



2022 Washington State Legislative Report

OVERVIEW

Legislature Adjourns Sine Die

The 2022 Legislature adjourned its virtual legislative session after continuing to work under COVID restrictions for the second year in a row. Lawmakers announced their intent to focus on serving Washington better, strengthening the economy, advancing racial equity, and addressing climate change. The 60-day session saw the introduction of 1186 bills with 297 bills becoming law. Despite controversy on the size of the operating budget and the use of federal funds, the business community received some relief from the long-term care payroll tax, a reduction in unemployment insurance taxes, and a modest decrease in business and occupation taxes. Additionally, lawmakers passed a transportation investment package with \$1 billion for the replacement of the I-5 Columbia River bridge. For the maritime industry, legislation was adopted to require a state certificate of financial responsibility for oil, funding was increased for the removal of derelict vessels, and a maritime high school pilot program was established. New laws are effective June 9 unless an emergency or alternate date is established.

BUDGETS

Operating Budget

ESSB 5693, Ch. 297 Laws of 2022

The \$64 billion supplemental operating budget passed the Legislature after lengthy debate on its merits and sustainability. Republicans criticized the measure for having insufficient reserves and not providing meaningful tax relief. Democrats lauded the \$2 billion general fund transfer to transportation, the \$350 million to fix the paid family medical and leave account, and the \$100 million investment in salmon recovery. Additionally, \$350,000 funds a study on options to replace the benefits of the four lower Snake River dams as part of a comprehensive salmon recovery strategy for the Columbia and Snake River basins. The analysis must be completed by July 30, 2022. Meanwhile, \$1 million goes to establish a new maritime high school. The budget also provides \$13 million for permanent small business tax relief (SB 5980) that increases to \$118 million for the 2023-25 biennium. The final ending fund balance for the 2023-25 biennium is \$348 million and \$1.6 billion in total reserves.

Capital Budget

SSB 5651, Ch. 296 Laws of 2022

The \$1.5 billion capital budget was larger than the typical supplemental budget because of the infusion of a one-time \$650 million general fund transfer, the use of \$329 million in federal funds from the Infrastructure Investment and Jobs Act (IIJA), and \$305 million of existing bond capacity. The capital budget was good news for the port community around the state and in Clark County. The Port of Camas Washougal received \$2.4 million for its 41st Street project and \$1.596 million to the Port of Vancouver for the dock design at Terminal 1. The capital budget also supports statewide investments of \$40 million in CERB and \$120 million in public works.

Transportation Budget

ESB 5689, Ch. 186 Laws of 2022

The \$11.6 billion supplemental transportation budget was adopted in tandem with the Move Ahead Transportation Package and continues funding from previous projects. Importantly, the budget gives \$32.6 million in funding to the Freight Mobility Strategic Investment Board for freight projects around the state. Additional funding is provided to address safety risks and public health concerns with the clean-up of homeless encampments on WSDOT-owned rights-of-way. The budget also provides \$0.5 million for improvements on the Clark County owned Chelatchie Prairie Railroad.

Move Ahead Transportation Package

ESSB 5974, Ch. 182 Laws of 2022 / SSB 5975, Ch. 187 Laws of 2022

In the final days of session, Democrats in the House and Senate forged an agreement on the Move Ahead Transportation package that provides \$16.9 billion over 16 years in projects around the state. The final package abandoned the controversial export tax that would have negatively affected Oregon, Idaho, and Alaska. To make up for the change, \$57 million a year from the operating budget and \$57 million a year from the Public Works Assistance Account will be transferred to transportation to provide the offset over 16 years. The package also relies on \$5.4 billion from the Climate Commitment Act that was passed in 2021. These carbon taxes are used to pay for transit, high speed rail, electrification, bike, and pedestrian paths. Notably, the package funds movement towards passenger cars and light duty trucks to be all electric by 2030. Republicans opposed the package due to a lack of geographical parity and inclusion in its development.

CARBON & CLIMATE CHANGE

Greenhouse Gas Emissions Reduction for Public Facilities

HB 1280, Ch. 178 Laws of 2022

This policy requires that greenhouse gas emission reductions be part of the design of public owned or leased buildings. Designs must rely on all electric energy plus one renewable source that does not include natural gas. Any system that relies on fossil fuel will need to be retrofitted. The Department of Enterprise Services is responsible for developing guidelines that currently rely on Leadership in Energy and Environmental Design (LEED) silver standards.

Greenhouse Gas Emissions Reduction for Buildings

SB 5722, Ch. 177 Laws of 2022

Tier 2 buildings such as multi-family housing, non-resident buildings, and hotels greater than 20,000 square feet and less than 50,000 square feet will have new energy codes by December 2030. The Department of Commerce will adopt rules and notify building owners by July 1, 2025, of the new requirements. The new law creates an early adopter tax incentive and establishes a \$0.30 square foot penalty for non-compliance. Expansion of this policy to other size buildings is expected in the future.

Renewable Hydrogen

SSB 5910, Ch. 292 Laws of 2022

The Legislature intends to accelerate the availability and use of renewable hydrogen in Washington by supporting a regional clean energy hub and accessing federal funds. Existing exemptions from retail sales tax, use tax, and leasehold excise tax that apply to the production of renewable hydrogen is expanded to include the production of green electrolytic hydrogen.

Energy Facility Siting

E2SHB 1812, Ch. 183 Laws of 2022, Partial Veto

This measure establishes the Energy Facility Site Evaluation Council (EFSEC) as an independent agency distinct from the Utilities and Transportation Commission. E2SHB 1812 authorizes clean energy product manufacturing facilities, storage facilities, renewable natural gas facilities, and renewable or green electrolytic hydrogen facilities to opt into the EFSEC siting process. The law also requires consultation with federally recognized tribes. Governor Inslee issued a partial veto to eliminate the Department of Commerce study of rural energy issues.

EMPLOYMENT LAW

Non-Disclosure Agreements

ESHB 1795, Ch. 133 Laws of 2022

Employers are essentially prohibited from using non-disclosure agreements (NDA's) with the adoption of this legislation. The measure voids current NDA's and prevents retroactive enforcement and also prohibits the use going forward. This applies to agreements affecting alleged discrimination, harassment, retaliation, wage and hour violations, and sexual assault. Employers that violate the law is liable in a civil cause of action for actual or statutory damages of \$10,000, whichever is more, along with attorneys' fees and costs. The new law is liberally construed in favor of employees.

Wage and Salary Information

ESSB 5761, Ch. 242 Laws of 2022

The requirement for an employer to provide wage and benefit information after an initial job offer is changed with this law. Beginning January 1, 2023, employers with more than fifteen employees must place in each posting for each job opening the wage scale or salary range, and a general description of all the benefits and other compensation to be offered to the hired applicant. This applies to both electronic and printed postings whether done directly by an employer or through a third party.

Unemployment Insurance Premiums

ESSB 5873, Ch. 61 Laws of 2022

Efforts to prevent additional unemployment insurance tax increases were passed this session to further ease the challenges resulting from the pandemic shutdowns, hiring challenges, and employee availability problems still facing business. ESSB 5873 reduces the social tax by \$260 million through changing the rate from 0.75% to 0.50% helping employers for their 2022 and 2023 tax years.

ENVIRONMENT

State Upland Leases

HB 1430, Ch. 194 Laws of 2022

The Department of Natural Resources request legislation gained approval by the Legislature and signed by the Governor to change the maximum length of a lease of land managed by the agency. The current 55 years is extended to 99 years where the lease is for commercial, industrial, business, or recreational purposes. A periodic review beyond 55 years is required unless based on a percentage of income.

Growth Management Planning with Tribes

SHB 1717, Ch. 252 Laws of 2022

Lawmakers passed this law to require local governments to coordinate their planning under the Growth Management Act with Native American tribes. The Department of Commerce is required to provide notice to an affected tribe when a city or county proposes a comprehensive plan change. The agency shall facilitate a dispute resolution process to address concerns and ensure protection of tribal cultural resources in collaboration with the tribe. Lawmakers were unable to pass the controversial legislation, E2SHB 1099, to require comprehensive planning to include climate change.

Marine Resources Advisory Council SSB 5590, Ch. 91 Laws of 2022

The 2022 expiration date of the Marine Resources Advisory Council (MRAC) is removed, and the group is extended until June 30, 2032. The MRAC was temporarily established in 2013 to coordinate efforts related to ocean acidification. The 23-member voting group must meet at least twice per year and provide opportunities for public comment.

Kelp & Eelgrass Conservation 2SSB 5619, Ch. 230 Laws of 2022

This new law requires the Department of Natural Resources (DNR) to develop a Native Kelp Forest and Eelgrass Meadow Health and Conservation Plan. The goal is to restore at least 10,000 acres by 2040 and the law requires DNR to identify and prioritize areas in greatest need of conservation and restoration. A native and nonnative kelp forests and eelgrass meadows map for the Puget Sound and along the coast is required to be developed and must be submitted to the Legislature by December 1, 2023.

LONG-TERM CARE INSURANCE

Long Term Care Payroll Tax Delay SHB 1732, Ch. 1 Laws of 2022

Before session began, legislative leaders and the Governor promised to address the looming requirement to provide long-term care insurance for Washington employees. Originally established in 2019, the law requires a \$36K lifetime benefit funded by a 0.58% employee payroll tax. Republicans argued for the full repeal of the program however an 18 month delay ultimately passed. Employers must refund any tax collected by July 1, 2023. The bill contained an emergency clause and became effective immediately.

Long Term Care Payroll Tax Exemptions ESHB 1733, Ch. 2 Laws of 2022

In addition to the 18-month delay to the collection of the payroll tax for long-term care insurance, lawmakers also provided a series of exemptions from the program. A voluntary exemption is available for veterans, active service members, and their families. Non-immigrant temporary workers, non-residents and retirees are also eligible for a voluntary exemption from the tax.

PORTS

Public Meetings ESHB 1329, Ch. 115 Laws of 2022

This measure allows a public agency such as a port to hold meetings remotely after a declared emergency. For the last two years, local governments have been operating remotely under a pandemic

proclamation issued by Governor Inslee. Additionally, local governments are authorized to allow virtual access in certain circumstances to aid participation by the disability community without an emergency.

Truck Drivers Access to Restrooms

SHB 1706, Ch. 204 Laws of 2022

Under this law, ports must provide a sufficient number of restrooms for drayage truck operators in areas normally accessed by their activity. Compliance is met if access to existing restrooms while on port property is allowed when access does not pose an obvious safety risk or violate federal terminal security requirements. Compliance can also be shown by providing additional restrooms where there is the most need and having a policy that allows operators to leave their vehicles to access restrooms. Both the Department of Health and the Department of Labor and Industries are granted enforcement authority that can result in a class 2 civil infraction or safety violation under WISHA.

Remedial Action Grants

SB 5895, Ch. 102 Laws of 2022

At the request of the port community, lawmakers amended the Model Toxics Control Act to address cleanup projects. SB 5895 removes the problematic requirement for local governments to obtain all required permits within one year of the effective date of the enacted budget to receive grants or loans. This change will expedite cleanup work on ports and other local government property.

SECURITY

Police Reform

ESHB 2037, Ch. 80 Laws of 2022 / HB 1735, Ch. 4 Laws of 2022 / HB 1719, Ch. 3 Laws of 2022

The Governor signed a package of bills to address concerns over police reforms passed in the 2021 session. ESHB 2037 changes the definition of physical force, SHB 1735 modifies the standards for use of force by police officers, and HB 1719 alters the type of equipment they can use. Without these clarifications, law enforcement would not be able to respond in mental and behavioral crisis situations. All three bills became effective immediately. Lawmakers failed to pass controversial changes in SB 5919 to allow for pursuits using a vehicle.

TAXES

Clean Technology and Manufacturing Incentive

2SHB 1988, Ch. 185 Laws of 2022

Lawmakers authorized a sales and use tax incentive for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage. Projects that utilize minority owned firms are eligible for 50 percent of the sales tax credit, those that also pay prevailing wage can access 75 percent, and projects that include project labor agreements, prevailing wage, and minority owned firms are eligible for the full 100 percent credit. These restrictions will likely limit development opportunities.

Underdeveloped Land Tax Incentive

E2SSB 5755, Ch. 241 Laws of 2022

Cities with populations between 135,000 and 250,000 can offer a local sales and use tax for affordable housing under this new law. This applies to underdeveloped lots that are defined as land used as a surface parking lot for motor vehicles off the street that is open to public use. At least half of the

investment project for multifamily housing units must be rented at a price at or below fair market rent for the county or sold at a price at or below county median price.

R&D and Warehouse Incentive

ESB 5901, Ch. 257 Laws of 2022, Partial Veto

As passed by the Legislature, this measure contained two provisions, the first to establish a research and development (R&D) tax incentive and secondly to expand the warehouse and grain elevator sales and use tax exemption. The R&D tax incentive is capped at \$400,000 per project and the entire program is capped at \$2 million per year. The Governor vetoed the warehouse and grain elevator exemption where he noted the exemption was overly broad and that warehouses were thriving due to the pandemic accelerating the shift to online shopping.

Business and Occupation Tax Small Business Deduction

ESSB 5980, Ch. 295 Laws of 2022

Despite a \$12 billion surplus and the influx of federal funds, lawmakers made modest tax reforms to help employers. ESSB 5980 changes the B&O tax filing threshold to \$125,000 a year and will affect about 276,000 taxpayers. The measure is estimated at \$13 million in tax relief the first year increasing to \$57.8 million by 2024. The average business will see between \$240 to \$1080 in savings a year. The effective date applies to reporting periods beginning on or after January 1, 2023.

VESSELS

Certificate of Financial Responsibility for Oil Spills

E2SHB 1691, Ch. 202 Laws of 2022

After substantial amendment, the Legislature passed, and the Governor signed E2SHB 1691 to establish a Washington Certificate of Financial Responsibility (COFR). The Department of Ecology will be responsible for issuing the COFR and the law allows for indemnity club memberships as an acceptable option for vessels and facilities to demonstrate financial responsibility to the agency. A key amendment that was adopted requires an effective date to be established after rulemaking is completed to prevent immediate non-compliance. Additionally, the COFR duration is two years instead of the annual certificate that was initially proposed. Importantly, the final bill was also amended to require that the COFR program could not interfere with commerce or the supply chain. While the COFR is duplicative of existing requirements, the amendments achieved by CRSOA will make the program more workable.

Derelict Vessel Removal

HB 1700, Ch. 124 Laws of 2022

Changes to the Watercraft Excise Tax were made by lawmakers to provide a portion of the funds to the removal of derelict vessels instead of the entire amount going to the general fund. The Derelict Vessel Removal Account is managed by the Department of Natural Resources to cover vessel removal costs, and the vessel turn-in program.

Statewide Oil Spill Plan

SB 5747, Ch. 54 Laws of 2022

The Department of Ecology request legislation to update the statewide oil spill plan requirements passed the Legislature unanimously. Current requirements to consult with other states, agencies, and tribes were embodied into law along with the requirement that Ecology could schedule unannounced drills for vessel oil spill contingency plans.

WORKFORCE DEVELOPMENT

Apprenticeship Programs

E2SSB 5600, Ch. 156 Laws of 2022

Employers around the state are facing major employment challenges from pandemic induced retirements to the ageing of the workforce. In response, lawmakers passed legislation to expand on-the-job apprenticeship training opportunities by July 1, 2023. However, the program must be modeled after existing programs that require a unionized workforce in order to access the training programs. Additionally, E2SSB 5600 requires the training programs to consider the ability of providing a living wage plus benefits. A one-time grant is established to mitigate transportation and childcare expenses.

Maritime High School

ESSB 5693, Ch. 297 Laws of 2022

A new maritime high school in the Highline Public School District is created under the supplemental operating budget. The program provides a grant for a maritime education nonprofit to support outreach, recruitment, and maritime educational experiences at the new high school. Funding will support up to four hundred students to pursue maritime careers with a focus of partnering with regional middle schools, providing firsthand learning experiences on vessels, and to support curriculum that gives student STEM skills and pathways to maritime careers such as vessel operations, vessel design, and marine construction. This exciting pilot program is of great interest for its success to fill future workforce needs in maritime and for the potential of replicating the program in other areas of the state and region.

Innovation Challenge

2SSB 5789, Ch. 244 Laws of 2022

The Washington Career and College Pathways Innovation Challenge Program is created under this new law for integrated work-based learning models. Administered by the Student Achievement Council, they will offer competitive grants that engage community and regional organizations. The budget provides \$6 million for the grants and requires a report to the Legislature by December 1, 2022.

WHAT'S NEXT

Elections

All ninety-eight members of the House of Representatives and half of the forty-nine member Senate are up for election in 2022. Numerous legislators have announced their retirement from office for various reasons creating twenty-five open seats before the official filing deadline of May 20. Expect to hear about failed measures in the current election cycle such as the bill to require the Department of Labor and Industries to adopt burdensome ergonomics rules (HB 1837), the bill to establish a wealth tax (HB 1406), or the bill to add climate change to the growth management planning criteria (HB 1099). Finally, growing safety problems with the inability of police to conduct vehicle pursuits, concerns about the economy, inflation, and the increasing price of gas are major issues on the minds of voters.

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