

**CITY COUNCIL STUDY SESSION**

State Legislative Update.

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**DIRECTION NEEDED FROM COUNCIL****INFORMATION  
ONLY**

No action is required; this is an informational briefing. The State Legislature addresses a range of policy issues of interest to the City. Council may wish to provide direction to staff regarding particular legislative proposals.

**RECOMMENDATION**

N/A

**BACKGROUND & ANALYSIS**

Work continues during the interim between the 2018 state legislative session and the 2019 session which begins January 14. Legislators are developing policy language and writing draft legislation that they will introduce in January.

The November 6 General Election results will determine the makeup of the 2019 Legislature as all members of the State House of Representatives and half the members of the State Senate must stand for election. The stakes are high as the upcoming election will determine which party will control each chamber and by what margin.

Once the results of the General Election are known, legislators will meet in Olympia for Committee Assembly Days where they will establish leadership roles, make committee assignments within each caucus and hold work sessions on emerging legislative issues.

**State Revenue Forecast**

The Washington State Economic and Revenue Forecast Council released its latest state revenue forecast last week. The forecast indicates that state revenue collections will be higher than anticipated, coming in at an estimated 4.8% higher than the June forecast predicted. Cumulatively, collections are now estimated to be about \$147 million higher for the remainder of the 2017-2019 biennium.

**Governor's Budget Proposals Under Development**

Governor Jay Inslee will release his proposed 2019-2021 operating, capital and transportation budgets in mid-December prior to the beginning of the 2019 legislative session. State agencies are submitting budget requests to the Office of Financial Management and the Governor's Office. The Governor's Office is reviewing the agency requests and will determine priorities to balance the competing demands for state funding.

### **Trueblood Case Settlement Approved by Court**

The *Trueblood* lawsuit is now being referred to as “the *McCleary* of 2019.” The recent *Trueblood* settlement agreement calls on the state to invest a significant operating and capital funding into the state’s mental health system. The specific funding amount needed to meet the obligations outlined in the settlement remains unknown.

In 2015, the U.S. District Court ruled in *Trueblood versus Washington State Department of Social and Health Services (DSHS)* that the DSHS was not providing competency evaluation and restoration services in a timely manner to individuals with a mental disability. If a court believes a mental disability prevents someone from assisting in his/her own defense, the court puts the criminal case on hold while an evaluation is completed to determine the person’s competency and whether they need treatment to restore competency.

The DSHS is required to provide these evaluation and restoration services in a timely manner with 14 days as the standard. The Court found that the DSHS was not providing these services in a timely manner, held the DSHS in contempt and imposed monetary sanctions. Rather than continue to pursue ongoing litigation, the Plaintiffs in the case agreed to negotiate and develop a comprehensive settlement agreement to reform the state’s forensic mental health care system. A draft settlement agreement has been released and calls for significant state investments through both the state operating and capital budget.

### **Affordable Housing Funding Tools**

Representative Nicole Macri (D-Seattle) has indicated a strong desire to reintroduce legislation similar to House Bill 2437, which was considered in the 2018 legislative session but failed to pass. In the latest version of House Bill 2437, counties are authorized to impose a credit against the state share of the sales tax of up to .03 percent to fund affordable and supportive housing. The sales tax credit would not increase the sales tax for consumers and would not change the overall retail sales or use tax rate. Instead, the amount of sales tax retained by the state would be reduced and redirected to the county. Once imposed, the sales and use tax credit would be in place for 20 years. In King County, if the council does not impose the sales tax credit by July 1, 2020, cities within King County would have the opportunity to use the credit against the sales tax. The bill would require any jurisdiction imposing the tax to provide a local match. If the full .03 sales tax credit were imposed, the local match would be 35% of the total sales and use tax credit revenue collected within a calendar year within that jurisdiction.

The revenue could be used for three purposes (1) acquiring, rehabilitating, or constructing affordable housing, including new units within an existing structure; (2) operating and maintenance costs of new units of affordable or supportive housing; or (3) rental assistance to tenants. Jurisdictions would be authorized to enter into interlocal agreements in expending the funds.

City representatives met recently with Representative Macri to discuss provisions in the bill and to provide feedback on the bill for the 2019 legislative session. Joined by other cities in the Puget Sound, Bellevue staff requested that cities be given the authority to impose and collect the sales and use tax credit. If a city chose not to impose and collect the sales and use tax, then a county would have the opportunity to

do so. **Representative Nicole Macri** is holding subsequent stakeholder meetings to continue to refine the bill.

### **Minimum Density Proposal**

Senator Guy Palumbo (D-Snohomish County), recently circulated draft legislation that would impose new minimum density requirements for some cities. As currently drafted, the proposal would require cities with more than 20% cost-burdened households (defined as households paying more than 30% of their gross monthly income on housing) and residential areas within at least one mile of a transit center to meet new minimum density requirements.

The new requirements include the following:

- reviewing and revising impact fees
- increasing minimum density from 14 to 150 units per acre based on the land parcel's proximity to a transit center
- eliminating conditional use requirements for accessory dwelling units, courtyard apartments, duplexes, single-room occupancy, triplexes, and fourplexes
- reducing off-street parking requirements
- reducing height and square footage requirements on accessory dwelling units
- requiring only one sewer main for duplexes.

The proposed legislation would establish a grant program to help jurisdictions implement the requirements in the bill and would require impacted cities to update their comprehensive plan by the end of 2020. Many cities have already expressed strong concerns about the loss of local control, impacts on single family neighborhoods and other consequences of the proposal. The Association of Washington Cities (AWC) is gathering feedback from cities on the draft to share with Senator Palumbo.

### **Condominium Liability Act Reform**

Several legislators have acknowledged that condominiums are essential for providing middle income, starter, senior, and high-density housing and that the current regulatory and legal environment for condominium construction makes new condominium development cost prohibitive. The AWC, the Washington Realtors, Master Builders Association, and other stakeholders are joining forces to support amendments to the Washington Condominium Act to encourage more condominium development. Specific legislative language has yet to be developed.

### **Basic Law Enforcement Academy Funding**

The Criminal Justice Training Commission plans to request \$2.4 million from the state's operating budget to add nine additional training classes per year at the Basic Law Enforcement Academy (BLEA), for a total 19 training classes per year. The additional classes are needed because the Commission is not able to meet the growing demand for training from local police agencies to train officers in a timely manner. If approved by the Legislature the addition of new classes and funding will help meet the growing demand to train new officers more quickly. This is an issue for jurisdictions like Bellevue that

are hiring new police officers and need to have their training at the BLEA accomplished in a timely manner, so the officers can be deployed in the communities they serve.

### **Legislation Responding to the *South Dakota versus Wayfair* Court Decision**

The state Department of Revenue (DOR) is planning to bring forward agency-request legislation that aligns the Washington State Marketplace Fairness Act with the recent U.S. Supreme Court decision in the *Wayfair* case. The decision affirmed that states can collect sales tax from out-of-state retailers selling goods to consumers located in the state. However, in the decision, the Court stated that state laws and regulations governing the collection of the sales tax cannot place excessive burdens on retailers.

The DOR has said that in light of the *Wayfair* decision, out-of-state retailers will need to remit sales tax to Washington State if they generate at least \$100,000 in sales tax receipts in the state or conduct more than 200 transactions in the state. This is an increase from \$10,000 with no minimum number of transactions. While the increase in the dollar threshold will likely result in a decrease in sales tax collections at the state and local level, the establishment of a 200-transaction threshold should result in an increase.

### **Task Force on Local Business and Occupation (B&O) Tax Apportionment**

During the 2017 session, the Washington State Legislature passed House Bill 2005, sponsored by Representative Kristine Lytton (D-Anacortes), directing the DOR to convene a Local Business and Occupation Tax Apportionment Task Force (Task Force) to recommend changes to the simplify the two-factor municipal B&O tax apportionment formula. The Task Force includes three representatives selected by the Association of Washington Cities and three representatives selected by the Association of Washington Business.

The Task Force has been meeting throughout 2017 and 2018 and must present its recommendations to the Legislature by October 31. The Task Force is likely to finalize its recommendation at its September 25 meeting. The draft recommendations include changing how a service business apportions B&O tax revenue to a city based on customer location. Rather than sourcing to a jurisdiction based on the location from which the service contract is managed, the sourcing would be based on the location from which the customer orders the service. This change would have minimal fiscal implications for cities with a local B&O tax, like Bellevue, and is intended to simplify the local apportionment formula.

### **Business License Threshold Requirement**

By January 1, 2019, all cities that require a business license are required to update their local ordinances to comply with a new definition of “engaging in business.” Under the new definition, “engaging in business” is defined as a business either located within the city or located outside the city but generating at least \$2,000 in revenue in the city per year. A business will not be required to get a business license unless it meets this new definition. The business community has expressed concern that the \$2,000/year threshold is too low and supports a much higher amount. It is possible that legislation will be introduced in 2019 that would raise the threshold.

### **Transportation – Tolling Legislation and Discussions of a “Mini Transportation Package”**

Transportation continues to be a priority issue for legislators as they prepare for the 2019 legislative session. The Legislature will continue to make decisions around the implementation of the 16-year Connecting Washington statewide transportation package enacted in 2015. The 2019-2021 budget is expected to have an estimated \$200 million shortfall in transportation revenue. The estimated shortfall, along with the demand to fund projects not included in the Connecting Washington package, has prompted a conversation among some transportation leaders around proposing a “mini package” of projects in 2019. There are no specific details around the contents of a “mini package” and there are questions about whether such a package is politically viable.

The Legislature is also expected to consider proposals that would authorize tolling on a number of key corridors, including the express toll lanes on I-405 from Bellevue to Renton, the SR 167 HOT lanes, and the portions of SR 509/167 that serve as the Puget Sound Gateway.

### **Rural Broadband/Small Cell Network Facility Deployment**

The Governor has indicated that he intends to propose legislation that would make investments in the expansion of rural broadband. Cities have traditionally supported increased investments in rural broadband. However, recent proposals around rural broadband also included provisions that would preempt city authority to site, regulate, and charge market-based lease rates on small cell network facilities. This preemption is of concern to many cities. The Governor’s Office has indicated a desire to provide incentives, but not mandates, as cities permit small cell network facilities. The AWC and other stakeholders have provided feedback to the Governor on their concerns. A bill draft is expected to be released soon for continued stakeholder input.

### **Value Capture Financing Proposal**

The AWC is developing legislation that would provide cities with a new economic development tool like the Local Revitalization Financing program which was last funded by the state in the early 2000’s. The AWC proposal is likely to be modeled after Senate Bill 6499, introduced in 2018 by Senator Sharon Brown (R-Tri-Cities). That proposal would authorize cities to establish a “business ecosystem area” and public improvements within that area would be paid for with a credit against the state sales tax equal to the local property and sales tax increases that occur within the area.

### **Funding for Replacing Culverts**

A 17-year long legal battle regarding Washington State’s obligation to repair fish culverts recently culminated in a rare 4-4 tie decision by the U.S. Supreme Court. In 2007, the U.S. District Court ruled in *Washington versus United States* that the tribal treaty right to harvest salmon includes the right to have salmon habitat protected.

In 2013, a U.S. District Court judge issued an injunction establishing a schedule to repair state-owned road culverts that are too small, pitched too high above the stream bed, or are in other ways unsuitable for fish passage and, ordering removal of fish passage barriers. The schedule requires the state to repair 450 out of 800 culverts.

The state appealed the case to the U.S. Court of Appeals for the Ninth Circuit and lost. The U.S. Supreme Court reviewed the case and issued a 4-4 decision, essentially upholding the Court of Appeals decision and requiring the state to continue replacing state-owned culverts under an aggressive timeline, requiring significant state investment. The Legislature is expected to provide funding in both the state capital budget and the transportation budget to remove and replace the culverts.

## **POLICY & FISCAL IMPACTS**

The State Legislature addresses a range of policy issues of interest to the City.

## **OPTIONS**

N/A

## **ATTACHMENTS & AVAILABLE DOCUMENTS**

N/A

## **AVAILABLE IN COUNCIL LIBRARY**

N/A