansion program and establishes new community solar project eligibility requirements. The House bill had a public hearing on 1/16 and executive action in the Environment & Energy Committee on 2/4. The Senate bill had a public hearing on 1/22 but did not pass the committee by the cutoff, so is likely dead for the session.
- **HB 2528/SB 6355**—statutorily recognizes the contributions of sustainable forest management and forest products in environmental efforts of carbon sequestration. The bill also includes afforestation and reforestation as mechanisms for carbon sequestration. The House bill had a public hearing on 1/28 in the Rural Development, Agriculture & Natural Resources Committee, and passed the committee on 2/4. The committee made some minor changes in passage. The bill has been scheduled for public hearing in the Appropriations Committee. The Senate bill is scheduled for public hearing in the Agriculture, Water, Natural Resources & Parks Committee on 1/28, and executive action on 2/6. The bill has been referred to the Ways & Means Committee.
- **SB 6488**—Concerning aerial herbicides in forestlands, was heard in Agriculture, Water and Natural Resources on 1/28 and passed out on 2/6. SB 6488 is scheduled for public hearing in Ways & Means on 2/10 and is scheduled for executive action on 2/11.

### Transportation

- **New transportation revenue package**—with the passage of I-976 and the uncertainty of transportation revenue moving forward, Senator Hobbs released a new version of his transportation revenue proposal, “Forward Washington.” Here is a [link](#) to the high level materials. The actual bill language has not yet been released, but the chair of the committee has been clear that this is about building a foundation for a transportation revenue package next year. He will have a work session next Wednesday and will take public testimony. The proposal is about \$19 billion in investments over 15 years. A high-level summary of revenues and investments is provided below, but it does not appear to have any funding planned for high speed rail.

The proposal relies on the following revenue sources:

- A \$10 per metric ton charge on carbon for utilities and a \$15 per metric ton charge on carbon for other entities **OR** revenue from a Cap and Invest system;
- A 6-cent gas tax increase;
- Statewide impact fees on commercial, manufacturing and residential development;
- A graduated freight project fee increase averaging 16% per biennium;
- A \$15 increase in the enhance driver's license fee;
- A 1% sales tax on the sale of auto parts;
- A 1% increase in the rental car sales tax;
- A 50 cent per trip fee for for-hire vehicles, which includes both transportation network companies and taxicabs; and
- A 1% sales tax increase on the sale of new bicycles, including e-bikes.

The proposal includes the following spending investments:

- \$1.5 billion for preservation and maintenance, with specific preservation projects identified;
- \$3.5 billion for fish passage barrier removal;
- \$4.7 billion for improvement projects, including the I-5 bridge replacement over the Columbia River, widening of SR 18 and complete replacement of the US 2 Trestle;
- \$375 million directly distributed to cities and counties;
- \$1.3 billion for ferry capital projects; and
- About \$670 million in various transit grant programs.

The proposal does not assume any changes to passenger vehicle weight fees, the current electric vehicle fee, and the current hybrid vehicle fee.

- **Car Tabs Fees**—A number of bills (**HB 2227/SB 6031**, **SB 6245**, and **HB 2659/SB 6350**) have been introduced that would limit car tabs to \$30. The Senate bills had a public hearing on 2/4 in the Senate Transportation Committee. The house bills have not been scheduled for public hearing. In addition, **SB 6108** would nullify car tab fees approved by transit authorities in certain counties had a public hearing in the Senate Transportation Committee on 2/4. In addition, **SB 6606**, which changes the valuation schedule for valuing vehicles subject to the motor vehicle excise tax is had a public hearing on 2/4 in the Senate Transportation Committee and has been scheduled for executive action on 2/10.