

WASHINGTON LEGISLATIVE UPDATE – 2021

CONTRACTS & PROCUREMENT

PROCUREMENT CUSTOMER ADVISORY GROUP
MARCH 17, 2021

ACKNOWLEDGEMENTS

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AGENDA

- The 67th Washington State Legislature & Contracts and Procurement
- Bills That Impact Statewide Contracts & Procurement
- Bills That Impact Public Works Contracts
- Bills That Impact Contracts
- Bills That Would Have Impacted Contracts, But Are Dead
- Additional Resources



THE 67TH WASHINGTON STATE LEGISLATURE

CONTRACTS & PROCUREMENT

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

BUDGETS

OPERATIONS

- 2019 – 2021: HB [1093](#) & SB [5091](#)
- 2021 – 2023: HB [1094](#) & SB [5092](#)

CAPITAL

- 2021 – 2022: [HB 1080](#) & [SB 5083](#)

TRANSPORTATION

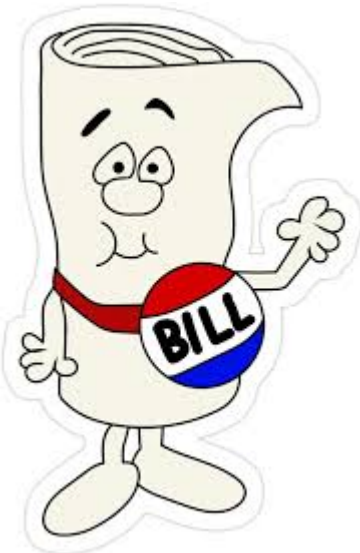
- 2019 – 2021: [HB 1136](#) & [SB 5166](#)
- 2021 – 2023: [HB 1135](#) & [SB 5165](#)

ARE WE THERE YET?



- Day 66 of 2021 Legislative Session
 - Past House of Origin Cutoff (March 9)
- Coming Up
 - March 26: Policy Committee Cutoff – Opposite House
 - April 2: Fiscal Committee Cutoff – Opposite House
 - April 11: Opposite House Cutoff
 - April 25: Last Day for Regular Session

WE'RE HALF-WAY THERE



Session	2021
Bills Introduced:	1,054
Passed House:	219
Passed Senate:	202
Passed Both Chambers:	12
Governor Signed:	7

67TH LEGISLATURE (2021 – 2022)

Contracts & Procurement

Policy through Procurement

Goods & Services Procurement Code

Public Works Procurement

Looking Forward

Contract Modernization

Data Security & Privacy

Transparency & Leg. Reports

Environmental & Social Justice

Green, Sustainable, & Lifecycle

Labor & Workers Rights

CONTRACTS & PROCUREMENT

Policy Through Procurement

- **E2SHB 1050 – HFCs & GHG Emissions**
- HB 1518 – Environmental Standards for State Purchased Paper
- HB 1489 – WIN PPE
- SHB 1204 – Transportation Electrification
- SB 5366/HB 1103 – Buy Clean & Buy Fair WA Act
- SSB 5116 – Procurement & Use of Automated Decision Systems
- SB 5458 – Public Contracts & Small Businesses [Adds new section to 39.26]

Procurement Code for Goods & Services

- **E2SHB 1050 – HFCs & GHG Emissions [39.26.310]**
- **ESHB 1267 – Police Use of Force [39.26.125]**
- **ESSB 5432 - Cybersecurity & Data Sharing in State Government [Adds new section to 39.26]**
- SSB 5302 – PPE Vendor Database [43.19]
- SB 5458 – Public Contracts & Small Businesses [Adds new section to 39.26]

Public Works Procurement

- **HB 1391/SB 5356 – Prime Contractor Bid Requirements**
- **HB 1280 – GHG Emission Reductions in Public Facilities**
- **SB 5302 – Alternative Public Works**
- **SHB 1259 – OMWBE & Expanding Public Contracting Opportunities**
- SSB 5333 – Void & Unenforceable Clauses in Public Works Contracts Relating to Delays Caused by Covid-19 Pandemic Emergency Proclamations
- SB 5366/HB 1103 – Buy Clean & Buy Fair WA Act
- HB 1308 – Expanding Apprenticeship Utilization Requirements

LOOKING FORWARD

Contract Modernization

- **E2SHB 1274 – Cloud Computing Solutions**
- **ESSB 5432 – Cybersecurity & Data Sharing in State Government**
- **SHB 1391/ESB 5356 – Prime Contractor Bid Requirements**
- **SB 5032 – Reauthorization & Improvements to Alternative Public Works Contracting**
- **SHB 1502 – Procurement & Design of Electric Ferries by Counties**
- **SB 5146 – Fish & Wildlife Commission Indemnification Authority**

Data Security & Privacy

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

Transparency & Leg. Reporting

- **ESSB 5432 – Cybersecurity & Data Sharing in State Government**
- **ESHB 1267 – Police Use of Force**
- **HB 1489 – WIN PPE**
- **SSB 5302 – PPE Vendor Database**
- **SSB 5116 – Procurement & Use of Automated Decision Systems**
- **SB 5458 – Public Contracts & Small Businesses**

ENVIRONMENTAL & SOCIAL JUSTICE

Green, Sustainable, & Lifecycle

- **E2SHB 1050 – HFCs & GHG Emissions**
- **HB 1280 – GHG Emission Reductions in Public Facilities**
- **SHB 1502 – Procurement & Design of Electric Ferries by Counties**
- **HB 1518 – Environmental Standards for State Purchased Paper**
- **SHB 1204 – Transportation Electrification**

Labor & Worker Rights

- **SHB 1391/ESB 5356 – Prime Contractor Bid Requirements**
- **E2SHB 1274 – Cloud Computing Solutions**
- **SB 5366/HB 1103 – Buy Clean & Buy Fair WA Act**
- **HB 1308 – Expanding Apprenticeship Utilization Requirements**

BILLS THAT IMPACT STATEWIDE CONTRACTS & PROCUREMENT

KEY BILLS

- E2SHB 1050
HFCs & GHG Emissions
- E2SHB 1274
Cloud Computing Solutions
- ESSB 5432
Cybersecurity & Data Sharing in State Government
- ESHB 1267
Police Use of Force

E2SHB 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)
 - [Engrossed Second Substitute](#)
(Feb. 15, 2021)
- Amends [RCW 39.26.310](#) – 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).*

E2SHB 1274 – CLOUD COMPUTING SOLUTIONS

- [HB 1274](#)
- Sponsors:
 - Hackney, et al.
- Status
 - [Original Bill](#)
(Jan. 19, 2021)
 - [Substitute Bill](#)
(Feb. 15, 2021)
 - [Second Substitute](#)
(Feb. 22, 2021)
 - [Engrossed Second Substitute](#)
(Feb. 22, 2021)
- Amends RCW [43.105](#) – Consolidated Technology Services (WaTech)
- Objective:
 - Original Bill: Require state agencies, unless excepted, to migrate existing on-premises IT applications to third-party commercial cloud computing services and use the same for new IT applications.
 - Engrossed Second Substitute Bill: Enables 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.

ESSB 5432 – CYBERSECURITY & DATA SHARING IN STATE GOVERNMENT

- [SB 5432](#)
- Sponsors:
 - Carlyle, et al.
- Status
 - [Original Bill](#)
(Feb. 8, 2021)
 - [Substitute Bill](#)
(Feb. 12, 2021)
 - [Engrossed Substitute](#)
(Feb. 12, 2021)
- Notes:
 - Governor’s Office request legislation
- Amends RCW [43.105](#) – Consolidated Technology Services (WaTech) and [RCW 39.26](#)
- Objective:
 - Creates the Office of Cybersecurity within CTS.
 - Tasks Office of Cybersecurity, in collaboration with 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 RCW 39.26 & RCW 39.34.
 - Exempts cybersecurity reports provided to the Governor from the Public Records Act.

ESHB 1267 – POLICE USE OF FORCE

- [HB 1267](#)
- Sponsors:
 - Entenman, et al.
- Status
 - [Original Bill](#) (Jan. 18, 2021)
 - [Substitute](#) (Feb. 9, 2021)
 - [Engrossed 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 exception for OII investigator contracts. See Bill at §313.

BILLS THAT IMPACT PUBLIC WORKS CONTRACTS

BILLS THAT IMPACT PUBLIC WORKS

- SHB 1391 & ESB 5356
Prime Contractor Bid Requirements
- HB 1280
GHG Emission Reductions in Public Facilities
- SB 5032
Reauthorization & Improvements to Alternative Public Works Contracting
- SHB 1259
OMWBE

SHB 1391 – PRIME CONTRACTOR BID REQUIREMENTS

- [HB 1391](#) & [SB 5356](#)
- Sponsors:
 - Goehner, et al.
- Status
 - [Original Bill](#)
(Jan. 27, 2021)
 - [Substitute](#)
(Feb. 22, 2021)
- *Notes:*
 - Similar bill was enacted in 2020. See [LAWS OF 2020, CH. 140](#) (ESB 5457) (codified at [RCW 39.30.060](#)).
- Amends [RCW 39.30.060](#)
- Objective:
 - Amend RCW 39.30.060 to conform the statute to the Legislature’s intent
 - “and” = conjunctive
 - “or” = disjunctive
 - Adds CPARB report
 - Also exempts Alternative Public Works exemption for Job Order Contracting to include:
 - Design Build; **and**
 - General Contractor/Construction Manager

HB 1280 – GHG EMISSION REDUCTIONS IN PUBLIC FACILITIES

- [HB 1280](#)
- Sponsors:
 - Ramel, et al.
- Status
 - [Original Bill](#) (Jan. 19, 2021)
- Amends [RCW 39.35](#) – 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 [RCW 39.10](#) – 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.

SHB 1259 – OMWBE – PUBLIC CONTRACTING OPPORTUNITIES

- [HB 1259](#)
- Sponsors:
 - Santos, et al.
- Status
 - [Original Bill](#)
(Jan. 18, 2021)
 - [Substitute](#)
(Feb. 22, 2021)
- *Notes:*
 - A similar bill was introduced in 2019. See [HB 1202](#).
- Amends [RCW 39.19](#)
- Objective:
 - Provide OMWBE with increased enforcement authorities to police certification abuse and other violations
 - Annual reports regarding agencies in the lowest 20% for public contracting opportunities with OMWBE-certified firms

BILLS THAT IMPACT CONTRACTS

OTHER BILLS THAT IMPACT CONTRACTS

- SHB 1502
County Procurement of Electric Ferries
- E2SHB 1365
Procuring & Supporting Appropriate Computers & Devices for Public School Students and Instructional Staff
- SB 5146
Fish & Wildlife Commission Indemnification Authority

SHB 1502 – COUNTY PROCUREMENT OF ELECTRIC FERRIES

- [HB 1502](#)
- Sponsors:
 - Wylie, et al.
- Status
 - [Original Bill](#)
(Feb. 5, 2021)
 - [Substitute](#)
(Feb. 22, 2021)
- Amends [RCW 36.32](#), County Procurement
- Objective:
 - Create a competitive bidding procedure for county procurement and design of electric ferries
 - Modeled after State Procurement Code
 - [39.26.160](#) – Bid awards
 - [39.26.030](#) – Procurement records

E2SHB 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)
 - [Second Substitute](#)
(Feb. 22, 2021)
 - [Engrossed Second Substitute](#)
(Feb. 22, 2021)
- Amends [RCW 28A.650](#) – 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 Bill at §3(3)(c).

SB 5146 – FISH & WILDLIFE COMMISSION INDEMNIFICATION AUTHORITY

- [SB 5146](#)
- Sponsors:
 - Van De Wege
- Status
 - [Original Bill](#) (Jan. 12, 2021)
- Amends [RCW 77.12.320](#)
- Objective:
 - Provide the Fish and Wildlife Commission will authority to enable it to indemnify the United States and its agencies as a condition to secure federal funds for fish, shellfish, and wildlife projects

BILLS THAT WOULD HAVE IMPACTED CONTRACTS, BUT ARE DEAD

CATEGORIES

Goods & Services

HB 1489

SSB 5302

HB 1518

SB 5458

SHB 1204

Public Works

SSB 5333

SB 5366

HB 1308

Other

SSB 5116

HB 1489 – WASHINGTON INNOVATES NEW PERSONAL PROTECTIVE EQUIPMENT ACT (WIN PPE)

- [HB 1489](#)
- Sponsors:
 - Boehnke, et al.
- Status
 - [Original Bill](#)
(Feb. 5, 2021)
- Amends [RCW 43.330](#) – 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

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 [RCW 43.19](#) – Dep’t of Enterprise Services
- Objective:
 - Requires Enterprise Services to establish a Personal Protective Equipment (PPE) vendor/product database & public-facing website.

HB 1518 – ENVIRONMENTAL STANDARDS FOR STATE PURCHASED PAPER FOR COPIERS/PRINTERS

- [HB 1513](#)
- Sponsors:
 - Stonier & Ormsby
- Status
 - [Original Bill](#)
(Feb. 10, 2021)
- Amends [RCW 43.19A](#) – 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.”

SB 5458 – PUBLIC CONTRACTS & SMALL BUSINESSES

- [SB 5458](#)
- Sponsors:
 - Wagoner
- Status
 - [Original Bill](#)
(Feb. 15, 2021)
- Amends [RCW 43.19.725](#), [.727](#) & [RCW 39.26](#)
- Objective:
 - Expand RCW 43.19 to all state/public contracts
 - Report percentage of contracts awarded to small businesses
 - Creates Small Business Procurement Preference (add new section to [RCW 39.24](#)): 3% of all public contracts that are exempt from competitive bidding requirements
 - Amends [RCW 28B.10](#) (HigherEd); [RCW 39.04](#) (Public Works); [RCW 39.26](#) (Goods/Services); and [RCW 39.80](#) (A&E)

SHB 1204 – TRANSPORTATION ELECTRIFICATION

- [HB 1204](#)
- Sponsors:
 - Macri, et al.
- Status
 - [Original Bill](#)
(Jan. 14, 2021)
 - [Substitute](#)
(Feb. 22, 2021)
- *Notes:*
 - Similar bill was introduced last session. See [HB 2515](#).
- Would create a new statute
- Objective:
 - Change the demand curve for electric vehicles.
 - Original Bill – Regulatory Approach:
 - Require that all passenger & light-duty vehicles sold or registered in Washington be electric vehicles by 2030.
 - Applies to private and publicly-owned vehicles.
 - Substitute Bill - Goal:
 - Establish a goal for the state that publicly and privately owned passenger and light-duty vehicles of model year 2030 and later sold, purchased, or registered in Washington be electric vehicles.

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

- [SB 5333](#)
- Sponsors:
 - Holy & Wilson
- Status
 - [Original Bill](#)
(Jan. 22, 2021)
 - [Substitute Bill](#)
(Feb. 12, 2021)
- Notes:
 - Enterprise Services provided testimony. WSDOT also testified.
- Amends [RCW 4.24.360](#) – 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.

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 1308 – EXPANDING APPRENTICESHIP UTILIZATION REQUIREMENTS

- HB 1308
- Sponsors:
 - Riccelli, et al.
- Status
 - [Original Bill](#)
(Jan. 19, 2021)
- Amends [RCW 39.04.320](#)
- Objective:
 - Requires Municipal public works contracts over \$1 million to include 15% apprenticeship utilization requirement
 - Requires subcontractors, on public works contracts over \$200,000 or more, to include 15% apprenticeship utilization requirement
 - Requires municipalities to monitor and report their apprentice utilization hours by contractor

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 [RCW 49.60](#) – Discrimination & [RCW 43.386.901](#) – 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.

ADDITIONAL RESOURCES

ENTERPRISE SERVICES – CONTRACTS & PROCUREMENT

- [Contracts & Procurement Enterprise Services](#)
 - [Current Contracts](#)
 - [Enterprise Procurement Policies](#)
 - [Contracts & Procurement Training](#)



Contracts & Procurement
WA Dep't of Enterprise Services
PO Box 41408
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USEFUL BILL INFO

- Bill Numbers
 - House Bills: 1000 – 3999
 - Senate Bills: 5000 – 7999
- Abbreviations
 - HB: House Bill
 - SB: Senate Bill
 - SHB: Substitute House Bill
(SSB – Substitute Senate Bill)
 - 2SSB: Second Substitute Senate Bill
(2SHB – Second Substitute House Bill)
 - EHB: Engrossed House Bill



USEFUL BILL INFO, CONT.

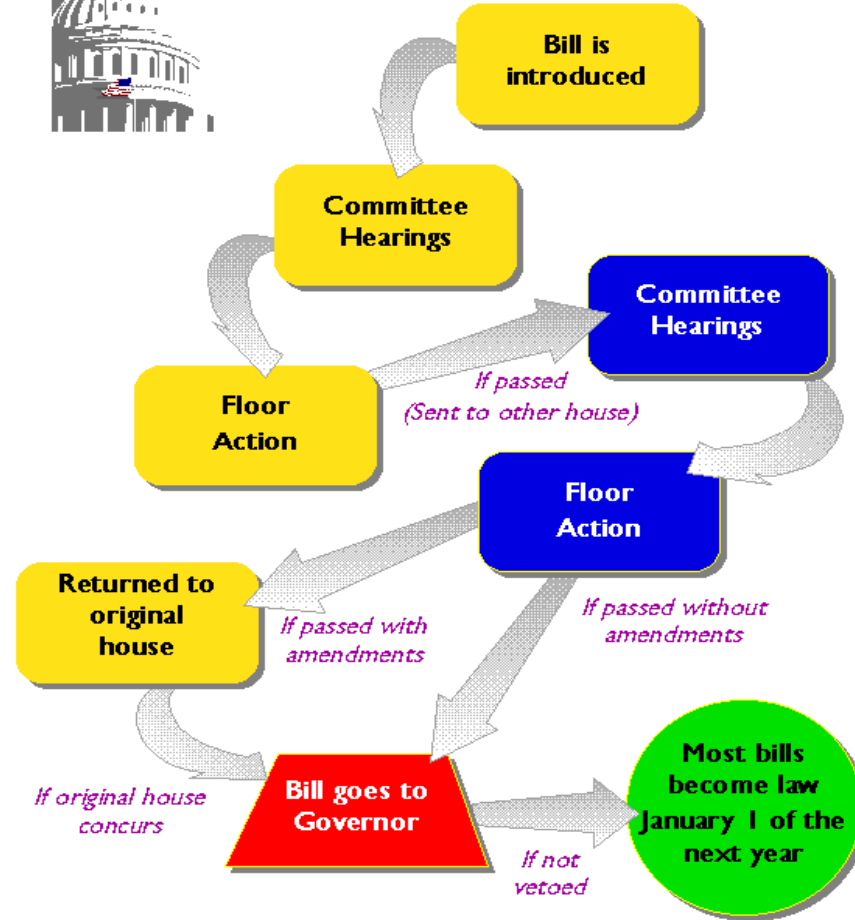
- *Bill*: A proposed law presented to the Legislature for consideration
- *Pre-filed Bill*: A bill which is submitted for introduction/first reading before the legislative session begins (pre-filed bills are introduced on the first day of the session)
- *Companion Bill*: A bill introduced with the same 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

HOW A BILL BECOMES A LAW

- A bill may be introduced in either the Senate or House of Representatives by a member.
- The bill is referred to a committee for a hearing. The committee studies the bill and may hold public hearings on it. It can then pass, reject, or take no action on the bill.
- The committee report on the passed bill is read in open session of the House or Senate, and the bill is then referred to the Rules Committee.
- The Rules Committee can either place the bill on the second reading calendar for debate before the entire body, or take no action.
- At the second reading, a bill is subject to debate and amendment before being placed on the third reading calendar for final passage.
- After passing one house, the bill goes through the same procedure in the other house.
- If amendments are made in the other house, the first house must approve the changes.
- When the bill is accepted in both houses, it is signed by the respective leaders and sent to the governor.
- The governor signs the bill into law or may veto all or part of it. If the governor fails to act on the bill, it may become law without a signature.



How a Bill Becomes a Law



WEBSITES – LEGISLATION TRACKING

- [LegiScan – Washington State](#)
- [Washington State Legislature – Bill Tracking](#)
- [National Conference of State Legislatures](#) – Bill Tracking & Subscription Services



WEBSITES – LEGISLATIVE PROCESS

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

WEBSITES – BUDGET INFORMATION

- [Budget Information](#) – 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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