



2021 Legislative Report

SMALL BUSINESS GUIDE TO 2021 SESSION

END OF SESSION – SUNDAY, APRIL 25



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MONDAY, JULY 19, 2021

SUPPORT

1. HB 1189/SB 5211 – Tax Increment Financing

- Authorizes local governments to designate tax increment financing areas and to use increased local property tax collections to fund public improvements
- A local government designating a TIF area may issue general obligation bonds to finance the public improvements. Any increase in assessed value within an area is included in the add-ons for purposes of the 1% revenue growth limit calculation.
- Each taxing district shall receive that portion of its regular property taxes produced by the rate of tax levied by the taxing district on the tax allocation base value for that TIF project in the taxing district.

Sponsors: *Senators Frockt, Mullet, Conway, Kuderer, Rolfes; Representatives: Duerr, Boehnke, Bateman, Sullivan, Fitzgibbon, Walen, Ramel, Springer, Wicks, Slatter, Pollet, Callan, Harris-Talley*

STATUS HB: [Governor Signed – Effective date 7/25/2021](#)

STATUS SB: **DEAD** - Senate Rules Committee

2. HB 1574 - Drive-by ADA Lawsuit Reform

- With regard to any civil action under RCW 49.60.030 that alleges any place of public resort, accommodation, assemblage, or amusement that is operated by a private entity has a building, facility, or parking lot that violates this chapter by reason of discrimination because of the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability:
 - Before filing such civil action, the aggrieved person or the person's attorney shall provide written notice with sufficient detail to allow the private entity to identify and cure the violation or comply with the law.
 - If the private entity does not cure the violation or comply with the law within 30 days after receiving the notice, the aggrieved person may file the civil action.
 - "sufficient detail" means the name of the aggrieved person who encountered the barrier, the date when the barrier was encountered by the aggrieved person, and a description of the barrier that was encountered by the aggrieved person.

Sponsors: *Representatives Klippert, Mosbrucker, Boehnke, Jacobsen, Barkis, Klicker, Chandler, Graham, Walen, Goodman, Chase, Schmick, Chapman, Dufault, and Sutherland*

STATUS HB: **DEAD** - House Civil Rights & Judiciary

3. HB 1332/SB 5402 – Property Tax Deferral

- Suspends interest and penalties on property tax payments during the Coronavirus Disease 2019 (COVID-19) state of emergency and for 12 months thereafter.
- Directs that county treasurers to grant a deferral of property tax payments normally due in April 2021.
- Establishes the COVID-19 Property Tax Deferral Loan Account.
- Allows cities and counties to apply for loans from the COVID-19 Property Tax Deferral Loan Account.

Sponsors: *Senators Mullet, Kuderer; Representatives: Sullivan, Ramel, Leavitt, Dufault, Hackney, Wylie, Santos, Ortiz-Self, Ormsby, Rule, Stokesbary, Callan, Pollet, Macri*

STATUS HB: [Governor Signed - Effective date 4/16/2021](#)

STATUS SB: **DEAD** - Senate Ways & Means Committee

OPPOSED

1. SB 5139 – Rent Control

- Establishes Rent Control in WA State
- Prohibits a housing provider from increasing rent or other charges for the first 6 months after the end of the Governor’s emergency eviction ban under 59.18.
- After the first 6 months expire, housing providers are then limited to only increasing rent by 3% over the previous year’s consumer price index, for a subsequent six months, based on the rental rate as it was on March 1, 2020. Revises landlord and tenant provisions regarding the protection of certain residential tenants to include:

Sponsors: *Senators Das, Lovelett, Darneille, Hunt, Liias, Nguyen, Wilson, C.*

STATUS: **DEAD** – Senate Housing & Local Government Committee

2. HB 1494/HJR 4204 – Split Roll Property Tax & Constitutional Amendment

- Creates Split roll property tax by giving exemption for primary residence that must be recouped by property taxes from other properties.
- Created tax exemption for principal residences up to \$250,000 of assessed value.
- The Washington Constitution requires all taxes to be applied uniformly on property within each taxing district. The Constitution also limits regular property tax levies to a maximum of 1% of a property's assessed value.
- HJR 4204 – Creates a Constitutional Amendment to get around the “Uniformity Clause” in the WA Constitution.

Sponsors: **HB 1494** – *Harris-Talley, Berg, Davis, Wicks, Peterson, Ortiz-Self, Orwall, Gregerson, Chapman, Ramel, Simmons, Berry, Lekanoff, Frame, Hackney, Slatter, Duerr, Kirby, Thai, Valdez, Ormsby, Morgan; HJR 4204* – *Harris-Talley, Berg, Wicks, Peterson, Ortiz-Self, Simmons, Gregerson, Chapman, Berry, Frame, Thai, Pollet, Ormsby, Davis, Ramel*

STATUS HB: **DEAD** - House Appropriations Committee

Capital Gains Tax:

HB 1496/SB 5096 – Capital Gains

- Imposes a 7% Capital Gains Tax (CGT) beginning January 1, 2022 on the sale or other voluntary exchange of long-term capital assets by individuals.
- The first \$250,000 of capital gains are excluded from the state CGT.
- All taxpayers must file with the state Department of Revenue (DOR), but a person with no tax liability is not required to file a tax return.
- A deduction for the sale of a qualified family-owned small business (under \$10M in annual revenue) where the owner has materially participated for 5 of the past 8 years.
- **Real Estate Exempt to Capital Gains Tax** – "Real estate" means land and fixtures affixed to land. "Real estate" also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.
 - All real estate transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where real property is located;
 - (a) An interest in a privately held entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the real estate owned directly by such entity.
- **Modified Emergency Clause** (Section 5(2)) – Will mean that Capital Gains Tax will NOT go to Referendum of the people automatically.
 - "The tax levied in subsection (1) of this section is necessary for the support of the state government and its existing public institutions."
 - This is essentially a back-door emergency clause in an attempt to deny the people their right of referendum on the proposed income tax.

Sponsors: *Representatives Senn, Walen, Davis, Johnson, J., Ramel, Bergquist, Macri, Gregerson, Simmons, Sells, Peterson, Bateman, Berry, Lekanoff, Frame, Fitzgibbon, Duerr, Hackney, Slatter, Kirby, Thai, Chopp, Valdez, Riccelli, Pollet, Ormsby, Harris-Talley, Stonier; Senators Robinson, Hunt, Nguyen, Wilson, C.*

STATUS HB: **DEAD** - House Finance Committee

STATUS SB: [Governor Signed – Effective date 1/01/2022](#)



SMALL BUSINESS GUIDE TO 2021 SESSION

END OF SESSION – SUNDAY, APRIL 25

On **Sunday, April 25th** at about **6:00 p.m.**, the 2021 Washington State Legislature **completed its final day of the 105-day session.** During the final days of session there remained some major work to finish up, including budgets, climate change bills, and responding to the recent Supreme Court Blake decision. These issues were addressed with long hours of debate and voting before sine die came. There is a **real possibility that a special session** will be called during the interim, to address additional transportation funding needs. Discussion on this subject lead us to believe that a special session would most likely occur in the Fall.

TRANSPORTATION BUDGET

On April 24th both the Senate and House passed the **\$11.8 billion “bare bones”** transportation Budget in the form of [SB 5165](#). It was a unanimous vote in the House but a few Republicans peeled off in the Senate making their vote 41-8. Important to note is that of the \$11.8 billion, approximately \$1 billion of came from the Federal American Rescue Plan. Of that one-time federal money, \$600 million will be used to backfill pandemic-related revenue losses, while about \$400 million is slated for water infrastructure investments to remove fish barriers and increase water flow, assuming the US Department of the Treasury determines they can be used for that purpose.

Governor Inslee has mentioned at a recent press event his disappoint in a lack of a new Transportation package and that a **special session is not out of the question if the Legislature can come to agreeance on a package.** Senator Hobbs who penned the Senate’s version was also disappointed in a lack of a new Transportation Package.

CAPITAL BUDGET

On April 22nd, the [2021-2023 biennium Capital Budget Proposed Compromise](#) was published and a few days later on April 23rd it passed the Legislature. The capital budget includes funding for infrastructure-type projects for schools, colleges, local governments and community projects where funding may be challenging to obtain. The proposed compromise capital budget ([SHB 1080](#) as amended) appropriates a total of **\$6.3 billion** for the **2021-23 fiscal biennium.** Of this amount, \$3.9 billion is financed with general obligation bonds.

The remaining \$2.4 billion consists of:





- \$589 million in federal stimulus funds,
- \$275 million in Model Toxic Control Accounts,
- \$255 million in alternative financing authorizations, and
- \$1.2 billion in other funds.
- Approximately \$82 million in bond capacity is reserved for a supplemental capital budget.

OPERATING BUDGET

On the morning of April 24, the final **\$59.2 billion 2021-2023 biennium operating budget proposal** (SB 5092) was **agreed upon by a conference committee**, and on April 25th it was adopted with a House vote of 57-41 and Senate vote of 27-22. The agreed upon operating budget proposal **spends nearly \$5 billion more than the prior biennium** budget. Much of the increased spending goes to fund Democrat priorities such as childcare and a low-income family tax credit, as well as bipartisan priorities like wildfire prevention and public health.

The 2021-2023 biennium operating budget **relied on the passage of a 7% capital gains tax bill (ESSB 5096)** which on April 24th, was adopted via conference committee with a 52-44 vote in the House. A day later on April 25, the Senate adopted it with a 25-24 vote. The first \$250,000 of capital gains are excluded from this capital gains tax. The **estimated \$500 million per year** in revenue from the new tax is **earmarked for the Education Legacy Trust Account** to fund early learning, childcare and education. The tax is effective January 2, 2022. Already a legal challenge has been made by The Freedom Foundation claiming it is an unconstitutional income tax.



-  **Unnecessary.** The Legislature can fund state priorities without raising taxes on anyone.
-  **Unpopular.** Washingtonians have said repeatedly over the years they do not want any type of state income tax.
-  **Unconstitutional.** This new tax would likely be challenged and struck down by the courts.
-  **A big step toward a state income tax.**



BUSINESS RELATED KEY LEGISLATION – PASSED

HB 1091/SB 5231 - Reducing greenhouse gas emissions by reducing the carbon intensity of transportation fuel.

- Directs the Department of Ecology (Ecology) to adopt rules establishing a Clean Fuels Program (CFP) to limit the aggregate, overall greenhouse gas (GHG) emissions per unit of transportation fuel energy to 20 percent below 2017 levels by 2035.
- Excludes exported fuel, fuel used by vessels, railroad locomotives, and aircraft, and certain other categories of transportation fuel from the CFP's GHG emission intensity reduction requirements.
- Requires the CFP to include processes for registering, reporting, and tracking compliance obligations and to establish bankable, tradeable credits used to satisfy compliance obligations.
- Retains the current distribution of revenue under the 2015 Transportation Revenue Package, eliminating changes that would have been triggered as a result of the establishment of a CFP.
- Requires the passage of a separate additive transportation funding act generating more than \$500 million per biennium in revenue before Ecology may assign compliance obligations or allow for actual credit generation in order to coordinate and synchronize the CFP with other transportation-related investments.
- **Governor Partial Veto** – Vetoed Section 3(8) part of the bill that requires a new statewide transportation-funding package for the climate bill to take effect.

Sponsors: *Representatives Fitzgibbon, Slatter, Berry, Dolan, Bateman, Ramos, Simmons, Ramel, Senn, Peterson, Duerr, Ryu, Valdez, Callan, Kloba, Chopp, Ormsby, Frame, Macri, Pollet, Goodman and Bergquist; By Request of Office of the Governor*

STATUS HB: [Governor Signed/Partial Veto – Effective Date 7/25/2021](#)

STATUS SB: **Dead** - Senate Environment, Energy & Technology Committee

SB 5476 – Drug Possession Law Changes (State vs. Blake)

- Reduces the criminal penalty for possession of a controlled or counterfeit substance from a felony to a gross misdemeanor.
- Requires the prosecutor to divert a person's first and second violations for possession of a controlled substance, counterfeit substance, or legend drug and encourages diversion thereafter when agreed by the prosecutor.
- Requires the Health Care Authority to establish the substance use recovery services advisory committee to make recommendations for implementation of a substance use recovery services plan, including recommended reforms to the law.
- Authorizes presiding judges of superior courts to appoint court commissioners with the authority to conduct resentencing hearings and vacate convictions pursuant to State v. Blake.
- **Governor Vetoed Section 21**, as he states, “the bill creates a new account that will not be used, therefore it is unnecessary.”

Sponsors: *Senators Dhingra, Hasegawa, Hunt, Kuderer, Lovelett, Nguyen, Pedersen, Rivers, Robinson, Saldaña and Wellman*

STATUS SB: [Governor Signed/Partial Veto – Effective Date 7/25/2021](#)

SB 5126 - Washington climate commitment act

- Ecology must conduct an environmental justice review every two years, beginning in 2023, to ensure the cap and invest program achieves reductions in criteria pollutants as well as GHG emissions in overburdened communities highly impacted by air pollution.
- Ecology must deploy an air monitoring network in high priority overburdened communities to collect sufficient air quality data for the 2023 review and subsequent reviews.
- Once the review determines the levels of criteria pollutants in an identified overburdened community, Ecology must: in consultation with local air pollution control authorities, establish air quality targets to achieve air quality consistent with whichever is more protective for human health:
 - National ambient air quality standards established by EPA; or the air quality experienced in neighboring communities that are not identified as overburdened;
 - Identify the stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing;
 - Achieve the reduction targets through adoption of emission control strategies or other methods;
 - Adopt stricter air quality standards, emission standards, or emissions limitations on criteria pollutants; and
 - After adoption of the stricter air quality standards, emission standards, or emissions limitations, issue an enforceable order on affected permittees or registered sources to comply with the stricter standards or limitations.
- **Governor Partial Veto** – Line-item vetoed to remove clauses requiring lawmakers to agree on a transportation funding package in order for the bill to take effect.

Sponsors: *Senators Carlyle, Saldaña, Conway, Das, Frockt, Hunt, Liias, Nguyen, Pedersen, Salomon, Stanford and Wilson, C.; By Request of Office of the Governor*

STATUS SB: [Governor Signed/Partial Veto – Effective Date 7/25/2021](#)

HB 1087 – Long-Term Care Trust Act (From 2019)

- Establishes the Long-Term Services and Supports Trust Program (Trust Program) to provide benefits for long-term services and supports to qualified individuals who need assistance with at least three activities of daily living.
- Establishes eligibility requirements for the Trust Program for persons who pay a premium of 0.58 percent of a person's wages for a specific amount of time.
- **Beginning January 1, 2022**, employees in Washington shall be assessed a premium of 0.58 percent of their wages. Washington residents receive "qualified individual" status if they are at least 18 years old and have paid the premium for either: (1) three years within the last six years, or (2) for a total of 10 years, with at least five of those years paid without interruption. For a year to count toward a person being deemed a "qualified individual" a person must have worked at least 500 hours during that year. Employees who demonstrate that they have long-term care insurance are exempt from paying the premium. Beginning January 1, 2025, a qualified individual may become an "eligible beneficiary" if the individual has been determined by the Department of Social and Health Services (DSHS) to require assistance with at least three activities of daily living.

Sponsors: *Representatives Jinkins, MacEwen, Cody, Harris, Tharinger, Slatter, Kloba, Ryu, Macri, DeBolt, Bergquist, Doglio, Robinson, Stanford, Stonier, Frame and Leavitt*

STATUS HB: [Governor signed - Effective date 4/16/2021](#)

SB 5061/HB 1098 - Unemployment Insurance

- After April 4, 2021 and during the weeks of a public health emergency (PHE), an unemployed individual, who left work voluntarily and who is high risk or resides with an individual who is high risk, is eligible for UI benefits. In addition, the unemployed individual may meet the able and available for work requirements if the individual is able to perform, available to perform, and is actively seeking suitable work which can be performed for an employer from the individual's home and the individual or another individual residing with the unemployed individual is high risk. ESD must consider the degree of risk to the health of those residing with the individual for the suitable work requirement.
- For claims on or after July 1, 2021, the minimum WBA increases to 20 percent of the AWW for preceding June 30th. An individual may not receive a WBA that exceeds the individual's weekly wage for claims with an effective date on or after January 2, 2022, or such subsequent date by ESD rule to continue eligibility of claimants in this state for federal unemployment benefits or receipt of federal funds under the CARES Act, the Continued Assistance for Unemployed Workers Act, or other act extending such benefits or funds.
- UI benefits paid for the one-week waiting period are not charged to contribution paying employers' experience rating account or to certain reimbursable employers when the waiting period is fully paid or fully reimbursed by the federal government. If the waiting period is partially paid or partially reimbursed ESD may, by rule, elect not to charge the benefits paid
- UI benefits paid for all weeks starting with the week ending March 28, 2020 through May 30, 2020 are not be charged to the experience rating account of any contribution paying employer.
- Annually beginning on December 1, 2021 through 2025, ESD, in consultation with the Unemployment Insurance Advisory Committee, must provide a report to the Legislature and the Governor that provides the status of the trust fund and any federal advances; and analyzes the impact of the minimum WBA increase.

Sponsors: *Senators Keiser, Conway, Billig, Dhingra, King, Nguyen, Saldaña, Stanford and Wilson, C.;*
By Request of Office of the Governor

STATUS SB: [Governor signed – Effective date 2/8/2021](#)

STATUS HB: **Dead** - Labor & Workplace Standards

SB 5097 - Paid Family Medical Leave

- Expands the definition of family member in the Paid Family and Medical Leave (PFML) program.
- Requires the Employment Security Department to collect and analyze data and submit reports to the Legislature with certain information relating to the PFML program.
- Requires the general fund to cover additional leave expenses under certain circumstances.

Sponsors: *Senators Robinson, Conway, Darneille, Das, Hasegawa, Hunt, Keiser, Liias, Lovelett, Nguyen, Saldaña, Stanford, Van De Wege and Wilson, C.*

STATUS SB: [Governor Signed – Effective date 7/25/2021](#)

SB 5025 – Consumer Protection Act

- Maximum civil penalties for violation of the CPA are increased as follows:
 - violation of any injunction issued under the CPA—\$125,000
 - any contract, trust, or conspiracy in restraint of trade or commerce or monopolization or attempt to monopolize any part of trade or commerce—\$180,000 for an individual or \$900,000 for a person other than an individual; and
 - unfair methods of competition and unfair or deceptive acts or practices in trade or commerce—\$7,500 for each violation.
- An enhanced penalty of \$5,000 shall apply to unlawful acts or practices targeting specific individuals or communities based on demographic characteristics, including age; race; national origin; citizenship or immigration status; sex; sexual orientation; presence of any sensory, mental, or physical disability; religion; veteran status; or status as a member of the armed forces.
- There is no time limitation to any state action asserting a claim for civil penalties under the CPA

Sponsors: *Senators Rolfes, Billig, Conway, Das, Dhingra, Hasegawa, Hunt, Keiser, Kuderer, Lovelett, Pedersen, Saldaña, Salomon, Stanford, Van De Wege, Wellman and Wilson, C.; By Request of Attorney General*

STATUS SB: [Governor Signed – Effective date 7/25/2021](#)

SB 5355 - Allowing Wage Lien

- Creates a statutory wage lien for claims on unpaid wages.
- Creates procedures for establishing, foreclosing, extinguishing, and prioritizing wage liens.
- Highly compensated employee means any employee who was a 5 percent owner of the business at which the employee is employed during the current year or preceding year, or who received compensation from the employer in excess of the indexed compensation established by the United States Department of the Treasury— \$130,000 in 2020. A highly compensated employee may not establish a wage lien.

Sponsor: *Senator Conway*

STATUS SB: [Governor signed –Effective date 1/1/2022](#)

BUSINESS RELATED KEY LEGISLATION – ALIVE IN 2022 SESSION

SB 5191 - Anti-price Gouging in an Emergency

- Prohibits excessive price increases for certain goods and services during a state of emergency.
- Provides investigative and enforcement authority with the attorney general.
- Imposes a civil penalty of no more than \$25,000 per violation.
- Prohibits an additional civil penalty from being assessed for the same violation under the Consumer Protection Act.

Sponsors: *Senators Darneille, King, Billig, Carlyle, Conway, Das, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Nguyen, Nobles, Randall, Salomon, Stanford and Wilson, C.; By Request of Attorney General*

STATUS SB: **Dead** - Amended in the House. Returned to Senate Rules 3.

SB 5062 - Data Privacy Act

- Establishes consumer personal data rights of access, correction, deletion, data portability and opt-out of the processing of personal data for specified purposes.
- Defines obligations for controllers and processors of personal data who are legal entities that meet specified thresholds.
- Identifies controller responsibilities, including transparency, purpose specification, data minimization, security, and nondiscrimination.
- Exempts state and local government, tribes, air carriers, employment related data, certain nonprofit organizations, and data sets subject to regulation by specified federal and state laws.
- Provides that violations are enforceable by the Attorney General under the Consumer Protection Act and subject to civil penalties.
- Creates a private right of action for certain violations and limits remedies to appropriate injunctive relief.
- Preempts local laws and ordinances related to the processing of personal data.
- Regulates the processing of data collected by private and public entities for certain public health emergency and contact tracing purposes.

Sponsors: *Senators Carlyle, Nguyen, Billig, Darneille, Das, Dhingra, Holy, Hunt, Lovelett, Mullet, Pedersen, Salomon, Sheldon, Wellman and Wilson, C.*

STATUS SB: **Dead** - Senate Rules Committee for third reading

HB 1574 - Drive-by ADA Lawsuit Reform

- With regard to any civil action under RCW 49.60.030 that alleges any place of public resort, accommodation, assemblage, or amusement that is operated by a private entity has a building, facility, or parking lot that violates this chapter by reason of discrimination because of the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability:
 - Before filing such civil action, the aggrieved person or the person's attorney shall provide written notice with sufficient detail to allow the private entity to identify and cure the violation or comply with the law.
 - If the private entity does not cure the violation or comply with the law within 30 days after receiving the notice, the aggrieved person may file the civil action.
 - "sufficient detail" means the name of the aggrieved person who encountered the barrier, the date when the barrier was encountered by the aggrieved person, and a description of the barrier that was encountered by the aggrieved person.

Sponsors: *Representatives Klippert, Mosbrucker, Boehnke, Jacobsen, Barkis, Klicker, Chandler, Graham, Walen, Goodman, Chase, Schmick, Chapman, Dufault, and Sutherland*

STATUS HB: **Dead** - House Civil Rights & Judiciary

HB 1084/SB 5093 – Banning Natural Gas

- Requires that the State Energy Code, for each code cycle, provide one reach code option for increasingly low-emission energy efficient homes that local jurisdictions may adopt for residential construction.
- Allows local governments to adopt a reach code option under the State Energy Code for residential buildings.
- Requires the Department of Commerce (Commerce) to adopt a state energy management and benchmarking requirement for tier 2 and tier 3 covered commercial buildings by July 1, 2022.
- Prohibits a natural gas utility from offering new service to any customer located outside of the area authorized in its approved certificate of public convenience and necessity as of July 1, 2021.
- Requires that, beginning July 1, 2021, each gas company tariff for line extensions for residential and commercial gas service must recover the full cost of the extension from the customer requesting service.
- Requires the Utilities and Transportation Commission (UTC) to, by October 1, 2022, open an investigation to evaluate pathways for gas companies to achieve their proportional share of greenhouse gas emissions reduction required under statewide emissions limits.
- Codifies the requirement for natural gas utilities regulated by the UTC to develop integrated resource plans.
- Authorizes the governing body of a municipal electric utility or public utility district to adopt a beneficial electrification plan.
- Establishes a Heat Pump and Electrification Program within Commerce.

Sponsors: *Representatives Ramel, Slatter, Johnson, J., Duerr, Fitzgibbon, Dolan, Chopp, Wylie, Bateman, Ramos, Berry, Ortiz-Self, Gregerson, Goodman, Ryu, Valdez, Callan, Kloba, Ormsby, Stonier, Fey, Macri, Peterson, Pollet, Bergquist and Harris-Talley; By Request of Office of the Governor.*

STATUS HB: **Dead** - House Committee on Appropriations

STATUS SB: **Dead** - Senate Environment, Energy & Technology

