



## AIA|WA 2019 Final Legislative Report

April 29, 2019

The 2019 state legislative session adjourned just before midnight on Sunday, April 28. Because the state budget was approved by the constitutionally-mandated deadline, there will be no special session. This year's session was the first year of a two-year session, so all bills that did not survive this year remain alive for the 2020 session. Bills will revert to the highest point they reached this year in their own house.

A huge thank you to all AIA members who took time over the last year to meet with their legislators, send an email or just pay attention to these reports! This final report offers a review of the 2019 session and a brief look ahead to next year.

General highlights from the session include approval of measures that will:

- Allow school districts collect more money from local property tax levies, something districts said they need to avoid budget cuts.
- Provide additional funding for special education.
- Re-legalize affirmative action policies in the public sector, including education. The Legislature passed Initiative 1000, which reverses a 1998 state ban on affirmative action that was approved by voters. This is a highly unusual move by the Legislature as it preempts the Initiative from appearing before voters on the November ballot.
- Reform the state's mental health system, including establishing more options for treating people in their communities instead of at state hospitals.
- Keep the state on daylight savings time permanently (Congress will need to approve the change).
- Increase the legal smoking age to 21.
- Create a first-in-the-nation [public healthcare option](#) for state residents.
- Establish a first-in-the-nation long-term care benefit program.
- Eliminate personal or philosophical exemptions from the measles, mumps and rubella vaccine.
- Require additional notice from landlords prior to evictions.
- Mandate rest and meal breaks for the state's nurses.

Among the items the Legislature did not pass include:

- A sales tax exemption for feminine hygiene products and diapers.

- A bill to formally eliminate the death penalty (there is currently a moratorium on the death penalty called by Governor Inslee).
- A proposal to make sexual education mandatory in schools.
- A data privacy law modeled after protections in the European Union.

Here's a look at AIAIWA's top legislative priorities:

## Budget & Taxes

In the last 24 hours of the session, Democrats passed all three state budgets—Operating, Capital and Transportation—as well as a package of tax bills raising \$850 million in new tax revenue in the 2019-2021 biennium (including the increased B&O tax on services; more info on that below). Republicans criticized the total spending level in the budget as well as its reliance on increased taxes. The new budget spends about 17 percent more than the state's previous two-year budget.

All of the 2019-21 budget bills may be accessed [here](#). The final version of the Capital Budget may be found [here](#).

### B&O Tax

The final version of [HB 2158](#), which includes the B&O tax increase, passed on a mostly party-line vote, 25-22 in the Senate (two Democrats all Republicans against the bill) and 52-46 in the House (five Democrats and all Republicans voted against the bill). The bill raises \$376 million over two years to expand college financial aid and provide more slots for higher-demand degree programs, including computer science, engineering and nursing. The tax will be levied in three tiers:

- A 20 percent surcharge on businesses primarily making money from services such as architecture, engineering, legal work, insurance and financial work, medical services, software publishing, research for science, online retail and telecommunications. This would raise the B&O tax rate to 1.8 percent from the current 1.5 percent.
- A 33.3 percent surcharge for advanced computing businesses with a gross worldwide revenue of \$25 billion to \$100 billion.
- A 66.7 percent surcharge on businesses that have global gross revenue exceeding \$100 billion (this likely only includes Microsoft and Amazon).

The higher tax rate on architecture services will begin on January 1, 2020.

Other tax increases include: a new B&O tax of 1.2 percent on large financial institutions with annual net income of at least \$1 billion; narrowing a current tax preference for international investment management services; rolling back tax breaks for travel agents and tour operators; changing the nonresident sales tax exemption for out-of-state shoppers; and taxing vapor products.

Democrats were not able to pass a new tax on capital gains. They did impose a graduated real estate excise tax to replace the previous flat tax, which raises taxes on sales of real estate priced at \$1.5 million or above. The increased tax rate applies only to the portion of the selling price above \$1.5 million. An even higher tax rate will apply to sales of homes priced above \$3 million. People selling homes priced at \$500,000 or under would get a tax cut. Legislators also expanded a partial state property-tax exemption for some low-income seniors, veterans and people with disabilities.

## Practice-Related Issues

### Architects' Practice Act

AIA|WA's [bill](#) to amend the Architects' Practice Act passed both houses unanimously and was signed into law by Governor Inslee on April 19. The bill addresses NCARB-approved changes to the path to licensure, including eliminating a year of AXP electives and allowing all candidates to complete the experience and testing portions of licensure non-sequentially. In addition, the bill removes the use of the word "intern" for associate architects with degrees (per AIA National policy) and adds language to clarify the definition of the practice of architecture to reduce the possibility that non-architects are allowed to stamp architecture plans. You can read a summary of the legislation [here](#). Although the bill does not officially go into effect until July 28, the Washington Board of architects has indicated that it will likely start implementing the NCARB changes sooner than that. For questions, contact the Board at 360-664-1388 or by email at [architects@dol.wa.gov](mailto:architects@dol.wa.gov).



*Gov. Inslee signing the Architects' Practice Act bill*

### Condo Liability Reform

AIA|WA supported [legislation](#) by Senator Jamie Pedersen (D-Seattle) to address the high rates associated with condo liability insurance by more closely defining implied warranties for condo construction. The bill passed both houses unanimously, indicating wide support for addressing the

problem. Under the new rules, to establish the fact that an alleged breach of warranty has had an adverse effect on performance, a condo owner must prove the alleged breach:

- is more than technical;
- is significant to a reasonable person; and
- has caused or will cause physical damage to the unit or common elements; has materially impaired the performance of mechanical, electrical, plumbing, elevator or similar building equipment; or presents an actual unreasonable safety risk to the occupants of the condominium.

The bill also specifies that condo HOA officers and board members are entitled to the same immunities from liability available to officers and directors of a nonprofit corporation or mutual corporation—addressing in statute the liability concerns that have led to non-meritorious lawsuits in the past.

Additional [legislation](#) strongly supported by AIA|WA and introduced by Rep. Tana Senn (D-Mercer Island/Bellevue) would have required an HOA board to notify members of any potential lawsuits; allow the construction professional or designer involved to be present at a meeting; and allow the entire membership to vote on whether to go forward with a lawsuit. The bill passed the House 94-4. It was heard in the Senate Law & Justice Committee but was not brought up for a vote by that committee's chairman, Senator Pedersen. AIA|WA will continue to pursue this legislation next year, although it is unclear if it will be able to move any further then. It will likely take several years to know if the changes brought about by Senator Pedersen's bill, above, result in lower liability insurance rates for architects and others.

### **Alternative project delivery**

AIA|WA-supported [legislation](#) requested by the Capital Projects Advisory Review Board to make adjustments to design-build and job order contracting language passed the House 96-1 and the Senate 48-0. The Governor is expected to sign the bill. You may read a summary of the legislation's provisions [here](#).

### **Contracting**

**Contracting in:** AIA|WA opposed [legislation](#) to require state contracts to be evaluated for moving the work in-house. This bill, heard for the third year in a row, is championed by the state employees' union and is strongly supported by Democrats. AIA|WA joined engineers, land surveyors and others asking to be exempted from the bill because the current state contracting system for these professions, where state employees work on smaller projects while managing larger projects performed by contracted firms, works well. Surprisingly, the bill was killed earlier this year than last year. It passed two House committees but failed to be brought up for a vote on the House floor. Although it is unclear why House Democratic leadership did not choose to allow vote on the bill, it is likely that there was some hesitation by a few members of the Democratic caucus (all Republicans were opposed) in the face of an amendment to remove architects, engineers and others.

Computer verification: [legislation](#) that would have required state contractors to verify computer hours by installing software to track computer use in the form of keyboard use, mouse clicks and screen shots was defeated after testimony by AIA|WA and ACEC, the American Council of Engineering Companies. The company that sells the software had the legislation introduced in 26 states this year. In Washington, the bill was never heard in its Senate committee and the House committee heard it but did not schedule it for a vote.

## **Codes**

AIA|WA helped to defeat [legislation](#) that would have lengthened the State Building Code Council's code cycle from three years to five was heard in committee but never received a vote. AIA|WA testified against the bill, arguing that a five-year cycle would delay the incorporation of important changes related to safety, efficiency and performance. The bill died in its first committee when it was not brought up for a vote.

## **Wrongful Injury or Death**

While not a huge priority for AIA, AIA|WA opposed a [bill](#) to make changes to the statutes governing wrongful death, including changes to the allowable beneficiaries entitled to recoveries and damages available under the statute. The new statutory language could lead to a situation (although not common) where architects must assume joint liability with other contractors when a worksite death occurs. An effort by the Architects and Engineers Legislative Council to attach an amendment that would have eliminated the joint and several (shared) liability section of this bill was successful in helping to kill the bill last year, but this year it failed. The bill passed and will be signed by the Governor.

## **School Funding**

### **Bonds**

All of the bills related to school construction funding failed to advance this year despite strong lobbying by school districts and the Office of Superintendent of Public Instruction. Legislation that would have amended the state constitution to lower the threshold for voters to approve school bond levies from 60 percent to [55 percent](#) or [50 percent](#) (separate legislation) of eligible voters failed to pass. The 50 percent bill was approved in the Senate by a vote of 28-21, but because the change would have required amending the constitution, it needed a two-thirds majority to succeed.

### **Construction Funding**

A number of bills to address school construction funding were also defeated, including bills that would have provided a sales and use tax exemption for construction related to public schools and [a bill](#) to increase funding through the school construction assistance program (SCAP). Only the latter bill survived to the second house.

### **Safety**

[A bill](#) to allow school safety funding to be used for design and planning work passed the House Capital Budget Committee but it did not make it to the House floor.

AIA|WA supported all of the above bills.

## Climate

Clearly a top priority for Democrats this session, legislation to address climate change performed very strongly. The increase in the number of Senate seats held by Democrats after the 2018 election allowed Democrats to push these bills few with very few or no Republican votes. In some cases, they were also able to lose the votes of one or more moderate Democrats from rural or industrial districts and still pass the legislation. This year the Democrats adopted a different strategy to climate legislation, choosing a piecemeal approach that addressed climate issues on a sector-by-sector basis rather than pursuing the larger climate taxation schemes they attempted (unsuccessfully) in previous years.

### Clean Buildings

Governor Inslee's clean buildings bill was AIA|WA's top priority and the [version](#) sponsored by Rep. Beth Doglio (D-Olympia) succeeded after a process involving many compromises to garner Democratic votes. This included dropping a provision to allow local governments to develop voluntary residential "stretch codes" that go beyond existing code. The core pieces of the final bill include building performance standards and incentives for large commercial buildings (> 50,000 sq. ft.); natural gas conservation standards; and requirements for electric vehicle infrastructure in new buildings.

Additional AIA|WA priority bills on climate included:

**HFCs:** [Legislation](#) to establish deadlines for banning greenhouse gasses (largely hydrofluorocarbons, or HFCs) in refrigerants passed and will be signed by the Governor. This bill reinstates Obama-era EPA regulations designed to end the use of HFCs, although the Washington version does not go as far as [California's regulations](#), which passed last year.

**Toxic Materials:** [legislation](#) to further restrict the use of toxic materials in consumer and building products passed and will be signed by the Governor. The bill instructs the Department of Ecology to identify classes of chemicals that may be restricted at a rate of five every five years.

**PACER:** An AIA|WA-supported [bill](#) that would have authorized a commercial property assessed clean energy and resilience (PACER) program in Washington passed one committee but failed to move further. This bill would have established an alternative source of funding to provide loans for energy efficiency improvements which would have been repaid through assessments on the property. Under this program, loans remain with the property if sold. This bill will be an AIA|WA priority next year.

AIA|WA monitored but did not actively support the following additional climate bills:



**Fossil-Free Electricity:** a [bill](#) to phase out use of natural gas and coal in power generation to reach a 100 percent clean energy standard by 2045 passed and will be signed by the Governor. The legislation, the strictest clean energy law in the nation, also bans the sale of coal-powered electricity to retail electricity consumers by 2026.

**Net Metering:** [legislation](#) passed to require electric utilities to make conventional net metering available to eligible customer-generators. It will be signed by the Governor.

**Appliance Efficiency:** a [bill](#) to develop stricter appliance efficiency standards passed and will be signed into law.

**HEAL Act:** the [Healthy Environment for All Act](#) received a lot of publicity. It would have addressed environmental disparities that disproportionately impact low-income, Native American and minority communities. Although passed by both houses, the House and Senate ultimately could not agree on a single version, and the bill failed to pass.

**Clean Fuels Program:** a [bill](#) to limit greenhouse gas emissions in transportation fuels passed the House but failed to pass the Senate. It would have reduced consumption of traditional gasoline and diesel over time as alternative options like biogas and electricity become more common. It faced strong opposition from the oil industry and legislators who argued it would significantly raise the price of gas.

## Housing Affordability

### Housing

Bills to address the availability of and funding for low-income housing fared less well this session than they did last year, but a number of initiatives did pass and will be signed by the Governor. These include:

- A [bill](#) to raise revenue for affordable housing by authorizing local governments to impose a local sales tax, credited against the state sales tax, for affordable or supportive housing.
- [Legislation](#) to allow cities and counties planning under GMA authority to use real estate excise taxes to support affordable housing and homelessness projects (this bill has been signed by Governor Inslee).
- A [bill](#) to authorize cities and towns to adopt ordinances regulating the creation of tiny house communities.
- [Legislation](#) to provide sales and excise tax exemptions for “self-help” housing development

### Housing Trust Fund

Lawmakers allocated \$175 million to the state’s Housing Trust Fund, the largest allocation ever included in a biennial budget. The Trust Fund provides funding for affordable housing projects across the state through a competitive application process.

## Density/GMA

Efforts by Sen. Guy Palumbo (D-Bothell, Maltby) and others to increase density inside GMA areas were largely defeated. [One bill](#) that did pass addresses rural areas; it will create a tax credit for capital contributions in distressed opportunity zone areas.

The “ADU bill” to increase urban residential building capacity was amended many times and ultimately fell far short of the original language that required certain cities planning under the GMA to allow two ADUs per lot and prevented local governments from enacting common restrictions such as parking requirements. The [version that passed](#) “encourages” cities to take actions to address urban residential building capacity, authorizes housing action plans and provides exemptions to SEPA appeals.

## What’s Next?

AIA|WA will participate in the rulemaking process for HB 1257, the clean buildings legislation, as many of the program details were left up to the Department of Commerce to negotiate. We will work to ensure that architects’ priorities are addressed in the rules and that the program parameters make sense from a practitioner’s perspective.

AIA|WA will spend the summer and fall identifying priorities and partners and talking with legislators about the issues on our list. Condo liability reform that addresses HOA board actions and commercial property assessed clean energy and resilience (PACER) legislation are early priorities. Although it is unlikely that we will be able to reverse the increase on the B&O tax on services, we will continue to participate in legislative discussions around more comprehensive and systemic reform of the state’s taxation system. Individual architects or firms unhappy with the tax increase may want to consider an off-season discussion with one or more of their legislators—particularly if they are Democrats. AIA|WA can help you arrange a meeting on this or any other topic. We would also love to have you join a larger AIA|WA group meeting with legislators in your district. If you are interested in participating over the summer and fall, please let [Kirsten](#) know.

Please take some time to consider what your priorities are for the 2020 legislative session and share them with us. A great way to help shape AIA|WA’s priorities for the coming year is to participate in the [Spring Advocacy Conference](#), which takes place this year on May 16 in Spokane. Travel costs, including airfare, are covered by AIA|WA.

Questions or comments:

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