



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

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May 18, 2021

To the Honorable President and Members,  
The Senate of the State of Washington

Ladies and Gentlemen:

I am returning herewith, without my approval as to Sections 205(2); 205(4); 205(5); 220, page 48, line 15, beginning with “Fuel” through line 16 ending with “process.”; page 48, line 28, beginning with “Fuel” through line 29 ending with “process.”; page 48, line 32, beginning with “Fuel” through line 33 ending with “process.”; page 49, line 5, beginning with “Fuel” through line 6 ending with “process.”; page 49, line 37, beginning with “Fuel” through line 38 ending with “process.”; and page 50, line 18, beginning with “Fuel” through line 19 ending with “process.”; 309, page 70, line 35, beginning with “No” through page 71, line 2, ending with “biennium.”; and 920(1), pages 175-176; 920(2), page 176; 920(3), page 176; page 177, line 13, beginning with “Fuel” and ending with “process.”; page 177, line 33, beginning with “Fuel” through line 34 ending with “process.”; and 920(9), page 179, Substitute Senate Bill No. 5165 entitled:

“AN ACT Relating to transportation funding and appropriations.”

**Section 205(5), pages 18-19, Transportation Commission, Unfunded Study**

This section directs the Transportation Commission to evaluate and identify activities funded in the transportation budget that might be paid for using other revenue resources. This proviso also instructs the commission to recommend potential changes to funding sources in order to maintain a state of good repair. There was no funding provided to support this work. For this reason, I have vetoed Section 205(5).

**Section 220, page 48, line 15, beginning with “Fuel” through line 16 ending with “process.”; page 48, line 28, beginning with “Fuel” through line 29 ending with “process.”; page 48, line 32, beginning with “Fuel” through line 33 ending with “process.”; page 49, line 5, beginning with “Fuel” through line 6 ending with “process.”; page 49, line 37, beginning with “Fuel” through line 38 ending with “process.”; and page 50, line 18, beginning with “Fuel” through line 19 ending with “process.”**

Section 220 includes the following sentence in six provisos: “Fuel type may not be a factor in the grant selection process.” This sentence is a nondollar proviso that is subject to the governor’s veto authority. It is also substantive legislation included in an appropriations bill that either conflicts with or amends the statutory mandates in RCW 47.66.040 and 47.66.030 that direct WSDOT to consider, among other criteria, energy efficiency issues and federal and state air quality requirements in selecting programs and projects. In addition, this requirement conflicts with, or at best substantially impairs, the statutory mandate for the state and local government subdivisions to transition to zero emission vehicles as articulated in RCW 43.19.648.

The sentence at issue is a policy change — that is, an amendment — to existing statutory requirements. As such, the sentence violates Article II, Sections 19 and 37 of the Washington State Constitution.

It is well established that the governor's veto powers in Article III, Section 12 of the Washington State Constitution extend to appropriation items and full subsections or provisos in an appropriations bill. It is also well established that our courts will intervene to prevent obvious circumvention of the veto power by the Legislature or equally obvious manipulation of that power by the governor. The addition of this sentence within these provisos constrains my ability to exercise the constitutionally authorized veto powers.

Based on the above concerns, I previously vetoed this sentence in several subsections in the 2019-21 biennial transportation budget bill, Engrossed Substitute House Bill 1160, to prevent a constitutional violation and a forced violation of state law. Litigation regarding this matter is ongoing. Because the same sentence is included again in this biennial transportation appropriations bill and because the litigation has not been resolved yet by our state Supreme Court, I again have no choice but to veto this sentence that appears in several subsections.

For these reasons, I have vetoed Section 220, page 48, line 15, beginning with "Fuel" through line 16 ending with "process."; page 48, line 28, beginning with "Fuel" through line 29 ending with "process."; page 48, line 32, beginning with "Fuel" through line 33 ending with "process."; page 49, line 5, beginning with "Fuel" through line 6 ending with "process."; page 49, line 37, beginning with "Fuel" through line 38 ending with "process."; and page 50, line 18, beginning with "Fuel" through line 19 ending with "process."

**Section 309, page 70, line 35, beginning with "No" through page 71, line 2, ending with "biennium."**

Section 309 provides the appropriation authority for the Washington State Ferries construction program. Section 309(1) includes the following sentence: "No funds appropriated in this act or additional funds received through the unanticipated receipt process may be allocated or expended for terminal electrification purposes this biennium." This sentence would prohibit any funds appropriated in the transportation budget, and not just this section, and any future funds that may be received as an unanticipated receipt, from being spent on the electrification of ferry terminals. This could result in the Department of Transportation foregoing opportunities to pursue funding for terminal electrification and charging, contrary to the needs of the ferries program. As we continue the work toward the first 144-car hybrid electric vessel and the conversion of the Jumbo Mark II vessel, we must also pursue the charging infrastructure to be able to access electricity for seamless operations.

It is well established that the governor's veto powers in Article III, Section 12 of the Washington State Constitution extend to appropriation items and full subsections or provisos in an appropriations bill. It is also well established that our courts will intervene to prevent obvious circumvention of the veto power by the Legislature or equally obvious manipulation of that power by the governor.

This sentence is a nondollar proviso that is subject to the governor's veto authority. The sentence is a condition on the entire transportation budget bill and on unanticipated receipts and thus does not naturally fit together with the other language in Section 309(1), which is a separate proviso applying to only the appropriations in Section 309.

The prohibition on terminal electrification expenditures not only stifles the ongoing work by Washington State Ferries to electrify fleets and terminals, but also eliminates pathways to attain federal funds or other grants. While my veto authority is generally limited to sections, subsections or appropriation items in an appropriations bill, this sentence embedded in a subsection is a separate, nondollar appropriation item that is subject to my veto. The deleterious effects of this prohibition leave me no choice but to veto this sentence.

For these reasons, I have vetoed Section 309, page 70, line 35, beginning with “No” through page 71, line 2, ending with “biennium.”.

**Section 920(1), pages 175-176; Section 920(2), page 176; Section 920(3), page 176; page 177, line 13, beginning “Fuel” and ending with “process.”; page 177, line 33, beginning with “Fuel” through line 34 ending with “process.”; and Section 920(9), page 179**

Section 920 includes the following sentence in seven provisos: “Fuel type may not be a factor in the grant selection process.” I previously vetoed this sentence in six provisos in the 2019-21 biennial transportation budget bill, Engrossed Substitute House Bill 1160, for the reasons set forth in my veto message for Section 220 of this bill. Because Section 920 amends current law to reinstate the sentence that I had previously vetoed, I again have no choice but to veto the provisos that contain this sentence and have vetoed the sentence in two other provisos.

For these reasons, I have vetoed Section 920(1), pages 175-176; Section 920(2), page 176; Section 920(3), page 176; page 177, line 13, beginning with “Fuel” and ending with “process.”; page 177, line 33, beginning with “Fuel” through line 34 ending with “process.”; and Section 920(9), page 179.

I have vetoed the following sections related to bills that did not pass the Legislature, resulting in the lapse of funding. My veto of these sections will serve to clean up these unnecessary sections of the bill.

**Section 205(2), page 18, Transportation Commission, SSB 5444, Implementing a per mile charge on electric and hybrid vehicles**

**Section 205(4), page 18, Transportation Commission, SSB 5444, Implementing a per mile charge on electric and hybrid vehicles**

For these reasons I have vetoed Sections 205(2); 205(4); 205(5); 220, page 48, line 15, beginning with “Fuel” through line 16 ending with “process.”; page 48, line 28, beginning with “Fuel” through line 29 ending with “process.”; page 48, line 32, beginning with “Fuel” through line 33 ending with “process.”; page 49, line 5, beginning with “Fuel” through line 6 ending with “process.”; page 49, line 37, beginning with “Fuel” through line 38 ending with “process.”; and page 50, line 18, beginning with “Fuel” through line 19 ending with “process.”; 309, page 70, line 35, beginning with “No” through page 71, line 2, ending with “biennium.”; and 920(1), pages 175-176; 920(2), page 176; 920(3), page 176; page 177, line 13, beginning with “Fuel” and ending with “process.”; page 177, line 33, beginning with “Fuel” through line 34 ending with “process.”; and 920(9), page 179 of Substitute Senate Bill No. 5165.

With the exception of Sections 205(2); 205(4); 205(5); 220, page 48, line 15, beginning with “Fuel” through line 16 ending with “process.”; page 48, line 28, beginning with “Fuel” through line 29 ending with “process.”; page 48, line 32, beginning with “Fuel” through line 33 ending with “process.”; page 49, line 5, beginning with “Fuel” through line 6 ending with “process.”; page 49, line 37, beginning with “Fuel” through line 38 ending with “process.”; and page 50, line 18, beginning with “Fuel” through line 19 ending with “process.”; 309, page 70, line 35, beginning with “No” through page 71, line 2, ending with “biennium.”; and 920(1), pages 175-176; 920(2), page 176; 920(3), page 176; page 177, line 13, beginning with “Fuel” and ending with “process.”; page 177, line 33, beginning with “Fuel” through line 34 ending with “process.”; and 920(9), page 179, Substitute Senate Bill No. 5165 is approved.

Respectfully submitted,



Jay Inslee  
Governor