



# 2021 Legislative Session Update

# Balance of Power

House: 57 D, 41 R

Senate: 29 D\*, 20 R

*\*Sen. Sheldon caucuses with GOP*

# Remote Testimony



A video feed of a man with a beard and bald head, wearing a suit and tie, speaking. He is in a home office with a window with blinds to his left, a globe on a shelf behind him, and a corkboard with children's drawings on the wall. The video has a small 'KSC' logo in the top left corner.

5096 Jason Mercier

**SB 5096 CAPITAL GAINS TAX**

**1/14/21**

**JASON MERCIER**  
WASHINGTON POLICY CENTER  
SENATE WAYS & MEANS COMMITTEE



The KTVW logo, featuring a stylized mountain range and the letters 'KTVW' inside a circle.

# Remote Testimony Rules

**“Testimony registration will close 1 hour before the start time of the hearing. Anyone who does not register before this deadline will be unable to testify before the committee.”**

**“Ensure your registration information is accurate. It will be a part of the legislative record and used by TVW for online and television graphics.”**

**“You may participate via videoconference or phone.”**

[House remote testimony sign in](#)

[Senate remote testimony sign in](#)



# Remote Testimony Rules

**“Registering to testify does not guarantee you a chance to speak or speak at specific times. Time constraints, technical issues, changes to committee schedules, etc. could affect your ability to testify.”**

**“The committee Chair may limit public testimony to as little as one minute per testifier because of time constraints. Be prepared to testify at any point during the hearing.”**

**Providing written testimony is also available but: “Written testimony will close 24 hours after the start time of the hearing.”**

# Remote Testimony Challenges

It is important for lawmakers to remember that for many citizens this is their first time using remote testimony. Automatically muting them after one minute without a courtesy request to conclude their thoughts does not meet the spirit of public accommodation this moment needs. Chairs should also schedule bills of high interest in a way that doesn't limit the amount of public testimony.

# Budget Outlook

## 2021 Session (Assembly Days Outlook)

### Near General Fund; \$ in billions

	<u>2019-21</u>	<u>2021-23</u>	<u>2023-25</u>
1. Beginning Balance	\$2.0	\$0.9	-\$0.6
2. Revenue Forecast (Nov 2020)	\$51.0	\$54.7	\$58.0
3. 4.5% Growth Rate Assumption	-	-	\$1.4
4. Other Resource Changes	<u>-\$0.2</u>	<u>-\$0.5</u>	<u>-\$0.5</u>
<b>5. Total Revenue &amp; Resources</b>	<b>\$52.8</b>	<b>\$55.1</b>	<b>\$58.3</b>
6. Enacted Appropriations	\$53.7	\$53.7	\$56.1
7. CFL Adjustments	-	\$1.6	-\$0.1
8. ML Adjustments	-\$1.1	\$0.7	\$3.0
9. Policy Level Adjustments	\$0	\$0	\$0
10. Reversions	<u>-\$0.7</u>	<u>-\$0.3</u>	<u>-\$0.3</u>
<b>11. Revised Appropriations</b>	<b>\$51.9</b>	<b>\$55.7</b>	<b>\$58.7</b>
<b>12. Projected Ending Balance</b>	<b>\$0.9</b>	<b>-\$0.6</b>	<b>-\$0.4</b>
<b>13. Budget Stabilization Account</b>	<b>\$1.9</b>	<b>\$2.5</b>	<b>\$3.1</b>
<b>14. Total Reserves</b>	<b>\$2.8</b>	<b>\$1.9</b>	<b>\$2.7</b>

# Historical Spending Increases

**Statewide  
Expenditure History - Operating  
Funds Subject to Outlook (NGF-O)**  
(Dollars in Thousands)

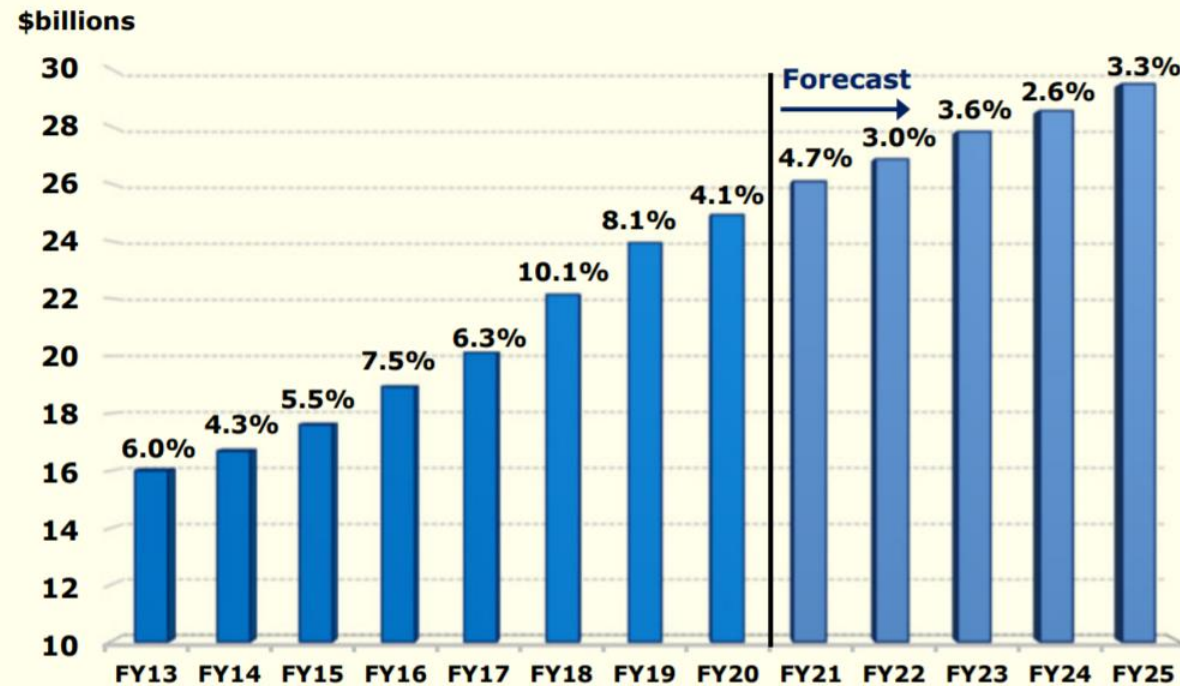
						<b>Final</b>	<b>Enacted</b>
	<b>2007-09</b>	<b>2009-11</b>	<b>2011-13</b>	<b>2013-15</b>	<b>2015-17</b>	<b>2017-19</b>	<b>2019-21</b>
⊞ Legislative	154,856	145,583	134,436	135,242	149,341	152,475	194,153
⊞ Judicial	243,709	222,860	221,371	241,689	269,103	289,964	340,797
⊞ Governmental Operations	566,365	473,505	467,753	529,572	563,470	602,460	766,204
⊞ Other Human Services	7,137,731	6,274,355	6,729,297	6,886,534	6,863,046	7,552,016	10,637,039
⊞ DSHS	4,780,223	4,441,639	4,545,034	4,946,284	5,534,607	6,498,532	6,469,997
⊞ Natural Resources	512,247	360,199	298,942	260,775	289,757	351,731	500,460
⊞ Transportation	80,965	73,410	77,417	69,014	82,361	92,915	126,118
⊞ Public Schools	12,942,831	12,945,292	13,549,500	15,265,522	18,122,604	22,654,762	27,248,209
⊞ Higher Education	3,516,215	3,090,908	2,731,171	3,083,559	3,552,665	3,711,185	4,051,203
⊞ Other Education	181,295	161,170	159,916	202,288	342,241	222,477	69,744
⊞ Special Appropriations	1,998,358	2,195,175	2,331,010	2,023,177	2,436,298	2,555,086	2,906,277
<b>Total</b>	<b>32,114,794</b>	<b>30,384,095</b>	<b>31,245,848</b>	<b>33,643,658</b>	<b>38,205,492</b>	<b>44,683,604</b>	<b>53,310,201</b>



# Revenues Growing



## Forecast of funds subject to the budget outlook process\* by fiscal year



\*Funds subject to the budget outlook process are General Fund-State plus Education Legacy Trust, Washington Opportunities Pathway and Workforce Education Investment Accounts  
Source: ERFC forecast, November 2020

WASHINGTON STATE ECONOMIC AND REVENUE FORECAST COUNCIL

# Revenue Still Increasing Overall

From the November 2020 Revenue Forecast:

**“Total state revenues are now expected to grow 10.7% between the 2017-19 and 2019-21 biennia and 7.2% between the 2019-21 and 2021-23 biennia.”**

# Tax Structure and Volatility

Though there is no recession proof tax structure, Washington has consistently ranked as having relatively stable tax collections compared to other states. The reason for this is Washington's three major tax sources (sales, gross receipts, and property) are among the least volatile taxes. Graduated income taxes, however, are the most volatile taxes.

# Standard & Poor's 2020 Bond Rating for the State:

**“Washington's revenues have historically exhibited less cyclicalities than others (due in part to the lack of a personal income tax) . . . we have observed that capital gains-related tax revenues are among the most cyclical and difficult to forecast revenues in numerous other states.”**



# Proposed 2021 Tax Increases

- 9% income tax on capital gains
- Seattle-styled statewide employer compensation tax
- Wealth tax
- Statewide soda tax
- Business tax preferences repeal
- Wireless devices tax
- New 40% top rate for death tax
- Carbon Tax/Low Carbon Fuel Standard
- Gas tax/Vehicle fees



**“Excise Tax” on  
Capital Gains?**

# What Type of Tax is a Capital Gains Tax? It is an Income Tax.



COMMUNICATIONS AND LIAISON

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

September 25, 2018

Rep. Dan Newhouse  
1318 Longworth HOB  
15 Independence Ave SE  
Washington, D.C. 20515

Dear Representative Newhouse,

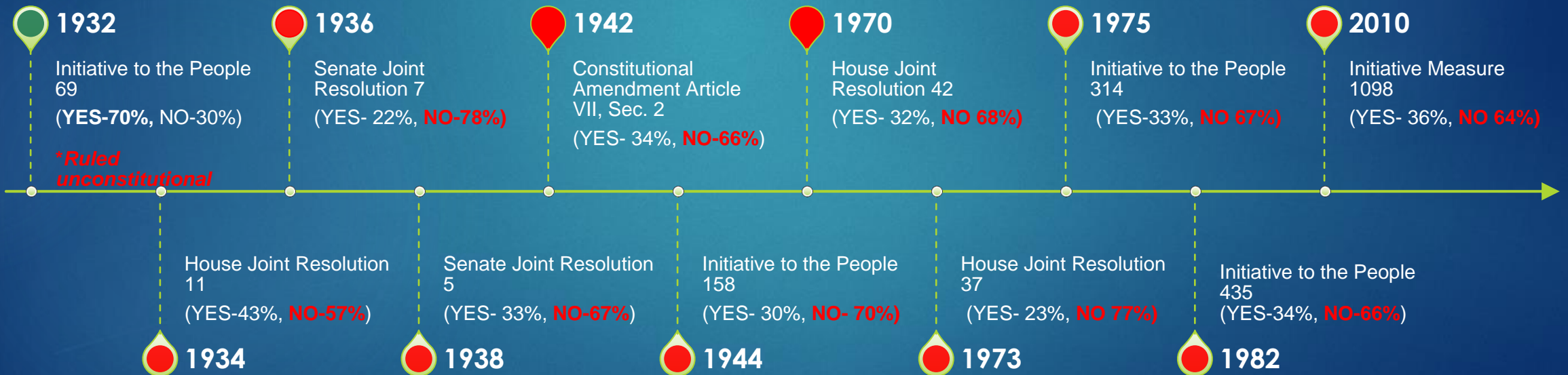
This is in response to your inquiry regarding the tax treatment of capital gains. You ask whether tax on capital gains is considered an excise tax or an income tax? It is an income tax. More specifically, capital gains are treated as income under the tax code and taxed as such.

# WA Department of Revenue:

- “The federal capital gains tax is characterized as an income tax. One potential challenge to a capital gains tax proposal is that opponents may characterize the Washington capital gains tax as an income tax and argue that it is not allowed under the Washington constitution”
- "The IRS considers taxes on investment income (dividends, a tax on net gains from the sale or exchange of a capital asset, or tax on the net taxable income of an unincorporated business) an income tax"
- “susceptible to constitutional challenge as an income tax prohibited by the Washington state constitution”



# Voters have rejected 10 straight income tax proposals, including 6 constitutional amendments



# Setting Up Income Tax Lawsuit

**From:** Pedersen, Sen. Jamie  
**Sent:** Saturday, December 15, 2018 3:09 PM  
**To:** Paul Janos  
**Subject:** RE: Copy of email to Inslee re capital gains tax

Dear Mr. Janos –

Thanks for your message and your support for an income tax. I personally believe that adopting a capital gains tax is one of the best things we could do to help advance the possibility of an income tax in our state, because it could help resolve the legal uncertainty about whether an income tax is a “property tax” subject to constitutional limitations. Until that happens, it would take 2/3 majorities in the legislature (and a vote of the people) to adopt an income tax, which makes it very unlikely to happen.

Best wishes, Jamie

Senator Jamie Pedersen  
43rd Legislative District  
[jamie.pedersen@leg.wa.gov](mailto:jamie.pedersen@leg.wa.gov)

Olympia Office  
JAC 235  
P.O. Box 40443

# State Supreme Court Ruling on Income Taxes in 1960:


"The argument is again pressed upon us that these cases were wrongly decided. The court is unwilling, however, to recede from the position announced in its repeated decisions. Among other things, the attorney general urges that the result should now be different because the state is confronted with a financial crisis. If so, the constitution may be amended by vote of the people. Such a constitutional amendment was rejected by popular vote in 1934."




# Do Taxes Matter?

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## A competitive tax rate.



ashington State offers businesses many tax advantages, including no personal or corporate income tax and tax incentives, deferrals and credits for specific high growth industries.

### About Washington

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# Low Carbon Fuel Standard (LCFS)

LCFS have been tried in British Columbia, California, and Oregon and the results consistently show high costs and small environmental benefits.

CA Legislative Analyst: LCFS is a “Relatively Costly GHG Reduction Strategy” and “costs would increase to roughly 46 cents per gallon in 2030.”

Extra LCFS cost per gallon not available for transportation projects like 18<sup>th</sup> amendment protected gas-tax revenue.

# Carbon Tax/Cap and Trade

Voters have twice rejected carbon taxes and the legislature has consistently refused to adopt a carbon tax or cap-and-trade system.

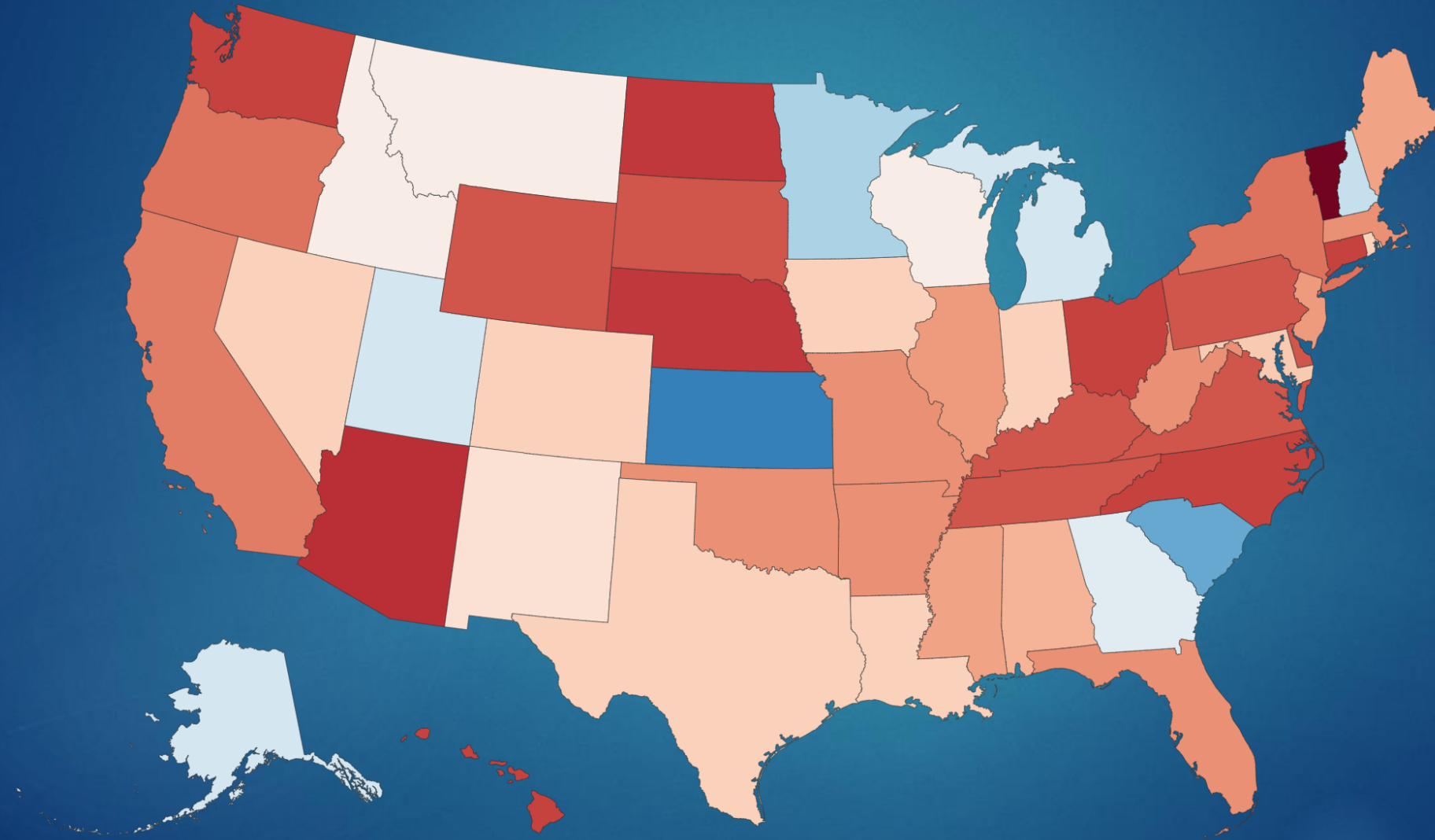
Cap-and-trade systems are notoriously volatile and subject to political manipulation/favoritism.

Although the best of the potential CO2 reduction policies, revenue-neutral carbon taxes are hindered because the systems can easily be changed to increase taxes and there is little trust that legislators will stick to promises of revenue neutrality.

# Emergency Powers Reform

National study: “Vermont, Washington, Ohio and Hawaii are among the worst-ranking states because they bestow on their governors the sole authority to determine when and where an emergency exists, and when an emergency ceases to exist.” <https://mainepolicy.org/project/emergency-powers/>

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# Emergency Powers Reform

There are several bills proposing reforms to the state's emergency powers. None have been scheduled for a public hearing. Other states require legislative approval after 30 or 60 days for emergency declarations.

The cutoff for bills to be passed out of committee is February 15. There is still time to hear the emergency powers reform bills but the time for action grows short as the pressure on committee agendas increases with each passing day.

# Questions? Want to receive updates or a free 6-month WPC membership?

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[www.washingtonpolicy.org/donate/page/policy-partners](http://www.washingtonpolicy.org/donate/page/policy-partners)