



LEGISLATIVE UPDATE

April 23, 2017

The 2017 Regulars Sessions Ends and the 2017 Special Session Begins

Sunday, April 23rd was the last day of the regular legislative session. Legislators wrapped up much of their work Friday night and came back for a pro forma adjournment of the session Sunday morning. The Governor announced that he will call a first special session for 10:00am on Monday morning. The expectation is that most legislators will not be back in Olympia Monday. Some were told that they would be expected back in about a week. Education negotiators are expected to return to Olympia promptly and are scheduled to continue to negotiate on a potential education agreement throughout the week.

There was still a fair amount of activity during the final week of the regular session. The Legislature passed HB 1594 and HB 1595 regarding public records, passed a biennial transportation budget, reached agreement on legislation to address the federal REAL ID requirements for Washington State Drivers Licenses and passed legislation addressing the use of cell phones while driving.

Legislative shenanigans continue: The Senate Majority Caucus Coalition (MCC) maintains that the House Democrats must pass the tax bills that support their budget proposals in order to negotiate in good faith. House Democrats have responded that it does not make sense to take a vote on taxes until there is an agreement on what programs the taxes will support, and that the Senate Republican budget proposal has holes in it.

On Friday, the Senate MCC initiated another vote on the capital gains and Business and Occupation (B&O) tax proposals. A previous vote on those bills did not occur because Senate rules require a 2/3 vote to advance bills that raise taxes to final passage. Lieutenant Governor Habib ruled that the 2/3 rule is not enforceable. He Lt. Governor Habib said that a 2/3 requirement for advancing a tax bill is not different than a 2/3 requirement for passing a tax bill. As a result, the Senate rules requiring a 2/3 vote to advance tax legislation are not enforceable. The Senate subsequently voted on both the capital gains and B&O tax bills. Both bills failed on a vote of 0-48. Additionally, Senator Rossi introduced legislation that duplicates the House's tax proposals. The Senate Ways and Means Committee will have a public hearing on that bill on Wednesday.

Transportation Budget

The transportation budget provides just over \$8.5 billion in appropriation authority and includes the first full biennium of funding for the Connecting Washington program. As provided in other updates, the budget includes \$93.9 million in regional mobility grant funding, \$32.2 million for rural mobility grants and \$40.6 million in special needs funding for transit agencies.

Other Highlights of the budget include the following:

- Advancement of \$60 million for the Alaskan Way Tunnel project;
- Advancement of \$36 million for right-of-way purchases for the SR 167/SR 509 Puget Sound Gateway project;
- Advancement of funding for the I-90/SR 18 Interchange;
- \$300,000 to WSDOT to conduct an analysis of an ultra-high-speed rail alignment between Vancouver, B.C. and Portland, OR;
- \$100,000 for a Joint Transportation Study of the responsibilities of the Washington State Transportation Commission;

- \$500,000 for the Joint Transportation Committee to conduct a study of air cargo movement at Washington airports;
- Direction to the Transportation Commission to continue to move forward with the road user charge task force and pilot project;
- An additional \$162 million for fish passage barrier removal over the 16-year plan; and
- \$19.5 million for the cost of operating two new Amtrak Cascades routes from Seattle to Portland.

April 4, 2017

The Deadline for Policy Bills has Passed

Wednesday March 29th was the deadline for the legislative policy committees. The fiscal committees have until April 4th. The deadlines do not apply to bills necessary to implement the budget, but for most bills, last Wednesday was the end of the road.

A few bills that managed to survive include:

SB 5049 – concerning relocation assistance following real property acquisition for public works. This bill is now in the House Rules Committee.

SB 5445 – prohibiting the use of eminent domain for economic development. This bill passed out of the House Judiciary Committee last week and is now in the House Rules Committee.

HB 1538 – requiring prime contractors to bond the subcontractors portion of retainage upon request. This bill is in the Senate Rules Committee.

SB 5080 – concerning actions for damage to real property resulting from construction, alteration, or repair on adjacent property. This bill passed from the House Judiciary Committee and is now in the House Rules Committee.

HB 1606 – requiring transportation benefit districts to hold a public hearing prior to imposing fees or charges by a vote of the governing board. This bill is now in the Senate Rules Committee.

Bills that did not make the deadline include:

SB 5228 – concerning the definition of hydraulic project in relation to the hydraulic project approval permits. This bill failed to pass the House Agriculture & Natural Resources Committee.

Other bills that have failed to survive this session include:

SB 5711 – pre-emption concerning telecommunications services. This bill failed to pass the Senate, and now resides in the Senate Rules Committee. Whether this bill is resurrected is unknown although local government lobbyists are keeping a jaundiced eye on it.

SB 5788/HB 1574 – concerning construction contracts. These bills failed to pass their chamber of origin several weeks ago. A discussion during the interim is likely regarding the use of notice clauses in construction contracts that extinguish claims of a contractor, subcontractor or supplier. The lobbyist for the Association of General Contractors (AGC) has indicated a preference for working with APWA to craft a resolution to their issues. The GAC will take the lead to set up interim discussions.

Also last week, the Legislature focused on the various budgets. The House passed their general

fund budget Friday on a partisan vote of 50-48. Republicans introduced 41 floor amendments and six were accepted. Much of the disagreement between Republicans and Democrats regarding the House budget is focused on the revenue assumptions for the total spending amount. The House budget assumes the passage of revenue increases included in HB 2186.

HB 2186 includes the following provisions:

- Establishes a 7% capital gains tax;
- Imposes a 20% Business and Occupation surtax on certain activities, creates a new deduction of \$250,000 and repeals several preferential rates;
- Creates a progressive Real Estate Excise Tax of 2% if the selling price is between \$1 million and \$5 million and 2.5% if the selling price is equal to or greater than \$5 million; and
- Eliminates tax exemptions or credits for extracted fuel, prescription drug resellers, non-resident sales taxes and bottled water.

March 28, 2017

Budget Discussions Take Center Stage

Policy committees are winding down – their deadline to pass bills is Wednesday. The budgets have taken center stage in this legislative session, and last Thursday night, the Senate Republicans passed their budget, SB 5048, by a 25 to 24 vote margin. The senate transportation budget, SB 5096, sits in the Senate Rules Committee. The senate capital budget has yet to be released. The House Democrats will release their budgets on Monday, March 27th.

These budget proposals are the opening act to a long drama, and should not be mistaken as revealing what will land on the Governor's desk. They are indicative of the positioning of the respective caucuses, and their differences demonstrate how far the legislators must go to reach a compromise. Most are still assuming several special sessions.

With that caveat, the Senate budget proposal provides a significant increase in education funding. The total amount of K-12 funding increases from \$13.2 billion currently to \$27.6 billion, with a total per student funding model dedicating \$12,500 to each student. The budget does this, in part, by setting a statewide levy for education at \$1.55 per thousand. This approach increases the school levy rates in "property rich" districts like Seattle and Bellevue, while reducing school levy rates in "property poor" districts, mostly outside of King County. The current levy rates vary from a low of just over \$1.00 per thousand to a high of more than \$9.00 per thousand.

To fund the additional educational spending and added spending on the behavior health system without raising other taxes, the proposal cuts various human service programs and books \$109 million savings from eliminating the state contribution to the Law Enforcement Officers and Firefighters plan 2 retirement system contributions. The budget also assumes savings from the passage of a sovereign immunity bill, SB 5896, and the proposal fails to fund 38 of the state employee contracts negotiated by the Governor's office. The Senate budget also sweeps \$127 million from the Public Works Assistance Account, while assuming implementation of SB 5033, which authorizes the state to issue bonds for local infrastructure projects, pooled by the Public Works Board, that would enjoy the full faith and credit of the state.

The House proposal is expected to rely on increased revenues, but at this writing, it is unknown what they would entail.

March 21, 2017

State Revenue Forecasts Released Budget Proposals Expected Soon

The State Forecast Council released the March revenue forecast on Thursday. The General Fund (GF-S) revenue forecast increased by \$247 million for the 2015-17 biennium, and increased by \$303 million for the 2017-19 biennium. Some legislators may spin that increase as significant and that no additional tax increases are needed. Others are likely to spin that this is less than a one percent variation in the state budget so tax increases are necessary to meet the state's McCleary obligations.

The forecast signals the release of the Senate Republican budget proposal, which should be released either on March 20th or 21st. The House Democrats will release their budget proposal a week later, likely March 27th. The transportation and capital budgets will be released either in tandem with the operating budget proposals or soon thereafter. The Senate Transportation Committee has scheduled a hearing on the transportation budget bill on March 21st.

The next bill cutoff is March 29th, when the policy committees must end their work. The fiscal committees have until April 4th. Opposite house cutoff is April 12th, and the regular session is scheduled to end April 23rd. Few believe that the Legislature will have the budget done in time and that special sessions are assumed. Each special session, which can be called only by the Governor, last up to 30 days. Already there is talk of this budget negotiation lasting until and through June.

As the 2017 session lurches forward, fewer bills survive the deadlines: here are some that are still moving through the process:

HB 2052 (Buys). This bill concerns the recertification of public bodies using alternative contracting methods. It is scheduled for a public hearing in the Senate Committee on State Government on March 24th.

SB 5080 (Padden). This bill is about the statute of limitations that apply to actions for damages to real property resulting from construction, alteration, or repair on adjacent property. It is scheduled for executive session in the House Judiciary Committee on March 23rd.

SB 5289 (Rivers). The distracted driving bill has a hearing in the House Transportation Committee on March 23rd. This version of the bill (the House version is HB 1371) exempts those with employed as a commercial motor vehicle driver who uses a personal electronic device within the scope of their employment.

SB 5445 (Padden). This bill prohibits the use of eminent domain for economic development. This bill is scheduled for executive session (committee passage) in the House Judiciary Committee on March 23rd.

March 14, 2017

The 2017 Legislature Resumes Committee Work

Floor action ended March 8th. The Legislature switched back to committee hearings – this time, House Committees hearing Senate bills and Senate Committees hearing House bills. The next

cutoff is not until March 29th when the policy committees cease their work; the fiscal committees continue until April 4th.

During the last phase, the Senate passed 283 bills of the 893 senate bills that were introduced, and the House passed 376 of the 1176 house bills introduced. Of those only a fraction impacts public works. The following are the most pertinent bills:

Bills that survived:

SB 5080 (Padden). Concerning actions for damage to real property resulting from construction, alteration, or repair on adjacent property.

SB 5301 (Miloscia). Including repeat and willful violations of certain state laws to the state's responsible bidder criteria.

SB 5445 (Padden). Prohibiting the use of eminent domain for economic development.

HB 1086 (Blake)/**SB 5438** (Braun). Promoting the completion of environmental impact statements within two years.

HB 1395 (Peterson)/**SB 5146** (Liias). Allowing public transportation benefit area authorities to use job order contracts and procedure.

HB 1538 (Stambaugh). Requiring prime contractors to bond the subcontractors portion of retainage upon request.

HB 1673 (Doglio). Adding training on public works and prevailing wage requirements to responsible bidder criteria.

Bills that failed to pass:

SB 5711 (Ericksen). Concerning telecommunications services.

HB 1332 (Fey). Concerning dangerous objects on county roads and bridges.

HB 1367 (MacEwen). Concerning the maintenance and repair of private roadways impacting the public interest.

HB 1574 (Rodne)/**SB 5788** (Brown). Concerning construction contracts.

March 7, 2017

A Special Session Appears Likely Entering Week 10

Floor action is wrapping up on Wednesday, March 8th. The pace of the legislative session picks up considerably afterward – policy committees having only three weeks to work through the bills from the other chamber. At this writing, there is only 48 days left of regular session.

Nobody is optimistic that the Legislature will get its work done before regular session ends on April 23rd. I was told last week, that negotiations have not occurred regarding the McCleary. This year feels like 2015, when the Legislature went right up to July before coming to a budget agreement.

Regarding bills of interest to APWA, the following are still alive:

HB 1395/SB 5146 – these bills allow transits to use job order contracting. The House bill passed last week and the senate bill is on the Senate floor calendar.

HB 1538/SB 5222 – these bills require prime contractors to bond the subcontractors' portion of retainage upon request. Both bills have been amended, and both bills are on their respective chamber's floor calendar.

SB 5301 – includes willful violation of certain state laws to the state's responsible bidder criteria. This bill passed the Senate and is currently in the House Capital Budget Committee.

SB 5711 - this bill concerns cell phone facility siting. This bill limits what cities site-specific charges for small cell facilities to \$500. Cities and towns must authorize the installation of small cell facilities or networks on city or town-owned structures located outside of the right-of-way to the same extent access is permitted to structures for other commercial projects or uses. Among other mandates, an application for a master permit for attaching small cell facilities or installing a new or replacing a pole must be approved within 90 days of submittal. This bill is on the Senate floor calendar.

SB 5788 – this bill concerns the notice clauses in construction contracts. Originally, the bill made the use notice clauses unenforceable. As amended, if a contractor did not follow the notice requirements of a contract, the owner must show they were harmed to enforce the notice clause. The House version failed in its committee of origin. SB 5788 is currently in the Senate Rules Committee and has until 5 pm on March 8th to get a Senate floor vote – which is looking unlikely.

February 28, 2017

Attention Shifts to the Floor Action in House of Origin

Friday, February 24th was the fiscal committee cut-off. Bills that did not pass out of their respective fiscal committees by Friday evening are technically dead. The exception to this rule is bills that are considered "necessary to implement the budget." Between now and March 8th, the focus will be on floor action.

After March 8th, the attention will shift back to committee action, but we will also see intense focus on the release of budgets. The next fiscal forecast is mid-March and the expectation is that the Senate will release its budget proposal around March 20th. The Senate will most likely release a budget that does not include any new revenue sources, which means there may be significant cuts to local government programs and shared revenues. This is not unexpected – most assumed that Senate Republicans would issue, as part of their negotiation positioning, a no-new-taxes budget. The extent that the House will push back on those local government cuts is unknown and leaves local governments in a precarious position.

Regarding bills that have survived both the policy and fiscal cutoffs, a number of contracting/bidding bills are still alive. The Government Affairs Committee is tracking the following contracting/bidding bills.

HB 1395 (Peterson) allows transits to use job order contracting.

HB 1538/SB 5222 (Stambaugh/Hasegawa) requires prime contractors to bond the subcontractor's portion of retainage upon request. The House bill was amended to allow the prime contractor to withhold the bond premium of the subcontractor's retainage bond.

HB 1673 (Doglio) adds training on public works and prevailing wage requirements to responsible

bidder criteria.

SB 5301 (Miloscia) applying to state agencies, this bill includes willful violations of certain state wage laws to the responsible bidder criteria.

SB 5788 (Brown) allows a contractor, subcontractor or supplier to a construction contract claim an adjustment despite the failure to submit a claim notice or claim-related document in a specific time frame or form as required by the contract to the extent the person seeking to enforce the contract notice provision was not prejudiced by the failure to comply. APWA has joined a chorus of others opposing this bill.

February 21, 2017

Several Bills Dead After the First Cut-Date Passes.

The February 17th policy bill deadline arrived and numerous bills on the APWA tracking list failed to survive it. The next deadline is February 24th, when fiscal committees must finish their work on bills with fiscal impacts. Thus, bills concerning public infrastructure finance are alive until then. None of these deadlines impact bills deemed necessary to implement the budget (NTIB).

Below are a few bills that failed to make the cut.

HB 1009 - Clarifying that the authority to mitigate environmental impacts under the state environmental policy act applies only to significant adverse environmental impacts.

HB 1028 - Reducing air pollution associated with asphalt production in urban areas. This bill authorized cities planning under the Growth Management Act to adopt ordinances that require vehicles transporting asphalt loads to cover the load.

HB 1367 - Concerning the maintenance and repair of private roadways impacting the public interest.

HB 1454 - Prohibiting the use of eminent domain for economic development. This bill's senate companion, SB 5445, survived the cutoff and is likely to make it to the House.

HB 1574 - Concerning construction contracts. This bill prohibits the use of contract clauses regarding claim notice. The senate version survived but was amended. The amended senate version shifts the burden to the contractor to show that the owner was not prejudiced by the contractor's failure to follow the claim notice provisions in the contract prior to obtaining an equitable adjustment for the claim.

HB 1589 - Specifying that certain types of changes to the allowable uses of a right-of-way are not subject to the requirements of the state environmental policy act.

HB 1745 - Establishing categorical exemptions in the state environmental policy act for development proposals that are consistent with locally adopted land use and shoreline regulations.

HB 1770 - Concerning transportation benefit district boundaries including whole parcels.

Concerning bills that did survive the cut (so far) include:

HB 1371/SB 5289 - Distracted driving.

HB 1332 - Concerning dangerous objects on county roads and bridges

HB 1395/SB 5146 - Allowing public transportation benefit area authorities to use job order contracts and procedure.

SB 5228 - Concerning the definition of hydraulic project in relation to the hydraulic project approval permits.

SB 5393 - Including fish passage barrier removal projects that comply with the forest practices rules in the streamlined permit process provided in RCW 77.55.181.

SB 5788 – (See failed bills HB 1574). This bill concerns construction contracts and was significantly amended in committee.

Unsure:

SB 5711 – The 5 G bill. Among other things, the bill requires cities and towns to: (1) authorize the installation of small cell facilities on city or town owned structures located outside the right-of-way; (2) allow service providers to place small cell facilities and networks on owned city or town owned facilities or on poles owned by a service provider located on the right-of way; and (3) provide service providers with access for attachments of small cell facilities.

The Senate Environment & Telecommunications Committee held a vote on the bill on February 8th, but the bill status, as of today, is “Held at the Desk.” The House version, HB 1921, failed.

February 14, 2017

First Cut-Off Date is Near and Transportation Chairs Seek Input on Unfunded Needs

We are approaching the first of legislative deadlines; by February 17th, policy bills must pass from their committee of origin. February 24th is the deadline for the fiscal committees. Thus, week 6 of the session will primarily be used for voting bills out of committee as the Legislature transitions to floor action in the coming weeks.

Regarding transportation budgets, APWA’s lobbyist spoke with the chairs of the House and Senate Transportation Committees, to see if it was worthwhile to seek state funding for new projects. The last transportation funding package funded many projects, but there remain unmet transportation needs in our communities.

While not optimistic that this biennium’s transportation budget will include many new projects, both Rep. Clibborn and Sen. King are encouraging their committee members to submit project requests – if only to gauge the extent of unmet transportation needs of the state. The likelihood is slim of the current transportation budget funding these needs. However, we urge those who have such projects to engage your legislators to submit those projects if only to make the case for additional transportation investment.

Clearly, the state has many infrastructure needs – particularly after the State has decimated the public works assistance account to cover general fund expenses. On February 14, the House Capital Budget Committee will hear several of the concepts to address infrastructure funding. Below are the bills that the committee intends to hear:

Bill #	Sponsor	Title	Summary
HB 1051	DeBolt	Concerning financing essential public infrastructure.	Improves access and reliability to low-cost financing for local government infrastructure projects by authorizing public works bonds when local governments can demonstrate: (1) The importance of the project; (2) Their difficulties accessing existing private credit markets for borrowings at reasonable interest rates; and (3) The ability to reliably repay their share of the state's total cost of retiring the public works bonds. Makes changes to the existing public works program and creates the public works financing assistance program. Creates the public works financing assistance account and the public works financing assistance bond repayment account. Takes effect January 1, 2018, if the proposed amendment to Article VIII, section 1 of the state Constitution, contained in House Joint Resolution No. (H-0423/17), is approved by voters at the next general election. Makes an appropriation from the public works assistance account to the department of commerce for the purpose of providing loans to local governments for infrastructure projects.
HB 1324	Tharinger	Concerning the financing of local infrastructure.	Authorizes the housing finance commission to develop and implement a program to provide financing to local governments for infrastructure projects. Authorizes a local government to enter into a financing agreement containing the terms and conditions of a loan from the commission and evidencing the obligation of the municipal corporation to repay that loan under the terms and conditions set forth in the financing agreement
HB 1392	Blake	Concerning authorization for projects and appropriating funds recommended by the public works board.	Addresses project loans recommended by the public works board.
HB 1677	Peterson	Concerning local government infrastructure funding.	Modifies public works projects provisions with regard to local government infrastructure funding. Changes the composition of the public works board.

February 7, 2017

The Fourth Week of Session is Marked by Movement on Few Public Works Bills

Last week, Rep. Shelly Short (R-Addy) was appointed to the 7th District Senate seat vacated by Senator Dansel, who is now at the U.S. Department of Agriculture. Senator Short's legislative assistant, Jacqueline Maycumber, is the new Representative from the 7th District.

Although the appointment of Senator Short addressed the immediate concerns about a tie in the Senate, questions remained about Senator Ericksen's ability to balance his appointment as Communications Director for the U.S. EPA Transition, while continuing to serve as a State Senator. Ericksen scheduled a press conference for last Wednesday to discuss that topic, but had to cancel the conference when his flight from Washington, D.C. was delayed.

The first legislative cut-off is quickly approaching. On Friday, February 17th, policy bills that have not passed out of their original policy committee by the end of the day are mostly dead for the year (there are always exceptions to this rule). Currently, over 1000 House bills have been introduced and 800 Senate bills. Thus, policy committees will devote a significant amount of time over the next few weeks to hearing and voting on bills.

On February 2nd APWA testified in opposition to HB 1574 which would eliminate time limits for submitting claims in public works contracts. This concept has been introduced several times in the past. Since it did receive a hearing this year, the GAC is tracking to take further action if the bill moves forward.

In week five, hearings of interest include:

- HB 1606 - Requiring transportation benefit districts to hold public hearings prior to imposing fees or charges by a vote of the governing board.
- SB 5611 - Creating a demonstration project for preserving public infrastructure and agricultural lands in floodplains.
- SB 5438 - Promoting the completion of environmental impact statements within two years.
- HB 1436 - Concerning the state building code council.
- HB 1622 - Concerning the state building code council.
- HB 1885 - Clarifying the roles of state and local governments in the regulation and mitigation of water resources.
- HB 1918 - Addressing treatment of groundwater under state water codes to support rural development while protecting instream flows.

Focusing on bills related to the State Environmental Protection Act, there are numerous bills on the APWA tracking list. Yet, only few bills are scheduled for committee action: HB 1086/SB 5438, which require a lead agency to aspire to prepare a final environmental impact statement in as expeditious a manner as possible while not compromising the integrity of the analysis. And, HB 1268, which exempts the construction of sidewalks, sidewalk extensions, paths, and pedestrian walks from SEPA review processes so long as the project does not include certain features. We expect that HB 1268 will be amended to cite the current rule that addresses that issue.

The GAC is also tracking a number of bills that introduced to address the shortfall in current public works infrastructure funding.

January 25, 2017

The Second Week of the 2017 Session Continues a Slow Start

Week two of the 2017 session is done and we are in the midst of week three. The flu has hit Olympia hard –a few legislators have missed days and more than a few staff have been missing. This has contributed to what feels like a slower than normal pace.

The recent resignation of Sen. Dansel has contributed to this slower pace. That resignation creates a tie in the Senate of 24 majority coalition caucus (23 Republicans plus Democrat Sen. Sheldon) and the 24 Senate Democrats. This tie makes senate floor action problematic and this impact will linger until a Republican replacement is appointed to fill Sen. Dansel's seat. Also, Sen. Ericksen, a Republican from Whatcom County, has taken a position with the transition team at the EPA. He intends to keep his senate seat and commute between Washington DC and Olympia. His anticipated absences will also create a tie situation. How this impacts the senate remains to be seen.

Below are the bill deadlines for the 2017 session:

January 9, 2017 First Day of Session

February 17, 2017 Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) in house of origin, except House fiscal committees and Senate Ways & Means and Transportation committees.

February 24, 2017 Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) from House fiscal committees and Senate Ways & Means and Transportation committees in house of origin.

March 8, 2017 Last day to consider (pass) bills in house of origin (5 p.m.).

March 29, 2017 Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) from opposite house, except House fiscal committees and Senate Ways & Means and Transportation committees.

April 4, 2017 Last day to read in opposite house committee reports (pass bills out of committee and read them into the record on the floor) from House fiscal committees and Senate Ways & Means and Transportation committees.

April 12, 2017* Last day to consider (pass) opposite house bills (5 p.m.) (except initiatives and alternatives to initiatives, budgets and matters necessary to implement budgets, differences between the houses, and matters incident to the interim and closing of the session).

April 23, 2017 Last day allowed for regular session under state constitution.

* After the 94th day, only initiatives, alternatives to initiatives, budgets and matters necessary to implement budgets, matters that affect state revenue, messages pertaining to amendments, differences between the houses, and matters incident to the interim and closing of the session may be considered.