

RESOLUTION NO. 1560

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF PASCO ADDRESSING THE APPARENT LEGISLATIVE DRAFTING MISTAKE IN THE 2020 AMENDMENT TO RCW 53.12.260 BY MAINTAINING THE STATUS QUO FOR COMMISSIONER COMPENSATION FOR CURRENT AND FUTURE COMMISSIONERS.

WHEREAS, enacted in 1975, RCW 53.12.260 provides for port commissioner compensation. Today this compensation consists of (a) \$128 per diem per day compensation for each day or portion or thereof spent in actual attendance at official meetings of the port district commission, or in performance of other official services or duties on behalf of the district (b) since the 1992 amendment to RCW 53.12.260, monthly compensation of either \$200 or \$500 per month depending on the gross operating income of the port district in the preceding calendar year.

WHEREAS, in 2007 the Legislature amended RCW 53.12.260 increasing the per diem portion of commissioner compensation from \$75 to \$90 and providing 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"). Adjustments on July 1, 2008, July 1, 2013, and July 1, 2018, resulted in current commissioner per diem of \$128 per month and the current monthly compensation of either \$278 or \$711 depending on the gross operating income of the port district in the preceding calendar year. The next adjustment was scheduled for July 1, 2023.

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 1st to January 1st 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 to 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.

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

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. The "plain reading" of the 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.

WHEREAS, Article XI, Section 8 of the Washington State Constitution prohibits and 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.

WHEREAS, 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.

WHEREAS, subsection 3 of RCW 53.12.260 allows a port commission to set compensation for commissioners in lieu of the amounts specified in the statute (both per diem and monthly).

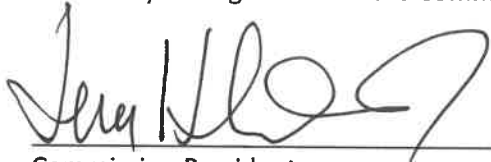
WHEREAS, it is in the best interest of the Port to maintain current levels of commissioner compensation and ensure that commissioners newly elected or re-elected in 2021 are provided the same compensation as the other commissioners when the newly elected or re-elected commissioners take office on January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

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.

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

1. Pursuant to RCW 53.12.260(3) the current Port of Pasco commissioner compensation of \$128 per diem per day, and either \$1,000 per month, or \$1,500 per month for any Commissioner who is elected or appointed after February 28, 2019, shall be maintained for all current commissioners and shall apply to all Port of Pasco 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 Pasco commissioners per diem compensation as provided by statute.
3. The Port of Pasco 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 Pasco on the 14th day of October, 2021, and duly authenticated by the signatures of the Commission and the seal of the Commission affixed hereto.


Commission President


Commission Vice President


Commission Secretary