

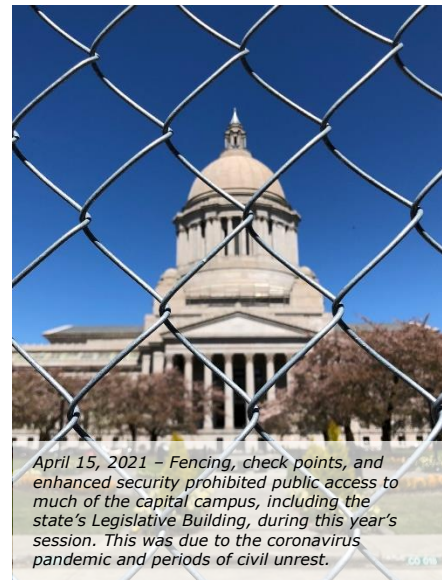
Legislative Year in Review

Small business fought to survive pandemic, anti-business legislative climate
December 2021

We typically produce an end-of-session report in late spring, after the Legislature adjourns for the year. NFIB's work to address the effects of the ongoing public health emergency on small businesses, however, extended well beyond this year's 105-day legislative session and merits some additional discussion.

SESSION OVERVIEW

The 2021 session of 67th Washington State Legislature was conducted virtually. Committee meetings and floor action were done online, with only a select few lawmakers allowed into the Legislative Building at a time in order to manage debates. Fencing and traffic barriers prevented public access to almost all of the capital campus. Session adjourned April 25.



April 15, 2021 – Fencing, check points, and enhanced security prohibited public access to much of the capital campus, including the state's Legislative Building, during this year's session. This was due to the coronavirus pandemic and periods of civil unrest.

- **105-day session**, adjourned on time
- **85 bills tracked** that received a committee hearing or other action; supported 30 (35%), opposed 34 (40%), and monitored 21 (25%) where amendments or other activity allowed NFIB to be neutral
- **85% success rate killing bills harmful to small business**
- **Four NFIB priority bills signed into law** by Gov. Jay Inslee: HB 1095, HB 1332, SB 5046, SB 5478
- The state director and NFIB members **testified 21 times** on bills important to small business
- **16 NFIB members serve in the state legislature**, including current and retired members

VICTORIES

- **B&O tax exemption for COVID-related assistance to small businesses** – NFIB worked with the state Department of Revenue on agency request legislation ensuring that PPP loans, EIDL advances, and state or local small-business assistance grants provided during a declared state or federal emergency would not be subject to the state's Business & Occupations (B&O) Tax. HB 1095 passed unanimously and is retroactive to February 2020.
- **Property tax deferral for COVID-impacted businesses** – HB 1332 provided a temporary county property tax deferral for businesses suffering 25% or greater revenue loss in 2020.
- **Expanded lump-sum settlement options for injured workers** – SB 5046, which also passed unanimously, allows lump sum payments to qualifying injured workers in lieu of a lifetime pension. The lump sum payment avoids a reduction in a worker's social security disability payments, allows the worker to pursue new employment opportunities (if physically able), and reduces long-term liabilities in the workers' compensation system.

- **\$500 million unemployment system relief** – While most employers will see their unemployment insurance (UI) premiums increase for the next several years due to massive layoffs caused by government-mandated business closures, a pair of bills passed the Legislature that will somewhat blunt the impact of these rate hikes. SB 5061 will reduce the rate of UI tax increases by capping the social tax component, suspending the solvency surcharge, and extending to five years (from four) the timeframe over which these tax increases are scheduled to occur. NFIB initially opposed SB 5061 because it did not include funding to backfill the UI Trust Fund. Fortunately, the Legislature also passed NFIB-supported SB 5478 that allocates \$500 million primarily to smaller employers in sectors heavily impacted by COVID closures. Beginning in 2022, these funds are supposed to pay for UI claims costs that would otherwise impact an employer’s experience rating. Experience-rated claims stay on the employer’s account for four years, so eliminating that charge at the outset should provide lasting savings.
- **Stopped a health insurance tax hike** – NFIB helped defeat Governor Jay Inslee’s plan to add nearly \$40 to every private health insurance policy purchased in the state. SB 5149 would have used these added premium tax collections to increase public health funding. With the defeat of this bill, the Legislature found other revenue sources to substantially increase public health spending.
- **Delayed California-style private attorneys general act** – HB 1076 would allow unions and other third parties to sue employers over alleged violations of roughly a dozen worker rights and workplace safety and health laws. The bill passed the House of Representatives, but died in the Senate Ways & Means Committee. It is a priority bill for the trial lawyers, so it will be back for further consideration during the 2022 session.

DEFEATS

- **Increased “workers protection” penalties** – HB 1097 added a new daily penalty for businesses refusing to comply with a stop work order (red tag) issued by L&I. This includes businesses that defied the governor’s shutdown orders during the pandemic. The penalty can range from about \$7,000 to \$10,000 per day. The bill also extended the timeframe for workers to file complaints alleging they were discriminated or retaliated against for reporting workplace safety or health concerns. The bill also initially included a diversion of workers’ compensation funds to provide grants to small businesses during a declared state of emergency. That part of the bill was modified into a loan from workers’ compensation reserves that must be repaid by the state’s General Fund. NFIB has long opposed any diversion of employer workers’ compensation premiums, which already total about \$100 million annually. These diversions help drive workers’ compensation tax increases on employers. NFIB is a stakeholder in the rulemaking process for these new small business state-of-emergency safety and health grants.
- **Climate Commitment Act** – SB 5126 authorizes cap-and-trade and a low carbon fuel standard (LCFS), both of which will result in substantially higher energy, gas and diesel, transportation, manufacturing, and other costs to small businesses. The state Supreme Court ruled Gov. Jay Inslee’s partial vetoes of the bill unconstitutional. This decision appears to reinstate the requirements that the Legislature approve a massive, new “additive transportation revenue package” before either cap-and-trade or the LCFS takes effect. NFIB will oppose what is expected to be at least a \$500 million transportation tax increase, including a minimum 5¢ per gallon fuel tax hike.

- **Wage liens** – The Legislature also approved SB 5355, allowing workers to file wage liens against a business owner’s real and personal property, including community property and the owner’s estate. The state Department of Licensing will begin accepting lien applications January 1, 2022.

OTHER

- **Capital gains tax** – NFIB won an amendment exempting the sale of qualifying small businesses from the new capital gains tax, SB 5096. Essentially, an owner- or family-operated small business with \$10 million or less in annual worldwide gross receipts can be exempted from the new tax if certain conditions are met. One such requirement is that at least a 90 percent ownership stake in the business be sold to avoid the tax. NFIB continues to work with the state Department of Revenue to determine how a sales agreement transferring ownership of a qualifying small business over time would be treated for tax purposes. For example, if an owner transfers 20 percent ownership interest each year for five years, is the sale taxable for capital gains purposes since 90 percent of the business is not sold all at once?
- **Long-term care payroll tax** – The Legislature approved some modest changes to the long-term services and supports program, now called “WA Cares.” Most notable was a deadline extension for individuals to opt out of the program by purchasing a long-term care policy from a private insurer. NFIB offered amendments to this year’s bill that would have allowed self-employed individuals who voluntarily enroll in the program to later opt out due to economic hardships, like those caused by the pandemic. While our suggestions were not included in this year’s bill, NFIB did protect the self-employed exemption we won when the bill was first enacted in 2019. In mid-December 2021, Gov. Inslee and legislative leaders announced a delay in payroll tax collections to fund the new program that had been scheduled to begin on January 1, 2022. NFIB will continue working to repeal this program if possible, and to protect the exemption for self-employed small-business owners if repeal is unsuccessful.
- **Open Safe, Open Now** – NFIB led an effort to pass legislation allowing all small businesses to re-open immediately, provided all applicable COVID safety and health requirements were met. Despite support from nearly 1,500 people signed in to testify on the bill (a record at the time), the Senate State Government Committee chair refused to allow a vote on the bill. However, Gov. Jay Inslee did expedite his “Healthy Washington – Roadmap to Recovery” plan, moving several counties to Phase 2 re-opening during the legislative session. In addition, NFIB assisted with litigation challenging the governor’s shutdown orders by helping identify impacted small-business owners who could be potential plaintiffs in the lawsuits.
- **Vaccine mandates** – In response to Gov. Inslee’s order that public employees and health care workers must be vaccinated or lose their jobs, NFIB brought in experts from our Small Business Legal Center and the Department of Labor & Industries to inform our members who contract with state agencies, educational institutions, or medical facilities about this new obligation, as well as how to handle employee medical and religious exemption requests. We continue to work with the governor’s office and L&I to avoid any further expansion of this mandate to small businesses or their employees.

For more information about our legislative, regulatory, and political efforts, contact NFIB Washington State Director [Patrick Connor](#) at (360) 786-8675.