

HB 1175-S.E - DIGEST

(DIGEST AS ENACTED)

Makes transportation appropriations for the 2009-2011 fiscal biennium and the 2011-2013 fiscal biennium.

VETO MESSAGE ON ESHB 1175

May 16, 2011

The Honorable Speaker and Members
The House of Representatives of the State of Washington

Ladies and Gentlemen:

Thank you for your work on the supplemental and 2011-13 transportation budgets. I am returning, without my approval as to Sections 103(3), 103(4), 204(2), 205(3), 208(11), 210(4), 210(6), 221(3), 221(4), 221(7), 221(8), 221(9), 221(18), 305(6), 306(4), 308(6), 308(10), 308(12), 610, 706, 714, 722, and 817, Engrossed Substitute House Bill 1175 entitled:

"AN ACT Relating to making transportation appropriations for the 2009-2011 and 2011-2013 fiscal biennia."

Section 103(3), pages 3-4, Office of Financial Management, Predesign Requirements for Washington State Ferries

This proviso requires the Office of Financial Management (OFM) to review and modify the Department of Transportation's (WSDOT) predesign requirements for state ferry vessel and terminal projects so that they continue to meet legal mandates without unduly burdening WSDOT. OFM is committed to working with the legislative transportation committees and stakeholders during the interim to assess and re-write the predesign manual for all appropriate transportation facilities, not just for ferry terminals and vessels. For this reason, I have vetoed Section 103(3).

Section 103(4), page 4, Office of Financial Management, List of Ferry Demands to Bargain

This proviso requires the Office of Financial Management to provide the legislative transportation committees, on a quarterly basis, a list of all demands to bargain with respect to unions representing marine employees. While I support sharing this information with the Legislature, it should not be limited to only one sector of employees. Therefore, I am directing OFM to provide information on all demands to bargain received by the Labor Relations Office to the legislative transportation committees and the Joint Committee on

Employment Relations, as appropriate. For this reason, I have vetoed Section 103(4).

Section 204(2), page 8, Joint Transportation Committee, Study of Management Organizational Structure of Ferries Division

This proviso provides funding to the Joint Transportation Committee (JTC) to conduct a study of the management organizational structure of the Department of Transportation Ferries Division. The ferry system has been studied extensively. The transportation budget passed in 2009 directed twelve studies or reports, and six more were added in the 2010 budget. The JTC recently completed a three-year series of finance studies related to ferries. The most recent study was conducted last year by the national Passenger Vessel Association (PVA) at my request and provided recommendations now being implemented by the Ferries Division. This report noted that the level of oversight for Washington State Ferries is greater than the five ferry systems represented on the PVA panel that performed the study. "This constant responding, educating and reacting are tremendously costly and this expenditure could be better utilized elsewhere." For these reasons, I have vetoed Section 204(2).

Section 205(3), page 10, Transportation Commission, Survey of Transportation Users

This proviso ties the appropriation for a survey of transportation users to the passage of Substitute Senate Bill 5128, which did not pass. It is important to conduct a statistically valid survey to identify the transportation priorities the public would like to target for future investments. In order to preserve the funding necessary for this survey, I have vetoed Section 205(3).

Section 208(11), page 15, Department of Licensing, Commercial Drivers

Funding is provided to implement provisions of Engrossed House Bill 1229 (related to commercial drivers) from the Highway Safety Account-State. However, this proviso incorrectly identifies the funds as Motor Vehicle Account-Federal instead of Highway Safety Account-State. For this reason, I have vetoed Section 208(11).

Section 210(4), pages 17-18, Department of Transportation, Time, Leave and Labor System

This proviso directs the Department of Transportation to report quarterly on its progress on the development of a time, leave, and labor distribution system. While this is a high priority for WSDOT, it is an important need of all state agencies. That is why I proposed that this project be developed as an enterprise solution by the Office of Financial Management in partnership with the Department of Personnel and WSDOT, with WSDOT being the pilot site to implement what will become an enterprise-wide application. Because it is important

to clearly set out the state's commitment to an enterprise solution for business process systems improvements, I am vetoing this section and directing that the project commence as a partnership of state agencies with OFM leadership. For these reasons, I have vetoed Section 210(4).

Section 210(6), page 18, Department of Transportation, 511 Traveler Information System Improvements

This proviso directs the Department of Transportation to make enhancements to the 511 traveler information system, as well as to develop or purchase software to allow public transportation users to determine the public transportation options available to them. The private sector is providing similar services for travelers, often at no cost to consumers. During this time of limited state resources, it is unnecessary to dedicate scarce state resources to areas being addressed by the private sector. Furthermore, no funding was provided to accomplish these actions. For these reasons, I have vetoed Section 210(6).

Section 221(3), pages 31-32, Department of Transportation, Ferry Performance Metrics

This section requires the Department of Transportation to develop a set of performance metrics for the Ferries Division and make recommendations to the 2012 Legislature on which measurements should be incorporated into the transportation appropriations act. My Government Management Accountability and Performance (GMAP) program already requires WSDOT to include ferry performance measures as part of its quarterly reports. WSDOT is further enhancing its use of performance metrics, which was one of the recommendations of the Passenger Vessel Association study I directed last year. WSDOT will continue reporting its progress and we will share those updates with the Legislature. For these reasons, I have vetoed Section 221(3).

Section 221(4), page 32, Department of Transportation, Ferries Division Process Changes

This section requires the Department of Transportation Ferries Division to continue to identify and implement route-by-route on-time performance changes. At the same time, it directs WSDOT to consider slowing down vessels to save fuel. It is unclear how the Ferries Division should improve on-time performance while slowing down vessels. WSDOT remains committed to a safe and reliable ferry system, as evidenced by the 94% of sailings arriving within ten minutes of the scheduled sailing time in 2010. For these reasons, I have vetoed Section 221(4).

Section 221(7), page 32, Department of Transportation, Fiscal Year Reports Outlining Wages and Benefits to Ferry Employees

This proviso requires the Department of Transportation to provide to the legislative transportation committees fiscal

year reports outlining wages and benefits provided to marine employees. While I support sharing this information with the Legislature, it should not be limited to only one sector of employees. Therefore, I am directing the Office of Financial Management to work with the appropriate agencies to provide wage and benefit information to the legislative transportation committees and ways and means committees. For these reasons, I have vetoed Section 221(7).

Section 221(8), page 32, Department of Transportation, Ferry Detail in the Transportation Executive Information System (TEIS)

This proviso requires the Department of Transportation to work with the Legislative Evaluation and Accountability Program Committee to provide more details on ferry projects in the capital reporting system used by the Legislature, Office of Financial Management, and WSDOT. It is important that versions of this system are compatible among the agencies for transmitting and comparing data. Furthermore, it would be premature to make such changes to the TEIS until the work required in Section 221(16) regarding the budget structure of the Ferries Division is complete, including a potential restructuring of the ferries budget. For these reasons, I have vetoed Section 221(8).

Section 221(9), page 32, Department of Transportation, Ferry Operating Program, Restrictions on Use of Appropriations for Labor Costs

This proviso limits appropriations used for labor costs to obligations under collective bargaining agreements, civil service laws, and judgments. This limitation would prevent the Department of Transportation from paying legal and necessary labor costs that fall outside these constraints. For example, WSDOT would not be able to pay the salaries and benefits of exempt employees, travel reimbursement for all nonrepresented employees, or the cost of contractors who perform labor-related services from funds appropriated for labor costs. For this reason, I have vetoed Section 221(9).

Section 221(18), pages 34-35, Department of Transportation, Ferry Operating Program, Report Linking Vessel Asset Condition Reports with Vessel Life-Cycle Cost Model

This proviso requires the Department of Transportation to link vessel asset condition reports with its life-cycle cost model for integration with a vessel management system. It also requires WSDOT's 2013-15 budget request to provide a project scope for implementing a vessel asset management system. Predesign requirements, life-cycle cost model changes, asset condition ratings, proposed new management systems, and revised budget structures must be considered in total. To that end, I am directing the Office of Financial Management to convene a workgroup that includes staff from the legislative

transportation committees to evaluate how these various requirements should be integrated and reflected in future budget instructions. Therefore, I have vetoed Section 221(18).

Section 305(6), page 40, Department of Transportation, Redistributed Federal Funds

Section 306(4), page 47, Department of Transportation, Redistributed Federal Funds

These provisos require that redistributed federal funds received by the Department of Transportation first be applied to offset planned expenditures of state funds, and second to offset planned expenditures of federal funds, on projects identified in the project list in the 2010 supplemental budget. If these options are not feasible, WSDOT must consult with the Joint Transportation Committee (JTC) prior to obligating redistributed federal funds. If such consultation is not feasible and Washington does not act quickly, we may lose the opportunity to receive redistributed federal funds. However, because input from the Legislature is important, I am directing WSDOT to consult with JTC members when possible. For this reason, I have vetoed Section 305(6) and Section 306(4).

Section 308(6), page 50, Department of Transportation, Ferry Capital Program, Restrictions on Use of Appropriations for Labor Costs

This proviso limits appropriations used for labor costs to obligations under collective bargaining agreements, civil service laws, and judgments. This limitation would prevent the Department of Transportation from paying legal and necessary labor costs that fall outside these constraints. For example, WSDOT would not be able to pay the salaries and benefits of exempt employees, travel reimbursement for all nonrepresented employees, or the cost of contractors who perform labor-related services from funds appropriated for labor costs. For this reason, I have vetoed Section 308(6).

Section 308(10), page 51, Department of Transportation, Ferry Capital Program, Review and Adjust Capital Funding Levels

This proviso requires the Department of Transportation to review and adjust its capital program staffing levels, compare the findings to a 2009 capital staffing level report, and report to the Office of Financial Management and the legislative transportation committees. WSDOT is currently conducting a thorough review of its staffing levels in all program areas, including the Ferries Division, as it downsizes to meet diminishing revenues. Thus, this requirement specific to Ferries is unnecessary. Therefore, I have vetoed Section 308(10).

Section 308(12), page 51, Department of Transportation, Ferry Capital Program, Provide Cost-Benefit Analysis of Eagle Harbor Slips

This proviso requires the Department to conduct a cost-benefit analysis of replacing or repairing existing structures at the Eagle Harbor maintenance facility. A report is due to the Legislature by December 31, 2011. While I appreciate the need for a thoughtful cost-benefit analysis prior to any capital budget request, I cannot support another unfunded reporting mandate. I am directing the Office of Financial Management to ensure adequate provisions are included in the predesign manual and budget instructions to address these concerns. Therefore, I have vetoed Section 308(12).

Section 610, pages 73-74, Department of Transportation, Report on Department's Future Business Model

This section requires the Department of Transportation to report to the Joint Transportation Committee on its future business model staffing scenarios and method of program and project delivery. I understand the importance of tailoring the workforce both to reflect the ramping down of construction funded by the last two transportation revenue packages and to prepare for a potential new transportation revenue package. However, Section 608 also directs WSDOT to develop new business practices so that a smaller, more nimble workforce can effectively and efficiently deliver transportation projects. In addition, WSDOT is already conducting a thorough review of its staffing levels as it downsizes to meet diminishing revenues. Because this section is unnecessary, I have vetoed Section 610.

Section 706, pages 82-83, Department of Transportation, Exempts Ferries from Biodiesel Requirements for 2011-13

This section exempts ferries from the state biodiesel use requirement. By leveraging federal and private funding, we have made the infrastructure investments to provide biodiesel to ferries. We are moving forward with changes to state procurement contracts to help further reduce the cost of biodiesel and take advantage of available in-state production. If we walk away now, our state funding investments in the industry will be lost, our oilseed farming and refining jobs will move out of state, and we will be forced to pay more to transport biodiesel products from the midwest. The rising cost of gas serves to remind us that we must rely on ourselves, not other countries, for our economic security and safety. I am directing the Department of Transportation to use as much biodiesel as possible within its authorized budget. For these reasons, I have vetoed Section 706.

Section 714, pages 95-96, Marine Employees' Commission Duties Subject to Available Amounts Appropriated for Statutory Duties

RCW 47.64.280 creates the Marine Employees' Commission (MEC). Section 714 amends this statute to provide that MEC shall not perform its duties as identified in this section if funding is not provided. Because funding for MEC has not been provided,

this section would prohibit it from performing its statutory duties. Among its duties, MEC adjudicates complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system. A provision in a budget bill cannot extinguish the rights of employees and labor organizations to access MEC to resolve disputes. Changing or eliminating MEC duties should be the subject of a policy bill, not a provision in a two-year budget bill. For these reasons, I have vetoed Section 714.

Section 722, page 99, Toll Enforcement and Administration

During the 2010 legislative session, two separate pieces of legislation, SB 6379 and ESSB 6499, amended RCW 46.63.160 without reference to each other. This section repeals one of those amendments. However, this action is unnecessary because RCW 1.12.025 clearly provides that the amendments can be merged because they do not conflict in purpose. While ESSB 6499 made policy changes related to toll enforcement as we move to a statewide photo toll system, SB 6379 made technical changes to a variety of vehicle and vessel title and registration statutes intended to have no policy or substantive legal effect. For this reason, I have vetoed Section 722.

Section 817, pages 130-131, Department of Transportation

A reduction of \$7.5 million in the Multimodal Transportation Account-State appropriation was made in the Rail Operating program for the 2009-11 biennium because it was assumed that there would be offsetting Amtrak credits. Amtrak recently informed WSDOT that it had incorrectly calculated the credits. Vetoing this section will restore funding to 2010 levels and allow the Rail Operating program the flexibility needed to close the 2009-11 Biennium. WSDOT is directed to report to the Office of Financial Management and legislative transportation committees on the total credits received from Amtrak. For these reasons, I have vetoed Section 817.

With the exception of Sections 103(3), 103(4), 204(2), 205(3), 208(11), 210(4), 210(6), 221(3), 221(4), 221(7), 221(8), 221(9), 221(18), 305(6), 306(4), 308(6), 308(10), 308(12), 610, 706, 714, 722, and 817, Engrossed Substitute House Bill 1175 is approved.

Respectfully submitted,
Christine Gregoire
Governor