



Legislative Report

May 6, 2010
Final Report

The legislature adjourned its regular session on March 11 and started a special session on March 15. The legislature adjourned its special session on April 12.

Notable Dates

- **June 10** – Day that bills signed by the Governor take effect.

Introduction

In January, we predicted that the legislature would meet the almost \$3 billion shortfall in the supplemental budget through a combination of cuts, elimination of some tax exemptions and some new revenue. When the legislature finally came up with a plan that included targeted cuts in agencies along with furloughs for state employees, elimination of some tax preferences, and new taxes on items such as bottled water, soda, and candy, and added a “temporary” B&O tax surcharge on some services, we were not surprised.

Despite facing the worst recession in the state in 80 years, the legislature avoided any significant restructuring of state government or spending patterns. In fact, even the reorganization of the Department of Commerce ended the session as a mere shadow of the original proposal put forth by the Department itself.

However, ports fared reasonably well in the new Olympia environment where success is measured by simply avoiding having bad things happen to you. The tax increases should minimally impact port operations. The tax preferences that were eliminated will only impact rural counties with low unemployment. MTCA funds were not raided, and in fact were restored slightly.

Additionally, ports saw a few small but not insignificant policy successes, including a little added flexibility to responding to public record requests.

There are several policy issues that received discussion but will require more attention during the interim. These include the airport encroachment issue which received a budget proviso directing WSDOT to draft guidelines during the interim. Also, prevailing wage expansion legislation was stopped but we’re committed to working on the issue during the interim, with the understanding that it will receive attention again next year. And though the local street utility tax authority was put on hold, the continuing need for local transportation project dollars ensures that this discussion will continue.

Because the supplemental budget deficit was addressed without major

changes in policy or direction, the next biennial budget challenge looms even larger. Likely to face a multi-billion dollar deficit again, the legislature's job will not be getting any easier.

LEGISLATION PERTINENT TO PORTS

Aquatic Lands

Harbor Lines: SB 6275 authorizes the Harbor Line Commission to change, relocate, or re-establish harbor lines for all harbors in the state and not just for the harbors previously listed in statute.

Aviation

Airport Encroachment: SB 6603 would have required comprehensive plans to ensure that land uses were compatible with the operation of adjacent airports and to restrict siting of incompatible uses adjacent to airports. Though it did not pass the legislature this year, there was a proviso added to the Aviation division's supplemental budget (**ESSB 6381**) that directs the division to develop guidelines setting up procedures and processes to assist counties and cities to identify land uses that may be incompatible with airports and aircraft operations.

Airport Property for Public Recreation: HB 3007 creates opportunities between municipalities and airport owners to make property available for recreational uses (such as ball fields) at less than market rates.

Boating/Marinas

DNR Rent Study: The final budget includes a proviso that calls for a study of aquatic land lease rates for private marinas and public marinas not operated by a port district. This is an issue ports will continue to watch through the interim.

Marine Fuel Taxes: For many years, the Dept. of Licensing was required to determine the amount of motor fuel tax attributed to marine fuel. Once determined, the amount of funds was used to acquire, improve and renovate state marine facilities. And, for many years, the average was about 1 percent. Rather than continuing the study, which has been conducted 12 times since 1965, **HB 1576** sets the amount at 1 percent.

Budget

After facing a \$9-billion budget shortfall during the 2009 session, legislators this year faced an additional \$3-billion deficit. They bridged the gap, in part, by passing nearly \$800 million in additional taxes. The largest chunk of new revenue came from a "temporary" B&O surcharge on service businesses such as law offices and real estate

firms. The tax package also increased “convenience store taxes” on goods such as bottled water, soda, candy, gum and cheap beer. Many of these tax increases will likely be challenged by ballot measure this fall.

Overall, budget writers respected the ports community this year. Legislators renewed their commitment to the Local Toxics Control Account (after sweeping the fund in 2009) by preserving \$38 million for remedial action grants. They also resisted the urge to implement new fees on cargo throughput, aircraft, marina leases and hydraulic permits. One issue to watch, however, is a budget proviso calling for a study of aquatic land lease rates for private marinas and public marinas not operated by a port district.

Innovation Partnership Zones (IPZ): The budget included \$250,000 in funding for a program for grants for IPZ’s to coordinate cluster and sector partnerships.

Economic Development

Data Center Tax Exemptions: A sales and use tax exemption is provided for eligible server equipment and power infrastructure for eligible computer data centers. **ESSB 6789** requires that to qualify a data center must be located in a rural county, have at least 20,000 sq feet dedicated to housing servers, and have commenced construction between April 1, 2010 and July 1, 2011. It applies to original equipment as well as replacement server equipment.

Ports and Job Training Programs: **SHB 2651** was passed by the legislature clarifying port statutes to allow a job training program currently being sponsored by the Port of Seattle to continue. After addition of an amendment agreed to by WPPA, the bill has no impact on other ports.

Reorganization of the Department of Commerce: Whittled down continually as it made its way through the legislative process, **E2SHB 2658** as it passed the legislature did clarify the department’s mission to “grow and improve jobs and facilitate innovation. However in the end only five programs were moved to other agencies. The County Public Health Assistance and the Developmental Disabilities Endowment were transferred to the Department of Health. The State Building Code Council was moved to General Administration. The Drug Prosecution Assistance program was transferred to the Criminal Justice Training Commission. And, the Energy Facility Site Evaluation Council was transferred to the Washington Utilities and Transportation Commission. The Municipal Research Council (MRC) that oversaw the contract with the Municipal Research Services Center was abolished, but the MRSC remains intact and funded, reporting directly to the Department. The measure also outlined a strategy for implementing a comprehensive energy planning process, but the governor vetoed the section that related to the legislature approving or recommending changes to the state energy policy.

Local Infrastructure Revitalization Financing (LRF): The pilot program for local governments to finance infrastructure improvements with a form of TIF which was passed last year, received a boost through additional funding of \$2.5 million. **E2SSB 6609** also provides additional flexibility to allow ports to be able to better partner with other local governments who are establishing a LRF project. As a result of this legislation, ports can, through inter-local agreement, pledge a specific amount for whatever timeline is agreed to for a LRF project.

Rural County Investment Projects: With the passage of **ESHB 3014**, the rural county sales and use tax deferral program is extended until July 1, 2020. However, only counties with an unemployment rate which is at least 20 percent above the state average for three years and community empowerment zones (CEZ) are eligible under the new language. The list of qualifying counties is developed by the Department of Revenue and is updated every two years, based on Employment Security Department data.

Environment/Natural Resources

Marine Spatial Planning: Intended to avoid conflicting oceanic uses, **SB 6350** created a framework that attempts to anticipate and avoid conflicting oceanic uses. Staff worked with the bill's sponsor to alleviate ambiguities and construct protections for marine trade within the bill. Implementation will be critical, so staff will continue to work on this issue, which received strong support from the Obama Administration and the state's Congressional delegates.

Model Toxics Control Account (MTCA): After sweeping the fund in 2009, legislators renewed their commitment to fund remedial action grants through the Local Toxics Control Account this year. The final budget preserved \$38 million in local cleanup funding. Although this represents only a portion of the fund, it is still a strong statement of commitment during tough fiscal times. Additionally, a proviso in the final budget introduced the idea of "grant funded cleanup trust" accounts which could be used to stabilize funding for long-term cleanup projects.

SMA/GMA Integration: Commemorating a milestone in state land use law, **HB 1653** integrates the Shoreline Management Act and the Growth Management Act. Passage of this landmark bill was the result of a coalition of past adversaries including ports, cities, counties, environmentalists, businesses and agricultural interests.

Governance

Eliminating Boards and Commissions: **HB 2617** initiated the elimination of several boards and commissions, including the Oil Spill Advisory Council.

WPPA Dues structure: Due to archaic statutory language that limited

dues paid to the WPPA based on assessed value of taxable property within a port district, one port was unable to pay their full dues when using the current WPPA dues calculation. That port put forward **HB 2748**, which WPPA supported, to address the glitch and make it possible for them to pay their full dues, without affecting the dues paid by any other ports.

Public Records Act (PRA): As it was signed into law, **SSB 6367** allows a public agency to respond to a public records request by providing an internet address where the specific records can be found. However, if the requester informs the agency that he or she cannot access records through the internet, the agency must still provide hard copies or allow the requester to view copies at the agency.

Land Use

High-density Urban Development: HB 2538 provides local governments with additional tools to encourage high-density urban development.

Land Use Hearings Board Timelines: Stemming from Gov. Gregoire's natural resource agency consolidation proposal, **HB 2935** consolidated several boards (including the Shoreline Hearings Board) into a single Environmental and Land Use Hearings Office. The original bill proposed a uniform, 30-day appeals timeline that would have extended the time given for shoreline appeals from 21 to 30 days. Arguing that in-water work is already uniquely constrained by limitations such as fish windows, we successfully amended the bill to preserve the existing, 21-day timeline for shoreline permit appeals.

Public Works

Alternative Public Works Procedures: HB 1690, passed finally during the special session, clarifies that all public entities may only use procedures specifically authorized under current alternative public works statutes. The measure was amended to also include language that clarified that Housing Authorities were also subject to alternative public works contracting procedures unless authorized by federal regulation as well as clarifying that they must also abide by state prevailing wage laws unless specifically preempted by federal law or regulation.

CPARB Expansion: The Governor vetoed **HB 2575** which would have expanded the membership to the Capital Projects Advisory Review Board (CPARB) to add a representative from Sound Transit. The governor vetoed the measure on the grounds that in her efforts to decrease boards and commissions she would not support any increase in the size or number of boards or commissions.

Mechanical/Electrical Subcontractors under GC/CM projects: The Capital Projects Advisory Review Board (CPARB) forwarded

legislation that, as passed will provide an alternative method for contracting with mechanical and electrical subcontractors under the GC/CM public works process. **SB 6401** will allow them to bring the subcontractors on earlier in the process and improve efficiency.

Off-site/Prefabrication: As it passed the legislature, **EHB 2805** simply requires contractors to report to the Department of L & I when they use out-of-state prefabricators for certain items for use in public works projects. The only change to affecting ports is a requirement that for projects over \$1 million, we must add language to our bid documents requiring the submission of certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington.

Transportation

Budget: The supplemental transportation budget, **ESSB 6381**, spends very little on new projects, with the exception of the \$590 million in federal passenger rail grants for improvements between Everett and Vancouver.

However, the budget does contain a proviso of particular interest to ports. The proviso directs the Joint Transportation Committee to evaluate the services of the Freight Mobility Strategic Investment Board (FMSIB), the County Road Administration Board (CRAB) and the Transportation Investment Board (TIB) and make recommendations regarding possible merger or consolidation of these agencies within an existing agency or a newly created agency. The recommendations may also include ways to restructure these grant programs, and must include a detailed implementation plan and organizational chart. The report is due by December 2010.

Transportation System Policy Goals: **SSB 6577** adds the goal of “economic vitality” to the established policy goals for the state’s transportation system. “Economic vitality” is defined as promoting and developing transportation systems that stimulate, support, and enhance the movement of people and goods to ensure a prosperous economy. It is added to the other five goals of preservation, safety, mobility, environment and stewardship.

Water

Water Rights: True to Mark Twain’s insight that “whiskey’s ‘fer drinkin’ an’ water’s ‘fer fightin’,” the feud over **SB 6267** played out until the closing hours of session. In the end, legislators passed a water rights bill that does not change water right permit fees (a major victory for farmers and other water rights holders), but calls for an in-depth study of water rights processing including fees. It also addressed options for expedited water rights processing.

Bill Tracking Report

Bill	Title	Chapter/Law	Date	Sponsor
Aviation				
SB 6275	Harbor lines	C 45 L 10	03/12/2010	Jacobsen
Budgets				
ESHB 2836	Capital supp budget 2010	Gov part veto	05/04/2010	Dunshee
ESSB 6381	Trans supp budget 2009-11	C 247 L 10	03/30/2010	Haugen
ESSB 6444	Operating supp budget 2010	Del to Gov	04/12/2010	Prentice
Economic Development				
SHB 2420	Industries/working land base	C 187 L 10	03/24/2010	Kenney
EHB 2561	Energy cost savings & jobs	Gov signed	05/04/2010	Dunshee
E2SHB 2658	Refocusing dept. of commerce	C 271 L 10	04/01/2010	Kenney
SHB 2684	Opportunity centers	C 40 L 10	03/12/2010	Kenney
ESHB 3014	Rural co. investmnt projects	C 16 L 10 E1	04/13/2010	Kessler
E2SSB 6609	Local govt infrastructure	C 164 L 10	03/22/2010	Kastama
2SSB 6679	Export finance assist center	C 166 L 10	03/22/2010	Kauffman
Environment & Natural Resources				
SSB 6350	Marine waters management	C 145 L 10	03/19/2010	Ranker
SSB 6373	Greenhouse gas emissions	C 146 L 10	03/19/2010	Ranker
SSB 6557	Brake friction material	C 147 L 10	03/19/2010	Ranker
ESSB 6658	Community solar projects	C 202 L 10	03/25/2010	Rockefeller
Governance & Elections				
E2SHB 2617	Boards and commissions	C 7 L 10 E1	03/29/2010	Driscoll
SHB 2651	Port districts/job training	C 195 L 10	03/24/2010	Upthegrove
HB 2748	Public port association dues	C 198 L 10	03/24/2010	Simpson
HB 3007	Airport property rental	C 155 L 10	03/22/2010	Upthegrove
SSB 6298	Public funds/credit unions	C 36 L 10	03/12/2010	Berkey
SSB 6344	Campaign contribution limits	C 206 L 10	03/25/2010	Fairley
SSB 6367	Agency web sites/pub records	C 69 L 10	03/15/2010	Hatfield
Land Use				
EHB 1653	Shoreline & growth mgmt acts	C 107 L 10	03/18/2010	Simpson
ESHB 2538	High-density urban developmnt	C 153 L 10	03/22/2010	Upthegrove
SHB 2935	Hearing brds/envir, land use	C 210 L 10	03/25/2010	Van De Wege
SSB 6214	Growth mgmt hearings boards	C 211 L 10	03/25/2010	Haugen
SSB 6520	William D. Ruckelshaus Ctr	C 203 L 10	03/25/2010	Hatfield
SSB 6611	Comprehensive land use plan	C 216 L 10	03/25/2010	Pridemore
Public Works				
EHB 1690	Public works projects	C 21 L 10 E1	04/23/2010	Hasegawa
HB 2575	Capital projects review brd	Gov vetoed	04/01/2010	Upthegrove
EHB 2805	Public works/off-site prefab	C 276 L 10	04/01/2010	Ormsby
SB 6401	General contractor projects	C 163 L 10	03/22/2010	Brandland
Taxes				
HB 1576	Tax on marine fuel	C 23 L 10	03/12/2010	Clibborn
2ESSB 6143	Excise tax law modifications	C 23 L 10 E1	04/23/2010	Prentice
ESSB 6789	Equipment in data centers	C 1 L 10 E1	03/25/2010	Prentice
Transportation				
SSB 6577	Transportation policy goals	C 74 L 10	03/15/2010	Kastama
Water				
E2SSB 6267	Water right processing	C 285 L 10	04/01/2010	Rockefeller