

COMMISSION AGENDA

Item No: 4C

Meeting: 10/21/21

DATE: September 28, 2021

TO: Port Commission

FROM: Eric Johnson, Executive Director
Sponsor: Heather Burgess, Port Legal Counsel

SUBJECT: Resolution 2021-20-PT:
Maintaining Status Quo for Compensation for Current and Future Commissioners

A. ACTION REQUESTED

Adoption of Resolution 2021-20-PT, a Resolution of the Port of Tacoma Commission Maintaining the Status Quo for Commissioner Compensation for Current and Future Commissioners.

B. BACKGROUND

RCW 53.12.260, first adopted in 1975, provides statutory monthly and per diem compensation for Port commissioners. In 2007, the statute was amended to provide for inflation adjustments to the per diem and base compensation amounts every five years.

In the alternative, RCW 53.12.260(3) allows Port districts to set compensation to be paid by commissioners.

In 2013, after taking public comment, the Port of Tacoma Commission adopted Resolution 2013-05 (attached at **Tab A**) setting Port Commission compensation at an annual salary of \$21,600.00, with per diem compensation as set forth in state statute. Resolution 2013-05 expressly adopted the future inflation adjustments in RCW 53.12.260 by reference.

On July 1, 2018, Commissioner annual salary and per diem was adjusted as provided for in RCW 53.12.260(3) resulting in a current annual salary of \$24,276.00 (\$2,023.00 per month) and per diem of \$128.00 with an annual cap of \$15,360.00. The next adjustment was scheduled for July 1, 2023.

During the 2020 Legislative Session, the Legislature sought, in House Bill 2449 (Chapter 83, Laws of 2020) to move the adjustment date for twelve special purpose governments, including port districts, from July 1, 2023, to January 1, 2024, to align with these twelve special purpose governments' fiscal calendar year. The bill passed both the House and the Senate unanimously. The Legislature's *Final Bill Report* notes that the per diem compensation for these special purpose governments had risen with adjustments to the current numbers and noted that the purpose of HB 2449 was merely to move the date. In the "summary" section the *Final Bill Report* notes that:

The calendar date on which the compensation limit for commissioners, board members, supervisors, and directors of special purpose districts, must be adjusted for inflation every five years is changed from July 1 to January 1. The date of the next scheduled adjustment is delayed from July 1, 2023, to January 1, 2024.

Specifically, the HB 2449 change to RCW 53.12.260 was accomplished by making a simple change to the statute as follows (deletion in strikethrough and addition in underline):

The dollar thresholds for salaries and per diem compensation established in this section must be adjusted for inflation by the office of financial management every five years, beginning ~~July 1, 2008~~ January 1, 2024.

Unfortunately, the adjustment date was changed but the reference to \$90 per diem and the \$200/\$700 monthly payments set in the 2007 version of RCW 53.12.260 were not updated. Therefore, the “plain reading” of RCW 53.12.260 is now \$90 per diem and the \$200 or \$500 monthly payments adjusted for inflation on January 1, 2024. It is clear the effect of “rolling back” commissioner compensation to 2007 levels was unintended and a clear legislative drafting mistake.

Since Port of Tacoma Resolution 2013-05 adopted the statutory per diem increases and used the same index to adjust its annual compensation, the unintended “roll back” of the indexing would take the per diem rate back to \$90.00 per day and fix the compensation to \$21,600.00 as it was in 2013, without the intervening July 1, 2018 increase.

In terms of timing, Article XI, Section 8 of the Washington State Constitution prohibits an increase or decrease in commissioner compensation during a term of office. Therefore, the 2020 amendment to RCW 53.12.260 would only apply as commissioners are elected or re-elected with the first application occurring for commissioners taking office on January 1, 2022 (at the Port of Tacoma, that would be three out of five Commissioners).

The Washington Public Ports Association has contacted the OFM and the Washington State Auditor’s Office (the “SAO”) about this issue. While acknowledging the issue, the OFM and SAO indicated that the current compensation should be left in place because the legislative intent was merely to change the date from July 1st to January 1st. The SAO has indicated that it will not be an audit issue. However, these views, while helpful, are not legally binding.

Until this unintended drafting mistake is: (a) corrected by the Legislature; (b) a definitive legal interpretation from the Washington Attorney General’s Office is issued; or (c) Washington courts issue a binding decision, it is in the best interest of the Port to adopt a resolution pursuant to RCW 53.12.260(3) to maintain the *status quo* for commissioner compensation as intended in Resolution 2013-05 and subject to the January 1, 2024 change per RCW 53.12.260.

C. SCOPE OF WORK

N/A

D. TIMEFRAME/PROJECT SCHEDULE

In light of the Constitutional requirements limiting the timing of compensation during a term of office, this action must be taken prior to the term of office for Commissioners elected during the

next election on November 2, 2021, or newly elected Commissioners will be subject to the “roll back” compensation levels described above during their term.

E. FINANCIAL SUMMARY

Maintaining the status quo will fix Commissioner compensation for all Commissioners at existing amounts with the next OFM adjustment taking place on January 1, 2024, as provided for in the statute.

F. NEXT STEPS

None.