# Washington Legislative Update – 2021 Contracts & Procurement

PROCUREMENT CUSTOMER ADVISORY GROUP FEBRUARY 17, 2021

#### **ACKNOWLEDGEMENTS**

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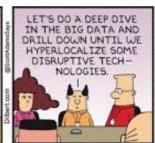
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#### AGENDA

- Contract Trends From The 66<sup>th</sup>
   Washington State Legislature
- Bills That Impact Statewide Contracts& Procurement
- Bills That Impact Public Works
   Contracts
- Bills That Impact Contracts
- Additional Resources







# LEGISLATIVE TRENDS: CONTRACTS & PROCUREMENT

A QUICK LOOK BACK TO THE 66<sup>TH</sup> WASHINGTON STATE LEGISLATURE - 2019 - 2020

### A QUICK LOOK BACK ... TO THINK ABOUT THE FUTURE

"To understand what is happening today or what will happen in the future, I look back."

> -Oliver Wendell Homes

## 66<sup>th</sup> Legislature (2019 - 2020

**Contracts & Procurement** 

Looking Forward

Environmental & Social Justice

Policy through Procurement

Contract Modernization Green, Sustainable, & Lifecycle

Goods & Services
Procurement Code

Data Security & Privacy

Labor & Workers Rights

Public Works Procurement Transparency & Leg. Reports

**Housing Contracts** 

### **CONTRACTS & PROCUREMENT**

#### Policy Through Procurement

- ESHB 2161 Ferry Vessel Procurement (2019)
- ESHB 1109 § 150(6) Operating Budget – Pay Equality Proviso (2019-2021)
- ESHB 2717 Compost Procurement (2020)
- ESHB 2265 PFAS Chemicals (2020)
- E2SHB 1521 Contracting Out (2020)
- HB 2691 Language Access Providers & Collective Bargaining (2020)
- ESHB 2322 § 308(9) Transportation Budget – Supplemental (2020)

### Procurement Code for Goods & Services

- SB 5558 Procurement Code Exemption - DSHS & HCA sensory impaired interpreter services (2019)
- E2SHB 1112 HFC Emissions
- ESB 5958 Interlocal Agreements 'Piggybacking' (2019)
- ESHB 1109 § 150(6) Operating Budget – Pay Equality Proviso (2019-2021)
- E2SHB 1521 Contracting Out (2020)
- HB 2691 Language Access Providers & Collective Bargaining (2020)

#### **Public Works Procurement**

- SHB 1295 Alternative Public Works Contracting Procedures (2019)
- ESSB 5418 Local Government Procurement (2019)
- ESSB 5035 Prevailing Wage (2019)
- ESSB6248 § 1027 Capital Budget Supplemental (2020)
- E2SHB 1521 Contracting Out (2020)
- ESB 5457 Naming of Subcontractors by Prime Contractors on Public Works Contracts (2020)
- ESB 6239 Apprenticeship Utilization Plans
- SB 6170 Plumbers (2020)

### **LOOKING FORWARD**

#### Contract Modernization

- •HB 1908 Repeal the 1998 Electronic Authentication Act (2019)
- •HB 1730 Statute of Limitations (2019)
- •ESHB 1794 Marijuana Contracts (2019)
- •SHB 1476 Contracts for Dogs & Cats (2019)
- •ESHB 1450 Non-Compete Agreements (2019)
- •EHB 1074 Tobacco & Vapor Products: Legal Age for Sales (2019)
- •ESSB 6028 Enact Uniform Electronic Transactions Act (UETA) (2020)
- •ESSB 6028 Repeal Electronic Signatures & Records statute (2020)
- ESSB 6028 Repeal Distributed Ledger Technology statute (2020)
- •ESSB 6248 § 1027 Capital Budget Supplemental (2020)

#### **Data Security & Privacy**

- •SB 6187 Modifying Definition of Personal Information (2020)
- •SB 6263 Creating a Model Policy to Establish Data Sharing Agreements between School Districts & Tribes (2020)
- •ESSB 6280 Facial Recognition

#### Transparency & Leg. Reporting

- •E2SHB 1224 Prescription Drug Cost Transparency (2019)
- •ESHB 1109 §150(10) IT Contract Reporting Proviso (2019)
- •ESHB 1109 §150(7) Glyphosate Reporting Proviso (2019-2020)
- •E2SHB 1521 Contracting Out (2020)
- •HB 2691 Language Access Providers & Collective Bargaining (2020)
- •ESB 5457 Naming of Subcontractors by Prime Contractors on Public Works Contracts (2020)
- •ESSB 6168 § 147(9) IT Contract Reporting Proviso (2020)
- •ESSB 6248 § 1027 Capital Budget Supplemental (2020)

## **ENVIRONMENTAL & SOCIAL JUSTICE**

#### Green, Sustainable, & Lifecycle

- •E2SHB 1112 HFC Emissions (2019)
- •E2SSB 5397 Plastic Packaging Stewardship (2019)
- •SHB 1652 Paint Products Stewardship (2019)
- •ESSB 5001 Human Composting (2019)
- •ESHB 2161 Ferry Vessel Procurement (2019)
- ESHB 1109 §150(7) Operating Budget Glyphosate Proviso (2019-2021)
- •ESHB 1109 §150(3) Operating Budget Passenger Motor Vehicle Proviso (2019-2021)
- •ESHB 2713 Compost Procurement (2020)
- •ESHB 2265 PFAS Chemicals (2020)
- •ESHB 2322 Hybrid Diesel-Electric Ferry (2020)
- •ESSB 6248 § 1027 Capital Budget Supplemental (2020)

#### Labor & Worker Rights

- •ESSB 5035 Prevailing Wage (2019)
- •ESHB 1450 Non-Compete Agreements (2019)
- •ESHB 2161 Ferry Vessel Procurement (2019)
- •ESHB 1109 § 150(6) Operating Budget Pay Equality Proviso (2019-2021)
- •HB 2691 Language Access Providers & Collective Bargaining (2020)
- •E2SHB 1521 Contracting Out (2020)
- •SB 6096 Labor Unrest DSHS Client Service Contracts (2020)

#### Housing

- •ESSB 5600 Landlord Tenant (2019)
- •HB 1011 Real Estate Disclosure Statement (2019)
- •EHB 1694 Allowing Tenants to Pay Certain Sums in Installments (2020)

#### 67th Washington State Legislature

#### 2021

- Long Session
  - 105 Days
  - January 11 April 25, 2019
- Biennial Budgets
  - Operations
  - Capital
  - Transportation

#### 2022

- Short Session
  - 60 Days
  - January 10 March 9, 2022
- Biennial Budget Supplements
  - Operations
  - Capital
  - Transportation

## 67<sup>th</sup> Legislature (2021 – 2022)

**Contracts & Procurement** 

**Looking Forward** 

Environmental & Social Justice

Policy through Procurement

Contract Modernization Green, Sustainable, & Lifecycle

Goods & Services
Procurement Code

Data Security & Privacy

Labor & Workers Rights

Public Works Procurement Transparency & Leg. Reports

**Housing Contracts** 

## **CONTRACTS & PROCUREMENT**

#### **Policy Through Procurement**

- 2SHB 1050 HFCs & GHG Emissions
- HB 1518 Environmental Standards fro State Purchased Paper
- HB 1489 WIN PPE
- SB 5256/HB 1204 Transportation Electrification
- SB 5366/HB 1103 Buy Clean & Buy Fair WA Act
- SSB 5116 Procurement & Use of Automated Decision Systems

### Procurement Code for Goods & Services

- 2SHB 1050 HFCs & GHG Emissions [39.26.310]
- SHB 1267 Police Use of Force [39.26.125]
- SSB 5432 Cybersecurity & Data Sharing in State Government [Adds new section to 39.26]
- SSB 5302 PPE Vendor Database [43.19]

#### **Public Works Procurement**

- HB 1391/SB 5356 Prime Contractor Bid Submission Requirements
- SB 5302 Alternative Public Works
- SSB 5333 Void & Unenforceable Clauses in Public Works Contracts Relating Delays Caused by Covid-19 Pandemic Emergency Proclamations
- HB 1259 OMWBE & Expanding Public Contracting Opportunities
- SB 5366/HB 1103 Buy Clean & Buy Fair WA Act
- HB 1280 GHG Emission Reductions in Public Facilities

### LOOKING FORWARD

#### **Contract Modernization**

- SHB 1274 Cloud Computing Solutions
- SSB 5432 Cybersecurity & Data Sharing in State
   Government
- HB 1391/SB 5356 Prime Contractor Bid Submission Requirements
- SB 5032 Reauthorization & Improvements to Alternative Public Works Contracting
- HB 1502 Procurement & Design of Electric Ferries by Counties

#### Data Security & Privacy

- SSB 5432 Cybersecurity & Data Sharing in State Government
- SSB 5116 Automated Decision Systems

#### Transparency & Leg. Reporting

- HB 1489 WIN PPE
- SSB 5302 PPE Vendor Database
- SB 5432 Cybersecurity & Data Sharing in State Government
- SSB 5116 Procurement & Use of Automated Decision Systems
- SHB 1267 Police Use of Force

## **ENVIRONMENTAL & SOCIAL JUSTICE**

# Green, Sustainable, & Lifecycle

- 2SHB 1050 HFCs & GHG Emissions
- HB 1518 –
   Environmental
   Standards fro State
   Purchased Paper
- SB 5256/HB 1204 Transportation
   Electrification
- HB 1280 GHG
   Emission Reductions in Public Facilities

#### **Labor & Worker Rights**

- SB 5366/HB 1103 Buy Clean & Buy Fair WA Act
- HB 1391/SB 5356 –
   Prime Contractor Bid Submission
   Requirements
- SHB 1274 Cloud Computing Solutions

#### Housing

# BILLS THAT IMPACT STATEWIDE CONTRACTS & PROCUREMENT

#### KEY BILLS

- SSB 5302 PPE Vendor Database
- HB 1489 Washington Innovates New Personal Protective Equipment Act (WIN PPE)
- 2SHB 1050 HFCs & GHG Emissions
- HB 1513 Environmental Standards for State Purchased Paper for Copiers/Printers
- SHB 1274 Cloud Computing Solutions
- SSB 5432 Cybersecurity & Data Sharing in State Government
- SHB 1267 Police Use of Force
- SB 5256 & HB 1204 Transportation Electrification

#### SSB 5302 – PPE VENDOR DATABASE

- **SSB** 5302
- Sponsors:
  - Cleveland, Conway, Wilson
- Status
  - Original Bill (Jan. 20, 2021)
  - Substitute (Jan. 29, 2021)
- Notes:
  - Enterprise Services provided testimony.

- Amends <u>RCW 43.19</u> Dep't of Enterprise Services
- Objective:
  - Requires Enterprise Services to establish a Personal Protective Equipment (PPE) vendor/product database & public-facing website.

# HB 1489 – Washington Innovates New Personal Protective Equipment Act (WIN PPE)

- HB 1489
- Sponsors:
  - Boehnke, et al.
- Status
  - Original Bill (Feb. 5, 2021)

- Amends <u>RCW 43.330</u> Dep't of Commerce
- Objective:
  - Direct Dep't of Commerce to
    - Maintain a web page listing WA State PPE producers
    - Report to Legislature
      - Percentage of 'pandemic response supplies' that are WA-made
      - Procurement challenges
      - PPE product preferences

#### 2SHB 1050 – HFCs & GHG Emissions

- HB 1050
- Sponsors:
  - Fitzgibbon, et al.
- Status
  - Original Bill (Jan. 11, 2021)
  - Substitute (Jan. 28, 2021)
  - Second Substitute (Feb. 15, 2021)

- Amends <u>RCW 39.26.310</u> State Procurement Code for Goods/Services
- Objective:
  - Reduce greenhouse gas emissions from fluorinated gases.
  - Requires Enterprise Services to establish a purchasing and procurement policy that provides a preference, in serving existing equipment, for reclaimed refrigerants that meet minimum quality standards established by the U.S. EPA under 42 USC § 7671g, the National Recycling and Emission Reduction Program. See Bill at §19(3) (amending RCW 39.26.310).

# HB 1513 — ENVIRONMENTAL STANDARDS FOR STATE PURCHASED PAPER FOR COPIERS/PRINTERS

- HB 1513
- Sponsors:
  - Stonier & Ormsby
- Status
  - Original Bill (Feb. 10, 2021)

- Amends <u>RCW 43.19A</u> Recycled Product Procurement
- Objective:
  - Enable state agencies, as an alternative to 100% recycled content office copier and printer paper, to purchase any paper that is produced in a process that results in at least 40% less carbon dioxide.
  - Require Enterprise Services to identify paper products that are "are produced in a process that yields at least 40 percent less carbon dioxide than standard copy paper."

#### SHB 1274 – CLOUD COMPUTING SOLUTIONS

- HB 1274
- Sponsors:
  - Hackney, et al.
- Status
  - Original Bill (Jan. 19, 2021)
  - Substitute Bill (Feb. 15, 2021)

- Amends RCW <u>43.105</u> Consolidated Technology Services (WaTech)
- Objective:
  - Original Bill: Require state agencies, unless excepted to migrate <u>existing</u> onpremises IT applications to third-party commercial cloud computing services and use the same for <u>new</u> IT applications.
  - Substitute Bill: Permits state agencies to move to the cloud; but does not require it. Creates a Task Force to report on labor impacts pertaining to switch from on-premises to cloud.

# SSB 5432 — Cybersecurity & Data Sharing in State Government

- SB 5432
- Sponsors:
  - Carlyle, et al.
- Status
  - Original Bill (Feb. 8, 2021)
  - Substitute Bill (Feb. 12, 2021)
- Notes:
  - Governor's Office request legislation

- Amends RCW <u>43.105</u> Consolidated Technology Services (WaTech) and 39.36
- Objective:
  - Creates the Office of Cybersecurity within CTS.
  - Tasks Office of Cybersecurity, in collaboration with CTS' Office of Privacy & Data Protection and the AGO, to research existing best practices for data governance and data protection, including model terms for data sharing contracts, and submit a report to the Legislature by December 1, 2021.
  - Adds data sharing requirements to 39.26 & 39.34. See SSB 5432 at §§ 5-6.
  - Exempts cybersecurity reports provided to the Governor from the Public Records Act. See SSB 5432 at §7.

#### SHB 1267 – Police Use of Force

- HB 1267
- Sponsors:
  - Entenman, et al.
- Status
  - Original Bill (Jan. 18, 2021)
  - Substitute (Feb. 9, 2021)
- Notes:
  - Governor's Office request legislation.

- Amends RCW 39.26.125
- Objective:
  - Creates Office of Independent Investigations (OII) to investigate potential criminal conduct arising from police use of force
  - Amends Procurement Code to create a competitive procurement exemption for OII investigator contracts. See Bill at §313.

#### SB 5256 – Transportation Electrification

- SB 5256 & HB 1204
- Sponsors:
  - Liias, et al.
- Status
  - Original Bill (Jan. 18, 2021)
- Notes:
  - Similar bill was introduced last session. See <u>HB 2515</u>.

- Would create a new statute
- Objective:
  - Change the demand curve for electric vehicles.
  - Require that all passenger & light-duty vehicles sold or registered in Washington be electric vehicles by 2030.
  - Applies to private and publicly-owned vehicles.

# BILLS THAT IMPACT PUBLIC WORKS CONTRACTS

#### BILLS THAT IMPACT PUBLIC WORKS

- SB 5366 & HB 1103 Buy Clean & Buy Fair Washington Act
- HB 1391 & SB 5356 Prime Contractor Bidding Submission Requirements
- SSB 5333 Void & Unenforceable Clauses in Public Works Contracts Relating Delays Caused by Covid-19 Pandemic Emergency Proclamations
- HB 1290 GHG Emission Reductions in Public Facilities
- SB 5032 Reauthorization & Improvements to Alternative Public Works Contracting
- HB 1259 OMWBE

### SB 5366 - BUY CLEAN & BUY FAIR WASHINGTON ACT

- SB 5366 & HB 1103
- Sponsors:
  - Stanford, et al.
- Status
  - Original Bill (Jan. 28, 2021)
- Notes
  - Similar bill was introduced last session. See SSB 2744.

- Creates 'Buy Clean & Buy Fair Washington Act'
- Objective:
  - Beginning July 1, 2021, requires 'awarding authorities' (including Enterprise Services) to require their contractors on 'covered projects' to submit certain specified data, including an Environmental Product Declaration (EPD) and labor rights data for each 'covered product' used.

# HB 1391 – PRIME CONTRACTOR BIDDING SUBMISSION REQUIREMENTS – PUBLIC WORKS

- HB 1391 & SB 5356
- Sponsors:
  - Goehner, et al.
- Status
  - Original Bill (Jan. 27, 2021)
- Notes:
  - Similar bill was <u>enacted</u> in 2020. See <u>LAWS OF 2020, CH.</u>
     140 (ESB 5457) (codified at 39.30.060).

- Amends RCW 39.30.060
- Objective:
  - Amend RCW 39.30.060 to conform the statute to the Legislature's intent.

# SSB 5333 — VOID & UNENFORCEABLE CLAUSES IN PUBLIC WORKS CONTRACTS RELATING DELAYS CAUSED BY COVID-19 PANDEMIC EMERGENCY PROCLAMATIONS

- **SB** 5333
- Sponsors:
  - Holy & Wilson
- Status
  - Original Bill (Jan. 22, 2021)
  - Substitute Bill (Feb. 12, 2021)

- Amends <u>RCW 4.24.360</u> Void & unenforceable construction contract provisions
- Objective:
  - Declare that, as to public works contracts, any contract provision that purports to waive, release, or extinguish a contractor/subcontractor/supplier's rights to damages or an equitable adjustment rising out of a delay in performance caused by the Covid-19 pandemic emergency proclamations is against public policy and is void & unenforceable.

# HB 1280 – GHG EMISSION REDUCTIONS IN PUBLIC FACILITIES

- HB 1280
- Sponsors:
  - Ramel, et al.
- Status
  - Original Bill (Jan. 19, 2021)

- Amends <u>RCW 39.35</u> Energy Conservation in the Design of Public Facilities
- Objective:
  - Require GHG emission reductions to be considered in the design phase of constructing public facilities.
  - Must consider the use of all-electric energy systems and at least one renewable energy or combined heat and power system.

# SB 5032 — REAUTHORIZATION & IMPROVEMENTS TO ALTERNATIVE PUBLIC WORKS CONTRACTING

- SB 5032
- Sponsors:
  - Hasegawa, et al.
- Status
  - Original Bill (Jan. 11, 2021)

- Amends <u>RCW 39.10</u> Alternative Public Works Contracting Procedures
- Objective:
  - Extends Alternative Public Works Contracting procedures until July 1, 2031.
  - Amends the design-build, general contractor/construction manager, and job order contracting procedures.
  - Requires the Capital Projects Advisory Review Board to develop best practices for increasing and sustaining access to contracting opportunities in alternative public works for minority, women, and veteran-owned businesses, and small businesses, and report to the Legislature any recommendations for changes to the statute by June 30, 2022.

# HB 1259 – OMWBE – Public Contracting Opportunities

- HB 1259
- Sponsors:
  - Santos, et al.
- Status
  - Original Bill (Jan. 18, 2021)
- Notes:
  - A similar bill was introduced in 2019. See HB 1202.

- Amends <u>RCW 39.19</u> and <u>RCW 39.04.155</u>
- Objective:
  - Provide OMWBE with increased enforcement authorities to police certification abuse and other violations
  - Public Works
    - Increases the small works roster cap from \$300,000 to \$500,000; and
    - Increases the cap for the limited public works process from \$50,000 to \$150,000.
       See Bill at §8.

# BILLS THAT IMPACT CONTRACTS

#### OTHER BILLS THAT IMPACT CONTRACTS

- SSB 5116 Procurement & Use of Automated Decision Systems
- HB 1502 County Procurement of Electric Ferries
- SHB 1365 Procuring & Supporting Appropriate Computers & Devices for Public School Students and Instructional Staff

# SSB 5116 — PROCUREMENT & USE OF AUTOMATED DECISION SYSTEMS

- SSB 5116
- Sponsors:
  - Hasegawa, et al.
- Status
  - Original Bill (Jan. 8, 2021)
  - Substitute Bill (Feb. 8, 2021)
- Notes:
  - Similar bill was introduced last session. See SHB 1655 & SB 5527

- Amends <u>RCW 49.60</u> Discrimination & <u>RCW 43.386.901</u> Facial Recognition
- Objective:
  - Requires the Washington state CIO to adopt rules regarding the development, procurement, and use of automated decision systems by a public agency.
  - Requires public agencies to develop an algorithmic accountability report that meet certain requirements on the use of automated decision systems.
  - Expands Washington's Law Against Discrimination (RCW 49.60) to prohibit discrimination by automated decision systems.
  - Delays effective date of last year's Facial Recognition Act (RCW 43.386) to July 1, 2026.

#### HB 1502 – County Procurement of Electric Ferries

- HB 1502
- Sponsors:
  - Wylie, et al.
- Status
  - Original Bill (Feb. 5, 2021)

- Amends <u>RCW 36.32</u>, County Procurement
- Objective:
  - Create a competitive bidding procedure for county procurement and design of electric ferries
  - Modeled after State Procurement
     Code
    - <u>39.26.160</u> Bid awards
    - <u>39.26.030</u> Procurement records

# SHB 1365 — PROCURING COMPUTERS FOR PUBLIC SCHOOL STUDENTS & INSTRUCTIONAL STAFF

- HB 1365
- Sponsors:
  - Gregerson, et al.
- Status
  - Original Bill (Jan. 25, 2021)
  - Substitute Bill (Feb. 15, 2021)

- Amends <u>RCW 28A.650</u> Common School, Education Technology
- Objective:
  - Provide 1 'learning device' for 1 student.
  - Requires educational school districts to provide specified technology, consultation, procurement, and training.
  - Enables ESDs to perform technology procurement in consolation and contract with Enterprise Services. See HB 1365 at §3(3)(c).

# Additional Resources

#### ENTERPRISE SERVICES — CONTRACTS & PROCUREMENT

- Contracts & Procurement
   Enterprise Services
  - Current Contracts
  - Enterprise ProcurementPolicies
  - Contracts & ProcurementTraining



Contracts & Procurement WA Dep't of Enterprise Services PO Box 41408 Olympia, WA 98504-1408 360-407-2210

#### USEFUL BILL INFO

- Bill Numbers
  - House Bills: 1000s & 2000s
  - Senate Bills: 5000s & 6000s
- Abbreviations
  - HB: House Bill
  - SB: Senate Bill
  - SHB: Substitute House Bill
     (SSB Substitute Senate Bill)
  - EHB: Engrossed House Bill



## USEFUL BILL INFO, CONT.

- Bill: A proposed law presented to the Legislature for consideration
- Pre-filed Bill: A bill which is submitted for introduction/first reading before the legislative session begins (pre-filed bills are introduced on the first day of the session)
- Companion Bill: A bill introduced with the same language in both the House and the Senate
- Substitute Bill: A version of a bill offered by a committee in the first chamber. If adopted, the substitute replaces the original bill or resolution

- Striker or Striking Amendment:
   Amendment removing everything after the title and inserting a whole new bill
- Engrossed Bill: A bill which reflects all amendments made in the house of its origin
- Enrolled Bill: A bill passed by both houses, which incorporates all amendments, and to which has been attached a certificate of enrollment indicating the date passed, votes cast on the bill, and the certifying officers' signatures. It is presented to the Governor for signature
- Act: A bill adopted by the Legislature

#### Websites – Legislation Tracking

- LegiScan Washington State
- Washington State Legislature Bill
   Tracking
- National Conference of State
   Legislatures Bill Tracking &
   Subscription Services







### Websites – Legislative Process

- <u>Legislative Process Resources</u>
   Washington State Legislature
- <u>Legislative Process & Terms</u>
   University of Washington, Office of Planning & Budgeting
- Televised Public Hearings, Legislative Review, & Inside Olympia
   TVW www.tvw.org

#### Websites — Budget Information

- <u>Budget Information</u> Washington State Fiscal Information
   Legislative Evaluation & Accountability Program LEAP Committee & Office of Financial Management (OFM)
- A Citizen's Guide to the Washington State
   Operating Budget (2021) Senate Ways &
   Means Committee
- A Citizen's Guide to the Washington State
   Capital Budget (2021) Senate Ways & Means
   Committee





#### THANK YOU



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