



**COMMISSION
AGENDA MEMORANDUM**

Item No. 11b

BRIEFING ITEM

Date of Meeting May 25, 2021

DATE: May 18, 2021
TO: Steve Metruck, Executive Director
FROM: Eric ffitch, Manager, State Government Relations
Nate Caminos, Director, Government Relations
SUBJECT: 2021 State Legislative Session Review

EXECUTIVE SUMMARY

The purpose of this briefing is to provide the Port of Seattle Commission, Executive Director, and Executive Leadership Team with a final report on the 2019 State Legislative Session, with specific attention given to the Port's 2019 State Legislative Agenda.

On Sunday, April 25th, the Washington State Legislature adjourned SINE DIE, meaning there is no date set for them to reconvene. This represented the end of the 2021 105-day session, and it ended with a flurry of action on Port of Seattle priorities.

On Sunday afternoon, April 25th, the House and Senate both voted to approve the conference report on HB 1091, Representative Fitzgibbon's low carbon fuel standard. First added to the Port's priority list in 2018, this was a major step forward for the state's and the port's aggressive environmental goals. The final compromise included some substantive policy updates which are described in greater detail below, but in all the key provisions of the program remain.

Also, that afternoon, the legislature approved the 2021-2023 biennial operating budget, finalizing the state's \$250,000 annual contribution to the Quiet Sound program. Securing that funding was an advocacy effort led by the Port and initiated by Commissioner Felleman, that ended up including a wide array of stakeholders from the American Waterways Operators to the Washington Environmental Council. State funding partnership will allow this program to get up and running in the current fiscal year.

There were challenges this session as well, notably legislation on tax increment financing that was approved in spite of our significant concerns. Negotiations yielded some protections for the port, but this issue is likely to require continued advocacy in the years ahead. Similarly, the Legislature was not able to secure passage of a transportation revenue package, one of the Port's top priorities. With the City of Seattle as our partner we were able to ensure that both proposed revenue packages included \$25m for the West Seattle Bridge, but neither package advanced. This will likely be an issue the Legislature returns to soon, including current rumors of a potential fall "special session." And of course, one of our other top priorities didn't even end up being

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introduced—the bill to reduce the required local match for public improvement projects from three-to-one down to two-to-one. We’ve been assured by our two legislative champions that it is an issue they can turn their attention to next year.

The memo below provides a high-level overview of issues the Port supported, monitored, or otherwise engaged on, and their status at the end of the 2021 legislative session.

SUCCESS FOR PORT PRIORITIES:

Low carbon fuel standard (HB 1091): On Saturday, April 24th, the House and Senate reached agreement on a compromise version of House Bill 1091, legislation to reduce emissions from the transportation sector by capping the carbon intensity of transportation fuel sold in Washington state. More commonly known as a low carbon fuel standard (LCFS) or clean fuel standard (CFS), this policy has been the Port of Seattle’s priority legislation since the 2018 legislative session.

The policy put in place by HB 1091 is relatively simple: it requires producers of transportation fuels to meet a carbon intensity threshold set by the Department of Ecology. Producers who don’t meet that threshold generate “obligations,” and producers that blend in biofuels to reduce the carbon intensity below the threshold generate “credits.” Those have value on the open market, since producers that generate obligations will need to purchase them to comply with the program.

Final amendments were incorporated to secure passage, and those include:

- ***Transportation linkage:*** Rather than requiring enactment of a \$500m/biennium transportation package, the bill is now tied to the passage of a \$.05 cent gas tax increase. This is the same change that was made to SB 5126, the cap-and-trade bill, during the final negotiations in the last forty-eight hours.
- ***Slowed implementation timeline:*** Where Rep. Fitzgibbon’s previous bill phased in the program by directing Ecology to require a 10 percent carbon intensity reduction by 2028 and a 20 percent reduction by 2035; the conference agreement instead calls for 10 percent by 2030, and 20 percent by 2038
- ***Legislative review:*** In addition, for Ecology to go beyond the 10 percent threshold (now in 2031-2033), the Joint Legislative Audit and Review Committee must conduct a review of program impacts and forward that to the Legislature. Further, the 10 percent threshold could not be increased until after the 2033 legislative session.
- ***Biofuels capacity requirement:*** In addition to the requirement for a Legislative Review when the carbon intensity reaches 10 percent, to go above that reduction amount the state must have demonstrated a 10 percent increase in the biofuel production capacity of the state and in the use of in-state agriculture feedstocks. Further, to go beyond 10 percent there would have to be at least one 10m gallon

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capacity biofuel facility sited, and the state would need to demonstrate an additional 60m capacity for biofuel production overall.

For the Port, the bill will have a significant impact on our work to reduce the emissions from our operations. It will mean more biofuels on the market in Washington and it will drive them to price parity with conventional fossil fuels.

And it will mean that biofuels facilities currently producing these fuels in our state—like the Renewable Energy Group in Hoquiam—will sell their products to Washington consumers, rather than shipping them to California.

Governor Inslee signed HB 1091 into law on May 17th, 2021, and vetoed the section that required passage of a gas tax increase prior to program implementation.

Flight kitchens (SB 5385): SB 5385, legislation to clarify the size of an airport in order for the airport operator to set minimum labor standards for employees working at the airport, passed and became law. SB 5385 amends legislation enacted last year that gave airport operators some limited authority to set labor standards. That bill stated that an airport with twenty million enplanements had that authority, and SB 5285 clarifies that the enplanement number is calculated based on average enplanements over the last seven years.

After passing the Senate on a strong bipartisan vote of 36-13 on March 2nd, it passed the House by a vote of 57-41 on Monday, April 5th. It was signed into law by Governor Inslee on Friday, April 16th, and will take effect on July 25th, 2021.

Inslee/Carlyle “Climate Commitment Act” (SB 5126): Senator Carlyle/Governor Inslee’s proposal to create a “cap-and-invest” framework to promote carbon emissions reduction in Washington was one of two signature environmental accomplishments that passed in the final days of session.

Under the provisions of SB 5126, titled the Climate Commitment Act by supporters, the state would establish a cap on greenhouse gas emissions for the largest-emitting industries. The Department of Ecology would ensure industry compliance with that cap through the sale, tracking, and accounting of greenhouse gas credits (known as “allowances”).

The bill passed the Senate by a vote of 25-24 on April 8th. At that point it was still considered a serious long shot, with just over two weeks remaining in session, but it sped through the House thanks in large part to the stewardship of Representative Fitzgibbon. It passed the House on April 23rd by a vote of 54-43, and the Senate voted to concur with House amendments on the penultimate day of the legislative session.

Like the low carbon fuel standard, the Climate Commitment Act contained language stating that it could not be fully implemented until the Legislature has adopted a \$.05 gas tax to fund a

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transportation package. And like the LCFS, Gov. Inslee vetoed that section when he signed the bill into law on Monday, May 17th.

HEAL Act, Environmental Justice Task Force recommendations (SB 5141): Senator Saldaña’s bill to implement the recommendations of the Governor’s Environmental Justice Task Force was passed by the House on Saturday, April 10th, and on April 20th the Senate voted to concur in the House amendments. Some substantive changes were made during the House floor debate, including a Republican amendment that requires business representation on the Environmental Justice Council. Broadly speaking, the bill seeks to ensure that state agencies comply with environmental justice requirements; establishes an Environmental Justice Council to advise state agencies on EJ issues; and requires an “environmental justice assessment” for certain actions taken by an agency.

The Port offered our support for Sen. Saldaña’s efforts in a letter from the Commission President and Executive Director on March 30, 2021, just as it moved to the House from the Senate. The original version had caused concern about impact to state agency action—which implicated Port partnership with entities like the Washington State Department of Transportation—but we expressed agreement with the bill’s intent throughout the process. Amendments eventually clarified the role of the Environmental Justice Council with respect to state agencies and eased their concerns and ours.

Passage of the HEAL Act compliments enactment of the low carbon fuel standard and the cap-and-invest proposal and ended up a signature priority for both House and Senate Democratic Caucuses.

Gov. Inslee signed the HEAL Act into law on May 17th.

Port issues in budget process:

Transportation budget: The House and Senate passed a conference agreement on a “current law” transportation budget but could not reach agreement on an additive transportation funding bill.

- Puget Sound Gateway program: Ensuring adequate funding to continue the Puget Sound Gateway program was the main issue the Port was following in the transportation current law budget process. The final budget included funding for the Gateway program, which didn’t lose any ground in spite of concerns that scope could shrink, or the schedule could slip. There remains a \$90m shortfall in the budget but that merely needs to be resolved prior to Stage 2 and is expected to be taken care of in an additive transportation package.

Capital Budget:

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- Model Toxics Control Act environmental cleanup funding: Remedial Action Grants to fund cleanup work at the East Waterway, Lower Duwamish, T115 and T91 were all fully funded in the final capital budget. This was a big year for our cleanup projects, with the strongest funding for MTCA since legislation was passed two years ago to reform the way funds were collected and distributed.
- Seattle Aquarium expansion: This session, the Port supported the Seattle Aquarium in advocating directly to the Capital Budget Chair Frockt asking for \$3m in capital funding in the 2021-2023 biennium to support the planned Ocean Pavilion expansion project. The final capital budget included \$2m for the expansion project, a win for the Aquarium and for the Port.

Operating Budget:

- Quiet Sound program: As staff reported last week, good news from the Senate about the Quiet Sound, but the House budget did not include any funding for the program. This will be the focus of staff efforts in the coming week. Budget conferees were named last week, and Port staff are seeking meetings with House conferees to seek support.
- Tourism recovery program: Early in session, the Port joined a long list of advocates seeking state support for funding to reinvigorate the tourism economy. The total ask was \$12m to support the Washington Tourism Marketing Authority. The full amount was included in the final 2021-2023 operating budget, a win for the small businesses that are involved in the tourism industry.

Broadband expansion for ports and PUDs (HB 1336): Rep. Hansen’s legislation is part of a continuing effort by ports and public utilities district to assist in provision of broadband service to underserved communities. The bill gives ports/PUDs/cities/towns and counties the authority to provide retail telecommunication services. It is important to note, NO PORT intends to become a retail provider of broadband. However, there is considerable federal funding through the Federal Communications Commission (FCC) that can only be allocated to entities that have retail authority. Passage of this bill will allow the various ports across WA who are leading in broadband to access federal funding and continue to provide service.

Port staff have offered support to the Washington Public Ports Association, for whom this is a priority, and we submitted written testimony in support at various stages in the process.

HB 1336 passed the House on February 23rd by a vote of 60-37 and the Senate on April 23rd by a 27-22 margin.

Governor Inslee signed the bill into law on Wednesday, May 12.

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Alternative Public Works Contracting (SB 5032): SB 5032 reauthorizes the Capital Projects Advisory Review Board. Janice Zahn currently holds the Ports seat on CPARB, and she partnered with Chris Herman from the Washington Public Ports Association and with other Port of Seattle staff to push the legislation forward. The legislation passed the Senate unamended with a unanimous 49-0 vote.

SB 5032 was the subject of sweeping amendment put forward by Rep. Santos in the House committee that sought to maintain her emphasis on equity in the public contracting space. The Port was supportive, though focused on ensuring that CPARB felt the changes were implementable. Rep. Santos worked with Rep. Tharinger—who sits on CPARB—to keep her equity focus but ensure it was practical for CPARB.

Gov. Inslee signed the bill into law on Monday, May 10th.

Streamlined sales tax mitigation (HB 1521): Another port priority bill, Representative Enteman (D-47th LD, Kent, Auburn) introduced legislation to continue Streamlined Sales Tax mitigation payments to certain cities that are still feeling financial harm from the enactment of that policy. HB 1521 would create a “warehousing and manufacturing job centers account” and require transfers from the general fund into that account “to mitigate actual net losses.”

HB 1521 passed the House with a unanimous vote on March 3rd, and the Senate voted 44-5 to advance the bill on Tuesday, April 6th. It was signed by Governor Inslee on Friday, April 16th.

Juneteenth (HB 1016): HB 1016, establish Juneteenth as a state holiday, passed the Senate by a vote of 47-1 on Friday, April 9th. Cmr. Cho was invited by the Governor’s office to provide testimony in support when it was first heard in the House. The bill is a priority of the House Democratic Caucus and did not face substantial opposition as it moved through the process. The bill was signed into law by Governor Inslee on Thursday, May 13th.

MORE WORK TO BE DONE: Issues that we will work next year

Transportation revenue package: Both the House and Senate Transportation Committees held work sessions early in the 2021 Session to explore stakeholder priorities for a transportation revenue package. There were three packages introduced in concept: one from House Transportation Chair Jake Fey, which spent \$26m over 16 years and did not require issuance of bonds; one from Senate Transportation Chair Steve Hobbs that spent between \$17 and \$18b over sixteen years and did require bond issuance; and one from Senate Transportation Ranking Republican Curtis King, who proposed a smaller package of around \$11b in the same time horizon.

Chair Fey relied on carbon fees (along with gas tax increases and other pay-fors) while Chair Hobbs’ initial proposal was flexible, with either a cap-and-trade funding the multimodal side of the package OR a carbon fee, depending which advanced. One of the big developments midway

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through session, then, was Hobbs negotiating with Sen. Carlyle to secure \$5.2b from his Climate Commitment Act (Cap and invest bill) to go toward transportation.

In spite of that progress, neither bill was able to secure consensus. By the end, the good news for the Port was only that each proposal included \$25m in funding for the West Seattle Bridge, a clear priority of ours all session.

Rumors abound that a fall special legislative session will consider a sixteen year transportation revenue package, and the Port will continue to monitor that conversation and ensure that the West Seattle Bridge funding remains.

Three-to-one match bill: One of the dark spots for the Port this session was the lack of progress on reducing the required local match for community improvement projects, like those funded by our Airport Community Ecology fund and South King County Fund. The obscure statute that allows small-dollar grants to be exempted from public bidding requirements, also requires that grant recipients demonstrate that they've provided three times the value of the public money they received. The Port worked on legislation in 2020 to reduce that to a *two to one* match. But due to the strictures of this odd virtual session—where each member agreed to only introduce seven bills maximum—neither of our champions from 2020 were willing to introduce the bill in the 2021 session.

Both legislators, Reps. Orwall and Gregerson from the 33rd Legislative District, expressed a willingness to work on the bill when the 2022 session convenes next January.

Tax increment financing: Senator Frockt and Representative Duerr sponsored legislation that seeks to give local governments – including port districts -- the authority to use Tax Increment Financing to fund public improvement projects. HB 1189 passed both chambers and was signed by Gov. Inslee on

This is a priority for the Washington Public Ports Association along with the Association of Washington Cities (AWC), the Washington Economic Development Association (WEDA), and many more. Because any taxing district could create an “increment finance area,” without necessarily seeking the consent of or collaboration with other taxing districts with overlapping jurisdiction, it could result in lost property tax revenue to port districts.

Port staff engaged in negotiations with WPPA, Port of Tacoma, Port of Moses Lake, and bill supporters from the AWC and WEDA to discuss potential amendments to the bill after identifying overarching concern at the way the bill is written and the fact that it will capture all increased property value in an increment area, rather than simply the increase in value that's attributable to the public improvement project. In the end, Port advocates secured language in the bill that caps the overall size of tax-increment areas to \$200m in overall property value and moved our position to neutral.

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HB 1189 passed the Senate in its amended form 45-2, then went back to the House where the concurrence voted was 68-30. It was signed into law by Governor Inslee on Monday, May 10th.

Staff mark this in the “more work to be done” category because advocates who support TIF are expected to seek future amendments to RAISE the cap size we negotiated. And in turn. If port districts who were opposed to the original bill see this policy implemented in a way that’s detrimental to our fiscal position, ports may seek additional protections in future legislative session.

ADDITIONAL ISSUES OF INTEREST:

Police reform and accountability measures: After communicating briefly to Representative Jesse Johnson early in session about specific elements of his signature police reform bill, HB 1054, the Port moved to a “monitor” position on policing bills. The justification for not engaging more actively was that our advocacy subcommittee, created by the Policing Task Force, had not yet put forward clear policy recommendations for adoption by the commission.

Legislation that we monitored this session in Olympia included:

- ESHB 1054, Rep. Johnson’s bill relating to police tactics/equipment:
 - Brief background: restricts chokeholds, military style equipment, establishes guidelines for use of teargas; outlines parameters for engaging in vehicular pursuit; and more
 - Status: Passed House by 54-43 vote on 2/27; Passed Senate 27-22 on April 6th; **Signed by the Governor on May 18th.**

- E2SHB 1089, audits of law enforcement agencies and peace officers:
 - Brief background: authorizes State Auditor to audit investigations of deadly use of force incidents by a peace officer; authorizes Criminal Justice Training Commission to request audits of law enforcement agencies regarding compliance with training and certification of peace officers
 - Status: Passed House by 80-18 vote on 2/10; Passed Senate 42-7 on April 7th; **Signed by the Governor on May 18th.**

- ESHB 1267, investigation of criminal conduct related to police use of force
 - Brief background: Creates Office of Independent Investigations (OII) withing Governor’s office to conduct “Fair and competent” investigations of police use of force
 - Status: Passed House by a 57-39 vote; Passed Senate 27-22 on April 9th; **Signed by the Governor on May 18th.**

- E2SHB 1310, permissible use of force standard

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- Brief background: establishes a civil standard for peace officer use of force; requires AG to develop model policies on use of force
- Status: Passed House by a 55-42 vote, 3/6/21; Passed Senate 26-23 on April 10; **Signed by the Governor on May 18th.**

- E2SSB 5051, state oversight of peace officers
 - Brief background: expands authorities of Criminal Justice Training Commission; expands background investigation requirements for peace officer applicants; overhauls certification and decertification processes for peace officers
 - Status: Passed Senate by a 26-19 vote on 2/25; Passed House by a 54-43 vote on April 7th; **Signed by the Governor on May 18th.**

- SSB 5066, peace officer duty to intervene
 - Brief background: requires a peace officer who witnesses another officer using excessive force to render aid to the other party; requires a peace officer to report incidents of excessive force they witness
 - Status: Passed Senate 28-21 on February 23rd; Passed Senate 71-27 on April 7th; **Signed by the Governor on May 18th.**

- E2SSB 5259, law enforcement data collection
 - Brief background: requires AG to recommend development of a statewide program for collecting use of force data; requires law enforcement agencies to begin reporting no later than three months after program is established; requires reports on issues including location, race of detainee, type of injury sustained, type of force employed
 - Status: Passed Senate by a vote of 46-2 on 3/1; Passed House 97-1 on April 6th; **Signed by the Governor on May 18th.**

Ballard-Interbay State Lands Development Authority (HB 1173): Rep. Liz Berry (D-36th LD, Ballard, Fremont, parts of Downtown) introduced legislation that Rep. Tarleton introduced at the end of her tenure in the 2020 session. HB 1173 would create a new development authority, known as a State Lands Development Authority, that would be charged with overseeing the redevelopment of the Armory Property in Seattle’s Interbay neighborhood. Rep. Berry’s “substitute” amendment to the bill reflects one concern raised by staff. However, the redevelopment options available to the Development Authority still include residential, so there are lingering concerns with the legislation.

HB 1173 passed the House by a vote of 77-21 on February 25th and was approved by its Senate committee on April 2nd. The bill then advanced to the Senate floor calendar on April 10th and

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was even added to a run list on April 11th. However, the Senate ran out of time and adjourned on April 11th without acting on the bill. That means it will not continue advancing and will be reintroduced at the House Rules Committee at the beginning of the 2022 legislative session.

ATTACHMENTS TO THIS BRIEFING

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

November 17, 2020 – The Commission approved the 2021 State Legislative Agenda

October 27, 2020 – The Commission was briefed on the 2021 State Legislative Agenda