2019 Washington State Legislative Session Wrap-Up

The 2019 Washington state legislative session ended at midnight on Sunday, April 28. The session lasted 120 days. It was marked by legislative priorities tackling housing affordability, homelessness, mental health funding, environmental progress, and basic education funding.

At a high level, the democratic caucus found an opportunity to move forward with many of their longstanding priorities because of majorities in both the House of Representatives and Senate. Though opposition exists for some of the policies enacted, the opposition could not muster sufficient votes to defeat several proposals.

June 2019 will mark the largest economic expansion in the United States’ history. This is a worry for some, but not for the legislature who failed to replace funds previously taken from, or increase the state's rainy-day fund.
Washington State Revenue Package

Spending in the 2019-2021 biennium increased increased 18.3 percent over the prior biennium topping out at $52.8 billion. This includes new taxes, including surcharges assessed on top of some existing taxes. You can read more about Washington state's revenue package here.

Business & Occupation Tax (B&O Tax)

ESHB 2158 imposes a surcharge of 20% on top of current B&O taxes for certain business sectors and other activity categories. It is higher for certain advanced computing businesses. The legislature passed revenue bills that increase the Business & Occupation tax on some services, added a surcharge to many B&O tax payments, and implemented a graduated real estate excise tax which created the highest tax on real estate transfers in the country. Though revenue already increased by close to $7 billion, the legislature on party-line votes added more revenue to the state coffers.

Real Estate Excise Tax (REET)

Under current law, the REET is a flat 1.28% of the sales price of real property. An additional one-half of one percent is added in certain local jurisdictions. Beginning January 1, 2020, the REET will become graduated.

The rate will be 1.1% for property with a selling price of $500,000 or less. The rate will be 1.28% on the portion that is greater than $500,000 but less than $1.5 million, 2.75% on the portion greater than 1.5 million but less than $3 million, and 3% on the portion greater than $3 million. The revenue collected is deposited into general fund accounts and is not directed specifically for affordable housing construction.

Industry representatives opposed this proposal on the grounds that the financial impact would be most felt by the residents of multifamily housing including an almost $360 per year increase in rent, and would have a chilling effect on future investment in Washington. These arguments were summarily rejected.
General State Welfare Legislation

The legislature passed critical bills around firearms and domestic violence situations and increased the legal smoking age to 21. The legislature also passed a law preventing a philosophical exemption to the vaccine that inoculates against measles, an issue of concern in southwest Washington this year.

The legislature also passed a law placing Washington on permanent Daylight Savings Time (the law requires Congressional approval). Don’t get too excited, yet. For reference, the European Union voted to permit European countries to choose between Daylight Savings Time and Standard Time and implement the change by 2021.

Much of the focus was on housing affordability and homelessness. The state increased funding to the Housing Trust Fund, topping out at $175 million. It also permitted local jurisdictions to maintain an increased amount of local REET taxes paid to be used for affordable housing and homeless programs.

No Rent Control in 2019

Though advocates sought to remove the statewide preemption on rent control in 2018, there was no similar effort made in 2019.

Across the country, Colorado and Illinois defeated efforts by advocates to remove local preemption laws. In Oregon, the state legislature enacted SB 608, which implements statewide rent control at seven percent plus CPI annually, adds just cause eviction and requires payment of relocation assistance in certain circumstances. California is considering similar legislation with a lower rent control ceiling (5%).

In 2020, we expect a similar proposal from advocates related to rent control, including what liberal lawmakers call “anti-rent gouging” laws to prevent large rent increases. This is the tactic employed by advocates in Oregon.

In the meantime, Seattle council member Kshama Sawant, as a part of her re-election bid is seeking to pass a rent control ordinance that would become effective if the state overturns the local preemption law preventing local jurisdictions from implementing rent control laws.
Tenant Protections

The legislature did make substantial changes to the Residential Landlord Tenant Act for the first time since 1973. Where we did not support specific pieces of legislation, we made every effort to defeat those proposals that detrimentally affect rental housing. When we could not support nor defeat a particular piece of legislation, we made every effort to make the proposals fundamentally work within the general operating practices of multifamily family owners and operators. Below is a summary of legislative proposals passed by the legislature that affect the landlord-tenant relationship.

Each of these laws take effect July 28, 2019.

Clarifying Terminations by Service Members in Residential Tenancies

House Bill 1138 passed by the Washington Senate April 8, 2019 by a vote of 47-0 with two excused. The bill clarifies the method and reasons a service member may terminate a residential tenancy.

Service members may terminate a residential tenancy when they receive a permanent change of station, which means one of the following:
- Transfer to a unit located at another port or duty station
- Change in a unit’s home port or permanent duty station
- Call to active duty for a period not less than 90 days
- Separation
- Retirement

A service member, which includes the service member’s spouse or dependents, must provide at least 20 days written notice and include a copy of the official military orders or a signed letter from the service member’s commanding officer confirming:

- The service member, because of a permanent change of station, is required to move more than 35 miles from the location of the rental premises
- The service member is prematurely or involuntarily discharged or released from active duty
- The service member is released from active duty and their home is more than 35 miles from the rental premises
- The commanding officer directs the service member to move into government provided housing
- The service member receives temporary change of station orders more than 35 miles from the rental premises for a period not less than 90 days

Increasing the Notice Required to Increase Rent

HB 1440 passed the House of Representatives on April 10 by a vote of 29-18 with two members excused. The bill requires housing providers to provide at least 60 days notice for a rent increase of any amount. Any rent increase becomes effective after the end of a term.

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Tenant Protections

E.g.: In a fixed term or lease for a specified period of time, the housing provider cannot implement a rent increase during the term if the rent is based on HUD Area Median Income levels.

In subsidized tenancies, where the amount of rent paid is based on the income of the tenant household, the housing provider must provide a minimum of 30 days notice of an increase in the amount of rent.

Increasing the Notice Required to Terminate a Tenancy in Specific Situations

House Bill 1462 was passed on April 13, 2019. The bill requires property owners to provide additional notice when they intend to substantially renovate, demolish or change the use of a multifamily residential property.

Specifically the bill requires owners or their representatives to provide at least 120 days notice to residents of a multifamily community when the owner intends to demolish, substantially renovate or change the use of the property.

WMFHA was successful in negotiating an amendment to exempt cities that have previously created a Tenant Relocation Assistance Program, namely the cities of Seattle and Tacoma.

“Substantially renovate” means extensive structural repair or extensive remodeling of the premises that requires a permit, such as a building, electrical, plumbing or mechanical permit and that results in displacement of an existing tenant.

A person that violates the notice provisions of this law is liable for up to three and one-half times the monthly rent.

Reforming Washington's Eviction Process

The most substantial changes to the Washington Landlord-Tenant Act will come from SB 5600. The bill is dubbed “the eviction reform bill” because it makes several changes to the process of eviction from beginning to end.

Below is a brief summary of the bills major pieces:
- Increases the notice to terminate from 3 days to 14 days
- Requires use of a common 14 day Notice to Pay or Vacate form including within the language of the statute
- Requires the Attorney General to translate the form into 10 most common languages spoken in Washington
- Defines rent to include all recurring monthly charges identified in the rental agreement, which may include utilities. This does not include nonrecurring charges such as late fees, damages, deposits, legal costs, or other fees.
Tenant Protections

- Requires any payments be applied to the rent first and then to other nonrecurring charges.
- The law also limits a housing provider’s ability to begin eviction proceedings based on non-rent charges owing, except when the tenant elects to pay move-in costs by an installment plan.
- Provides an opportunity for a tenant to reinstate their tenancy after judgment for eviction:
  - Automatically if the tenant pays 100 percent of the judgment entered within 5 court days of the date of the judgment, regardless of the type of tenancy.
  - Judicially, upon a court order after the court considers evidence of seven factors and permits the tenant to repay the judgment owing within 90 days, with no more than 30 days between each payment.
- A judgment for late fees is capped at $75, plus an additional $50 for each instance in which the tenant reinstates their tenancy after an eviction proceeding.
- Limits an award of attorney fees in certain conditions.
- Reforms the standard Summons form
- Removes the requirement to obtain an Order of Alternative Service prior to posting and mailing a Summons and Complaint for Unlawful Detainer (Eviction)
- Expands the Landlord Mitigation Fund to include repayment of an eviction judgment and requires the tenant to repay the judgment.

The law also appropriates $1 million to the Washington State Landlord Mitigation Fund to satisfy judgments entered resulting from an eviction and reinstatement.

If the tenant has received three or more Pay or Vacate notices preceding the notice being used for eviction, within the prior 12 months, the "judicial discretion" process is not available to the tenant.

Additionally, if the tenant fails to repay the state any amounts disbursed on their behalf from the Landlord Mitigation Fund, future opportunities to access the Fund for eviction reinstatement are not available.

WMFHA defeated proposals to enact just cause eviction requirements across Washington state, and additional regulations related to adding roommates and other members of a household, and defeated additional regulations around return of the security deposit.

WMFHA also defeated efforts to enact increased notice provisions including a 30-day Notice to Comply, and a 21-day Notice to Pay or Vacate. Finally, we defeated mandatory mediation requirements.

For more information about these and other laws, please contact Brett Waller at brett@wmfha.org.