

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

State Legislative Update

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POLICY ISSUES

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

ACTION

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DIRECTION

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INFORMATION ONLY

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No formal action is required; this is an informational briefing. Council may wish to provide direction to staff regarding particular legislative proposals.

BACKGROUND/ANALYSIS

Policy Committee Cutoff Deadline Passes

In order to pass, bills need to meet deadlines in the legislative process. The first of those deadlines, the policy committee cutoff deadline, has come and gone. Many bills did not meet that first deadline and are now considered “dead” for the remainder of the legislative session. Bills that met the first deadline passed out of a policy committee and are now either in a rules committee or, if the bill has fiscal implications, have been referred to a fiscal committee for further consideration. The next deadline, the fiscal committee cutoff deadline, was Friday, February 24. Bills needed to pass out of a fiscal committee by that date in order to remain under consideration.

Some bills are designated as “Necessary to Implement the Budget” (NTIB) and are exempt from these deadlines altogether. To receive this designation, a bill needs to have some connection to the development of the operating, capital, or transportation budgets.

Education Funding Proposals

After the Education Funding Task Force failed to reach a consensus on how to fully fund K-12 education and respond to the *McCleary* decision by the State Supreme Court decision, the Governor, House Democrats, and Senate Republicans have each released education funding proposals. The proposals are very different from one another, increasing the likelihood that the regular session of the Legislature will exceed its scheduled 105 days and go into special session(s). The proposals with the most momentum are House Bill 1843, passed by the House Democrats, and Senate Bill 5607, passed by the Senate Republicans.

The House proposal would increase state revenue by \$1.6 billion this biennium, and \$7.3 billion over four years, through tax sources yet to be identified, but that could include changes to the state property tax, a capital gains tax, and carbon pricing. The proposal phases out the “levy cliff” over four years to bring all local levies to 24 percent. The levy cliff refers to the fact that school districts may not be able to collect as much money as they have in the past because many districts’ local levy authority is capped at 28 percent now, but that cap will go down to 24 percent. This proposal also would retain the current “prototypical” model* for funding schools. The House passed its budget proposal last week along party

lines and while the taxes to fund this proposal are yet to be identified, it is anticipated that the House Democrats will not support proposals that make significant changes to state and local property tax levies.

The Senate proposal sets up a new property tax levy swap that would replace existing local levies to fund K-12 education. It is anticipated that under the proposal a number of King County communities, including Bellevue, would see an increase in their property taxes, as the proposal sets forth a \$1.80 per \$1,000 of assessed value statewide property tax. Local school districts would still be able to raise additional money with voter approval, but the amount that could be raised locally would be capped and could only pay for educational elements that are in addition to basic education. The proposal eliminates the “prototypical” school funding model* in place now and replaces it with a per-student model for school funding.

Senator Mark Mullet (D-Issaquah) has introduced his own school funding proposal, Senate Bill 5825, in an effort to strike a middle ground between House Bill 1843 and Senate Bill 5607. The proposal makes current local levies permanent. School districts would be able to seek additional local levies, but not to fund basic education. The state would add \$750 million every two years in levy equalization assistance to help school districts with lower property values. Senator Mullet’s proposal does not identify a revenue source for the \$750 million.

***Note:** The “prototypical school funding formula for basic education took effect September 1, 2011. The state's public school funding model allocates funding to school districts based on assumed levels of staff and other resources necessary to support a "prototypical" school that serves an assumed number of students at defined elementary, middle, and high schools levels. The use of prototypical schools is intended to illustrate the level of resources needed to operate a school of a particular size using commonly understood terms such as class size, hours of instruction, and specified staff positions.

The structure of the formula, which appears in statute, provides allocations for classroom teachers at an assumed class size, plus other building-level staff such as principals, teachers, librarians, counselors, and office support. Based on these staffing ratios, the state uses salary assumptions for each of the different staff types to generate state funding allocations, as discussed in more detail below. The allocations to a school district are adjusted to reflect the full-time equivalent enrolled students, in proportion to the prototypical school ratios. The funding provided to school districts through the prototypical school formula is for allocation purposes only. Districts have discretion over how the money is spent, subject to some limits.

In addition to the school-specific staffing that is allocated through the prototypical school model, the state's funding formulas include per student allocations for materials, supplies and operating costs (MSOC) and additional support and instruction time through categorical program funding.

Budget Discussions Begin in Earnest

Operating Budget:

We are at the point in the legislative process where legislators begin serious discussions about how much revenue is needed and what expenses it will fund. Budget writers have begun working on the operating budget, meeting multiple times per week to review the Governor’s proposed budget, and budget requests submitted by legislators. The Senate is expected to release its Operating Budget proposal in mid-March (likely after the next state revenue forecast is released on March 16), with the House likely to release its budget the following week. Once released, the budgets from each chamber

will mark the beginning negotiating position of each chamber. Like the education funding proposals, the budget proposals are anticipated to be very different from one another, once again suggesting that it is very likely the session will go beyond its scheduled 105 days.

Some key themes vital to city interests emerged last week, including:

- Little, if anything gets settled unless the Legislature can reach agreement on adequately funding K-12 education.
- Some Senate Republicans have said that the Senate's initial budget proposal will likely include significant cuts to local government revenues and other programs in order to "stake out a negotiating position."
- The House budget proposal is anticipated to include a series of tax increases.
- Finding new ways to help fund local infrastructure remains critically important, but how to fund it continues to be a problem.
- More housing is needed for a growing population and in particular, affordable housing and homeless assistance.
- Revenue the state has historically shared with local government is at risk as legislators seek a path forward to fund K-12 education and mandated programs.
- Several bills are still moving that would weaken or preempt local control.

Capital Budget Funding Limited this Session:

This biennium's capital budget faces some unique challenges. There is a requirement in state law that the state match local school bond levies for school construction. Last year, voters approved more school bond levies than anticipated, requiring the state to dedicate about \$400 million more than anticipated to local school construction. This additional cost leaves less funding available for community project investments. The debt capacity of the capital budget is \$2.5 billion, of which approximately \$1.6 billion (including the above-referenced \$400 million) will need to be dedicated toward education construction investments. Funding from the capital budget will be much more competitive this year.

In response to the limited funding available in the capital budget, the House advanced a proposal, House Bill 1517, sponsored by Representative. Drew MacEwen (R-Union), to bond lottery revenues to generate revenue for school construction, but doing so would require relying on the Budget Stabilization Account to backfill bond payments if lottery revenues decline. The proposal would generate approximately \$469 million in additional one-time capital budget revenue. While this proposal has bi-partisan support in the House, the Senate has indicated that it does not support utilizing the Budget Stabilization Account for backfilling the capital budget. The bill has been deemed "Necessary to Implement the Budget" and remains in play.

Transportation Budget:

The transportation budget will continue implementation of the Connecting Washington Transportation Package approved in 2015. Project advocates from around the state are requesting that the timeline for funding be moved up, however, the Chairs of the Transportation Committees in the House and Senate have indicated that they are unlikely to make funding adjustments. Bellevue has requested that funding be adjusted to the Mountains to Sound Greenway project, and that cost savings on the I-405 corridor be reinvested into the corridor. Additionally, while a number of bills have been introduced regarding tolling on the I-405 corridor, House leadership has indicated that bills will not advance in the House this session.

Legislation Preempting City Authority to Regulate Small Cell Network Infrastructure

Senate Bill 5711, sponsored by Senator Doug Ericksen (R-Ferndale), preempts city authority to zone and site small cell network infrastructure. The bill would establish a master permit for small cell network infrastructure that removes cities' authority to require concealment or design standards for small cell networks/facilities, and would require cities to allow small cells on city-owned infrastructure. Under the bill, a city council would approve a master permit for the siting of small cell networks citywide. Small cell networks would then be sited through a right-of-way permit without public process or council approval. This would significantly limit the authority for residents and the city council to have input and control over the deployment of small cell network infrastructure. The bill also limits what the city can charge for permit applications and pole attachments. The legislation is counter to Bellevue's efforts to work with other cities in the region in a consortium effort to develop a model ordinance to efficiently deploy small cell network infrastructure. The wireless industry has argued that a more streamlined process codified in state law is necessary to deploy small cell infrastructure and prepare for 5G technology. The legislation also significantly pre-empts local control and removes nearly all public process. Bellevue strongly opposes this legislation and City staff have been working with other cities and stakeholders to inform legislators of the many negative impacts for cities.

The bill passed out of the Senate Energy, Environment and Telecommunications Committee and has now been referred to the Senate Rules Committee. When the Committee passed the bill, Committee members indicated that they were advancing the bill as a "work in progress" and encouraged stakeholders to negotiate an amended version of the bill. The House version of the legislation, House Bill 1921, sponsored by Representative Jeff Morris (D-Mount Vernon), failed to meet the policy committee cutoff deadline, and is now considered dead, so the Senate version will be the vehicle as this bill progresses through the Legislature.

Over the past couple weeks, representatives of cities, utilities, and the telecommunication industry met several times to negotiate amendments to the legislation. After a great deal of back and forth, negotiations ended with cities agreeing to draft legislative language that would serve as a model ordinance that cities could use as a template for siting and permitting these facilities. Meanwhile, the wireless and telecommunications industry representatives continue to lobby to advance the legislation.

Local Control of Business Licensing

The Legislature is considering proposals that advance recommendations made by the 2016 Task Force on Local Business Licensing and Business and Occupation (B&O) Taxes led by Department of Revenue. The House and Senate have both held hearings on House Bill 2005, sponsored by Rep. Kristine Lytton (D-Anacortes), and Senate Bill 5777, sponsored by Senator Sharon Brown (R-Kennewick).

Both bills contain many provisions that align with the task force recommendations: (1) all cities that require a business license would adopt a uniform definition on the minimum amount of activity a business would need to engage in before a business license is required; and, (2) a subsequent work group would discuss potential changes to the local B&O tax apportionment formula. Cities and businesses are largely in agreement on the major provisions of the bill.

The two bills differ in their approach to cities joining the state business licensing system. At hearings on the bills, both cities and businesses expressed a need to work on further amendments to these provisions to identify a middle ground. Both versions of the legislation require cities to join the state business licensing system, and outline the terms that cities must operate under with the state system. The Senate

version requires cities to join the state system over five years, while the House version sets forth a 10-year timeline. Both bills offer “exceptions” to the requirement to joining the state business licensing system.

Under the House version of the legislation, cities currently using FileLocal (the portal developed and in use by Seattle, Tacoma, Bellevue and Everett) and cities with a population under 500 are exempt from the requirement to join the business licensing system. Under the Senate version, cities using FileLocal now or into the future and cities of any population that would face a hardship in joining the system are exempt from the requirement to join the business licensing system. Because Bellevue already utilizes FileLocal for administering its business licenses, the city falls within the exceptions of both bills and would not be required to join the state business licensing system. Cities and businesses are meeting this week to develop amendments to address these concerns and reach agreement on language.

Bill that Tied Marijuana Regulation to Liquor Revenue Considered Dead for This Session

House Bill **1099**, sponsored by Representative David Sawyer (D-Lakewood), was initially drafted to only impact the City of Lakewood. However, the bill passed out of the Commerce and Gaming Committee with an amendment that broadened the bill so it negatively impacted many more jurisdictions, including Bellevue. The bill language states that if a city does not issue a business license to retail establishments that is equal to the number of licenses allocated by the state Liquor and Cannabis Board (LCB), it would forfeit 75% of its state-shared liquor revenue and 100% of its marijuana revenue distribution. In the case of Bellevue, the LCB has issues eight retail licenses and five retail outlets are now/will be operating in the City. Under this version of the bill, Bellevue would forfeit approximately \$1.6 million in annual liquor/marijuana revenues (out of a total of approximately \$2.6 million). The version of the bill that contains the revenue forfeiture received a hearing in the House Appropriations Committee but did not advance to a vote in the House and is considered dead for this session. Bellevue was active in opposing this bill and provided comments when the bill was heard in committee.

Local Infrastructure Funding

A number of legislative proposals have been introduced to restore the Public Works Trust Fund or provide alternative financing mechanisms for local infrastructure. At this time, it is unclear which proposals are likely to advance. These bills are under consideration in the House Capital Budget Committee and the Senate Ways & Means Committee and will not be winnowed down until the fiscal committee cutoff deadline.

Of note, House Bill 1392, sponsored by Representative Brian Blake (D-Aberdeen), and Senate Bill 5265, sponsored by Senator Ann Rivers (R- Vancouver), authorize \$97 million for loans to 25 projects submitted by the Public Works Board. The House version of the legislation has received a hearing and is scheduled for executive action; however, the Senate version has not been scheduled for a hearing, suggesting there is support in the House for restoring the Public Works Trust Fund, but not in the Senate.

House Bill 1677, sponsored by Representative Strom Peterson (D-Edmonds), and Senate Bill 5496, sponsored by Senator Ann Rivers (R-Vancouver), were developed by the Association of Washington Cities. These bills attempt to make reforms to the Public Works Trust Fund to regain political support for the program. The bill increases the Public Works Board from 13 to 17 members by adding a legislator from each caucus to the Board. It would still require the Public Works Board to submit a loan list to the Governor and Legislature for funding, but would change the ranking criteria for the list to put a greater emphasis on whether the project can use the state’s investment to leverage federal funds. The

bill also establishes work groups to make future adjustments to the program. Similar to the Public Works Board loan list legislation, the bill has been heard in the House and is scheduled for executive action; however, the Senate version has yet to be scheduled for a hearing.

An alternative to the Public Works Trust Fund is Senate Bill 5033, sponsored by Senator Karen Keiser (D-SeaTac), would allow local governments to get low-interest loans by utilizing the full faith and credit of the state. This would allow jurisdictions access to low-interest loans, but would not provide grant or loan funding directly. It also requires a constitutional amendment. This proposal was heard in the Senate Ways and Means Committee, but has not yet been scheduled for executive action. A House companion was not introduced.

Homeless Encampments

Senate Bill 5657, sponsored by Senator Mark Miloscia (R-Federal Way), and House Bill 2044, sponsored by Representative Joan McBride (D-Kirkland), would limit cities' regulatory authority on homeless encampments on property owned or controlled by religious organizations. The bills state that local ordinances regarding homeless encampments cannot impose conditions on the location or duration of encampments. Specifically, a city would not be able to limit a religious organization from hosting an established tent encampment to fewer than eight months per year; however, requiring a three-month separation between encampments is acceptable. Additionally, cities would not be able to limit a religious organization from hosting a homeless encampment for any duration less than four months, and would not be able to limit the simultaneous hosting of encampments unless they are within 1000 feet of each other. The legislation also contains provisions that restrict a city's ability to regulate safe parking.

In previous sessions, both the House and Senate have approved similar versions of this legislation, suggesting that it has political support. This session, both the House and Senate versions of the bill met the initial policy committee cutoff deadline. The Senate version of the bill requires that the city hold a neighborhood meeting prior to approving a permit application for a homeless encampment, and that any permit have an appeals process. Both bills are in their respective Rules committees. Bellevue has opposed similar legislation based on preemption of local control.

Preempting Local Zoning of Affordable Housing Development on Property Owned/Controlled by Religious Organizations

House Bill 1987, sponsored by Representative Joan McBride (D-Kirkland), would preempt cities, towns, and counties regarding affordable housing development on real property owned or controlled by a religious organization. As originally drafted, multi-family or single-family affordable housing development located on real property owned by a religious organization may exceed two times the maximum height requirement and five times the density requirement for other single-family or multifamily residences within the same neighborhood. The House Committee on Community Development, Housing and Tribal Affairs amended the bill to state that a city cannot restrict the development of multi-family or single-family affordable housing development on property owned by a religious organization to any less than two times the density of the surrounding neighborhood. The bill is now in the House Rules Committee. Bellevue opposes this legislation as it preempts local zoning authority.

Affordable Housing Local Options

House Bill 1797, sponsored by Representative Joan McBride (D-Kirkland), would provide cities with funding tools for affordable housing. The bill would allow existing Real Estate Excise Tax (REET) revenues to be used for affordable housing development through 2022. It would also allow cities to

apply for a one-time remittance of 4.37 percent of the state sales and use tax on an affordable housing development, and would allow King County cities to impose via councilmanic vote the 1/10th cent local sales and use tax for affordable housing currently only allowed with voter approval. This bill previously included authority for cities to impose a third quarter REET for affordable housing; however, that provision was removed by the House Committee on Community Development, Housing and Tribal Affairs. The bill was referred to the House Finance Committee for further consideration.

Additionally, Senate Bill 5182, sponsored by Senator Joe Fain (R-Auburn), would allow a city or county to adopt a property tax exemption to preserve affordable housing. To receive the exemption, a minimum of 25 percent of units in a development must be affordable. The exemption would last 15 years. The bill passed the Senate Committee on Human Services, Mental Health, and Housing and has been referred to the Senate Ways and Means Committee where it is scheduled for a hearing. House leadership has indicated it is not supportive of this proposal.

Document Recording Fee

This fee is the most significant source of state funding for homeless programs. It funds state and local programs that help provide shelter and transition people into more permanent homes. The \$40 fee is scheduled to sunset in 2019 unless the Legislature chooses to extend it. The Legislature has advanced a couple proposals to extend the fee. In the Senate, Senate Bill 5254, sponsored by Senator Joe Fain (R – Auburn) intertwines the document recording fee with changes in land use policy. Advocates for Realtors and the development community argue that homelessness is, in part, caused by the lack of available housing in urban areas. They argue changes to the Growth Management Act and the Buildable Lands Report are needed to address housing availability long term. There are ongoing stakeholder meetings between cities, counties, Futurewise, Master Builders Association, and the Washington Realtors Association to find a middle ground on potential land use policy changes. Meanwhile, the bill as originally drafted passed out of committee and is waiting to be heard in the Senate Ways and Means Committee.

The House continues to consider a proposal that just addresses the document recording fee - House Bill 1570, sponsored by Representative Nicole Macri (D-Capitol Hill). After negotiations, a substitute bill was voted out of the House Community Development, Housing and Tribal Affairs Committee. The substitute bill removes the sunset clause on the document recording fee and makes the \$40 document recording fee permanent. The bill also allows counties and/or cities to charge and retain an additional fee, up to \$50. The bill has been referred to the House Appropriations Committee for further consideration.

Additionally, the House Republicans have introduced an alternative solution to the document recording fee. House Bill 2010, sponsored by Representative Jacequelin Maycumber (R-Republic), would allow eastern Washington counties bordering Canada to use the fee for education and prevention of wildfires. The bill passed out of the House Community Development, Housing and Tribal Affairs Committee and has been referred to the House Rules Committee. Bellevue's adopted state legislative agenda supports changes to the document recording fee to provide additional funding for affordable housing and homeless support.

Police Use of Deadly Force

Only one proposal on the use of deadly force remains under consideration after the policy committee cutoff deadline, Senate Bill 5073, sponsored by Senator David Frockt (D-Seattle). Under the bill, as amended by the Senate Law & Justice Committee, an officer would not be criminally liable for using

deadly force if a reasonable officer, relying on the facts and circumstances known by the officer at the time of the incident, would have used deadly force. Current law allows officers to assert a defense that there was a lack of malice. The bill removes that and replaces it with a good faith standard. The bill also requires the development of model policies and best practices for police agencies to consider, and mandates training around de-escalation techniques. The bill would increase funding to law enforcement by eliminating the requirement that agencies pay 25% of officer training costs through the Basic Law Enforcement Academy, and restores the Public Safety Enhancement Account and directs funds in the account to be used to provide advance patrol tactics and scenario-based simulations. To review the substitute version of the bill, [click here](#). The bill has now been referred to Senate Ways & Means for further consideration.

Public Records Act Reform Bills Heard Last Week

House Bill 1594, sponsored by Representative Joan McBride (D-Kirkland) and House Bill 1595, sponsored by Representative Terry Nealey (R- Dayton), bring forward many of the reforms addressed in the stakeholder working group that met over the legislative interim. Both bills were voted out of committee with bipartisan support and no amendments. The bills are now in the House Rules Committee.

The Association of Washington Cities and Washington State Association of Counties are participating in meetings with Washington Coalition for Open Government and Allied Daily Newspapers to negotiate amendments to both bills to address concerns from opponents of the bills. The main concerns have been raised around the cost recovery and mediation components of the bill.

Key concepts from the bills are listed below:

- **Cost Recovery:** Allows the same reimbursement mechanism allowed for hard copies of public records for electronic public records, including any sort of transmission device such as a thumb drive, cost of postage, cloud storage or delivery.
- **Bot Requests:** The bill clarifies that an agency may deny bot requests if from the same source to the same agency within twenty-four hours and which causes “excessive interference with other essential functions of the agency”.
- **Mediation:** Allows for mediation when a request is unclear or there is disagreement between the requestor and agency. Both parties must enter into mediation within five business days of the original request. If the requestor refuses mediation, this refusal may be taken into account by a court of law.
- **Local Grant Program:** The state archives office and Record Management in the Secretary of State’s office may establish a competitive one-time grant program in order to help agencies improve retention, management and disclosure of public records.
- **Feasibility Study:** The state archives office and record management will conduct a feasibility study on the effectiveness and potential functionality of a statewide open records portal.

Liquor Revenue Bill Passed by House Appropriations Committee

House Bill 1113, sponsored by Representative Dave Hayes (R -Stanwood), gradually increases the local government share of excess liquor revenues until the percentage-based method for distributions is restored in 2024. Sixty percent of the additional revenues would be earmarked for public safety. The House Appropriations Committee voted this bill out of Committee with a 30-3 vote. The bill is now in the House Rules Committee.

Flexibility with Existing Revenues

House Bill 2006, sponsored by Representative John Koster (R-Arlington), would allow cities and counties greater flexibility with existing revenues. Specifically, the bill would eliminate non-supplant language for revenue from the Municipal Criminal Justice Assistance Account and revenues from the locally-imposed mental health and substance abuse sales tax. The bill is scheduled for a hearing in the House Finance Committee.

Staff will continue monitoring legislation with potential impacts to Bellevue's interests and will provide updates for Council as appropriate.

ALTERNATIVES

N/A

RECOMMENDATION

N/A