

**A RESOLUTION OF THE
PORT OF TACOMA COMMISSION MAINTAINING THE STATUS QUO FOR
COMMISSIONER COMPENSATION FOR CURRENT AND FUTURE
COMMISSIONERS**

WHEREAS, RCW 53.12.260, enacted in 1975, provides for statutory base monthly compensation and per diem for port commissioners; and

WHEREAS, RCW 53.12.260(3) allows the Port Commission to set compensation to be paid to commissioners as an alternative to the statutory calculation; and

WHEREAS, in 2013, following public comment, the Port of Tacoma Commission adopted Port of Tacoma Resolution 2013-05 setting compensation for Port Commissioners at an annual salary of \$21,600.00 and per diem compensation at the statutory rate set forth in RCW 53.12.260, and including adjustments for inflation as provided for therein; and

WHEREAS, in 2007, the Legislature amended RCW 53.12.260 to provide for an inflationary adjustment to both per diem and monthly compensation every five years beginning July 1, 2008, as determined by the Washington State Office of Financial Management (the "OFM"), which was expressly referenced in Port of Tacoma Resolution 2013-05 as being applicable to Commissioner monthly compensation and per diem; and

WHEREAS, with the most recent inflation adjustment effective on July 1, 2018, the Port Commission's current annual salary is \$24,276.00 and the existing per diem rate is \$128.00 per day with an annual cap of \$15,360.00 per year; and

WHEREAS, the next inflation adjustment pursuant to RCW 53.12.260 was scheduled to occur on July 1, 2023; and

WHEREAS, in 2020, 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.

and;

WHEREAS, 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.

and;

WHEREAS, unfortunately, the adjustment date was changed but the references to the monthly compensation and per diem in the 2007 version of RCW 53.12.260 were not updated; and

WHEREAS, the “plain reading” of the RCW 53.12.260 as amended is that the \$90 per diem will next be adjusted for inflation on January 1, 2024, which would have the effect of “rolling back” commissioner statutory per diem to 2007 levels; and

WHEREAS, the same “plain reading” of House Bill 2449 would also have the effect of negating the intervening adjustment for inflation on July 1, 2018 to Port Commissioner’s annual salary, rolling it back to \$21,600 as adopted in Resolution 2013-05, as RCW 53.12.260 inflation adjustments were incorporated therein by reference; and

WHEREAS, this result was not intended and a clear legislative drafting mistake; and

WHEREAS, Article XI, Section 8 of the Washington State Constitution prohibits an increase or decrease in commissioner compensation during a term of office, meaning that 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; and

WHEREAS, it is in the best interest of the Port to maintain current levels of commissioner compensation and to ensure that commissioners newly elected or re-elected in 2021, are provided the same compensation as the other commissioners when the newly elected or re-elected commissioners take office on January 1, 2022; and

WHEREAS, 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 subject to the January 1, 2024 change per RCW 53.12.260; and

NOW, THEREFORE, based upon the foregoing, it is resolved by the Port of Tacoma, by and through its Commission, to maintain the *status quo* as follows:

1. Pursuant to RCW 53.12.260(3) the current Port of Tacoma commissioner compensation of \$128.00 per diem per day and annual salary of \$24,276.00 shall be maintained for all current commissioners and shall apply to all Port of Tacoma commissioners hereinafter elected or appointed.
2. The RCW 53.12.260(4) inflationary adjustment that will occur on January 1, 2024, and each five years thereafter will be applied to all Port of Tacoma commissioner compensation as provided for by Port of Tacoma Resolution 2013-05.
3. The Port of Tacoma Legal Counsel and the Executive Director will inform the Commission if and when the drafting issue in RCW 53.12.260: (a) has been the subject of Legislature action; (b) a definitive legal interpretation from the Washington Attorney General’s Office is issued; or (c) Washington courts issue a binding decision so that the Port Commission may consider an appropriate resolution.

ADOPTED in open session at a regular meeting of the Board of Commissioners of the Port of Tacoma on the **21st day of October 2021**, and duly authenticated by the signatures of the Commission and the seal of the Commission affixed hereto.

PORT OF TACOMA COMMISSION

Dick Marzano, President

Donald G. Meyer, Vice President

Deanna M. Keller, Secretary

Kristin Ang, 1st Assistant Secretary

John McCarthy, 2nd Assistant Secretary