NO. 98835-8

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE LEGISLATURE,

Respondent,

v.

THE HONORABLE JAY INSLEE, in his official capacity as Governor of the State of Washington,

Appellant.

RESPONSE BRIEF OF WASHINGTON STATE LEGISLATURE

ROBERT W. FERGUSON
Attorney General

JEFFREY T. EVEN, WSBA No. 20367
Deputy Solicitor General
ZACHARY PEKELIS JONES, WSBA No. 44557
LAURYN K. FRAAS, WSBA No. 35553
Assistant Attorneys General
Office ID 91087
800 5th Ave., Ste. 2000
Seattle, WA 98104-3188
jeffrey.even@atg.wa.gov
zach.jones@atg.wa.gov
lauryn.fraas@atg.wa.gov

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF ARGUMENT 1

II. ISSUES PRESENTED 2

III. STATEMENT OF THE CASE 2

A. Legal Background: Codified Statutes Address Some, But Not All, of the Grants Addressed by Section 220 of the 2019–21 Transportation Budget 2

B. The Governor's Vetoes 8

C. Procedural History 8

IV. ARGUMENT 9

A. Standard of Review 9

B. The Governor's Veto of a Single Sentence Within Budget Provisos Exceeded His Constitutional Authority 9

1. The Constitution, to balance executive and legislative prerogatives, limits the Governor's veto authority 10

2. The Governor's vetoes of less than a whole appropriation item in Section 220 are invalid 13

a. Analysis of an item veto begins with the Legislature's structure of the bill 13

b. The fuel type condition did not constitute a whole appropriation item 16

3. The Governor's views on the constitutionality of a proviso do not expand his veto power 25

C. The Fuel Type Condition is Constitutional 26

1. The fuel type condition comports with article II, section 19 because it does not create substantive law 27

a. No substantive laws address fuel type as a factor in multimodal transportation grants 28

(i) The fuel type condition does not conflict with past substantive statutes 28

(ii) House Bill 2042 does not require fuel type to be a factor in transportation grants.....33

b. The fuel type condition does not extend past the budgetary biennium.....38

c. The fuel type condition does not define rights or eligibility for services.....40

2. The fuel type condition complied with article II, section 37 of the Washington Constitution 42

a. Section 220 is a complete act.....44

b. The fuel type condition does not "render erroneous" RCW 47.66.040 45

c. True appropriation conditions do not violate article II, section 37.....47

V. CONCLUSION 50

TABLE OF AUTHORITIES

Cases

Amalgamated Transit Union Local 587 v. State,
142 Wn.2d 183, 11 P.3d 762 (2000), *as amended* (Nov. 27, 2000),
opinion corrected, 27 P.3d 608 (2001) 42, 43, 50

ASARCO, Inc. v. Puget Sound Air Pollution Control Agency,
112 Wn.2d 314, 771 P.2d 335 (1989) 46

Black v. Cent. Puget Sound Reg'l Transit Auth.,
195 Wn.2d 198, 457 P.3d 453 (2020) 42, 43, 44, 45

Brown v. Owen,
165 Wn.2d 706, 206 P.3d 310 (2009) 15

Cascade Tel. Co. v. Tax Comm'n of Wash.,
176 Wash. 616, 30 P.2d 976 (1934) 23

Citizens for Responsible Wildlife Mgmt. v. State,
149 Wn.2d 622, 71 P.3d 644 (2003) 50

City of Tacoma v. Luvene,
118 Wn.2d 826, 827 P.2d 1374 (1992) 14

CLEAN v. State,
130 Wn.2d 782, 928 P.2d 1054 (1996) *as amended* (Jan. 13, 1997) 13

El Dia, Inc. v. Hernandez Colon,
963 F.2d 488 (1st Cir. 1992) 33

Eyman v. Wyman,
191 Wn.2d 581, 424 P.3d 1183 (2018) 21

Five Corners Family Farmers v. State,
173 Wn.2d 296, 268 P.3d 892 (2011) 47

Flanders v. Morris,
88 Wn.2d 183, 558 P.2d 769 (1977) 27, 41, 48

Hansen v. Friend,
118 Wn.2d 476, 824 P.2d 483 (1992) 31, 38

In re Salary of Juvenile Dir.,
87 Wn.2d 232, 552 P.2d 163 (1976) 26

Ortblad v. State,
85 Wn.2d 109, 530 P.2d 635 (1975) 10

Philadelphia II v. Gregoire,
128 Wn.2d 707, 911 P.2d 389 (1996) 25

Retired Pub. Emps. Council of Wash. v. Charles,
148 Wn.2d 602, 62 P.3d 470 (2003) ..... passim

Smith v. King,
106 Wn.2d 443, 722 P.2d 796 (1986) 31

State ex rel. Hamilton v. Martin,
173 Wash. 249, 23 P.2d 1 (1933) 14

State ex rel. Ruoff v. Rosellini,
55 Wn.2d 554, 348 P.2d 971 (1960) 23

State ex rel. Wash. Toll Bridge Auth. v. Yelle,
54 Wn.2d 545, 342 P.2d 588 (1959) 39, 40

Strauss v. Premera Blue Cross,
194 Wn.2d 296, 449 P.3d 640 (2019) 9

Wash. Educ. Ass'n v. State (*WEA*),
93 Wn.2d 37, 604 P.2d 950 (1980) 49

Wash. Fed'n of State Emps., AFL-CIO, Council 28 AFSCME v. State,
101 Wn.2d 536, 682 P.2d 869 (1984) 24

Wash. State Grange v. Locke,
153 Wn.2d 475, 105 P.3d 9 (2005) ..... passim

Wash. State Legis. v. Lowry,
131 Wn.2d 309, 931 P.2d 885 (1997)..... passim

Wash. State Legis. v. State,
139 Wn.2d 129, 985 P.2d 353 (1999)..... passim

Wash. State Motorcycle Dealers Ass'n v. State,
111 Wn.2d 667, 763 P.2d 442 (1988)..... 11, 12, 23, 24

Statutes

RCW 28A.58.010..... 49

RCW 28A.58.100(1)..... 49

RCW 43.19.648(2)..... 32

RCW 46.77 44

RCW 46.77.030(1)(a) 39

RCW 46.77.120 7

RCW 47.04.280(1)(e) 32

RCW 47.66 ..... passim

RCW 47.66.030 ..... 4, 7

RCW 47.66.030(1)(a) 4, 5

RCW 47.66.030(1)(b)..... 4

RCW 47.66.040 ..... passim

RCW 47.66.040(1)..... 4

RCW 47.66.040(2)..... 29

RCW 47.66.040(2)(a) 29

RCW 47.66.040(2)(b) 45, 46

RCW 47.66.070 ..... 6, 18

RCW 47.66.100 ..... 4, 5

RCW 47.66.110 5

RCW 47.66.120 ..... 5, 34

RCW 70A.15.4000..... 31

RCW 70A.15.4010..... 7

RCW 70A.15.4040..... 7

Rules

CR 56 9

RAP 2.5(a) 31, 38

Regulations

40 C.F.R. § 50.1 30

40 C.F.R. § 50.19 30

WAC 173-476-010..... 30, 46

WAC 173-476-900..... 30, 46

WAC 194-29-020(7) 32

WAC 194-29-070..... 32

Contitutional Provisions

Const. art. II, § 1 10

Const. art. II, § 19 ..... passim

Const. art. II, § 37 ..... passim

Const. art. III, § 12 ..... passim

Const. art. VIII, § 4 10

Other Authorities

Briffault, Richard,
The Item Veto in State Courts, 66 Temp. L. Rev. 1171 (1993) 25

Conference Report on Engrossed Substitute H.B. 1160, § 220, 66th Leg., Reg. Sess. (Wash. 2019), https://bit.ly/3cOYayS. 36

Crystal, Howard M., *et al.*,
Returning to Clean Air Act Fundamentals: A Renewed Call to Regulate Greenhouse Gases Under the National Ambient Air Quality Standards (NAAQS) Program,
31 Georgetown Envtl. L. Rev. 234 (2019) 31

Engrossed Second Substitute H.B. 2042,
66th Leg., Reg. Sess., (Wash. 2019) 33, 34, 35, 36

Engrossed Substitute H.B. 1160, § 220, 66th Leg., Reg. Sess. (Wash. 2019) ..... passim

H.B. 1160 35

H.B. 1160,
https://bit.ly/2O8ItIP 35

H.B. 2042 ..... passim

H.B. 2042 § 18(1)(a), https://bit.ly/3jgMZ3t 36

H.B. 2042, Bill History (Apr. 23, 2019),
https://app.leg.wa.gov/billsummary?BillNumber=2042&Initiative=false&Year=2019. 36

Laws of 1993, ch. 393, § 6(2)(b) 29

Laws of 2005, ch. 318, § 5(2)(b) 30

Laws of 2019, ch. 287 33

Laws of 2019, ch. 287, § 18 5

Laws of 2019, ch. 416 2

Nat'l Research Council,
Hidden Costs of Energy, 154,
https://www.nap.edu/read/12794/chapter/5 30

Nat'l Research Council,
Real Prospects for Energy Efficiency in the United States 121 (2010),
https://www.nap.edu/read/12621/chapter/5#123 29

Substitute H.B. 1160,
https://bit.ly/3oTe0uS 35

Tabuchi, Hiroko,
Toyota Aims to Remain King of the Hybrids,
N.Y. Times, Jan. 6, 2011,
https://www.nytimes.com/2011/01/07/business/global/07toyota.html 30

Vile, M.J.C.,
Constitutionalism and the Separation of Powers 158 (1967) 26

WSDOT, *Public Transportation - Rural Mobility and Paratransit/Special Needs Competitive Grants (Consolidated)*,
https://wsdot.wa.gov/transit/grants/public-transportation-rural-mobility-paratransit/special-needs-competitive-grants (last visited Feb. 1, 2020) 4

Wash. Att'y Gen. Op. 1987 No. 6 (1987) 47, 50

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Governor's attempt to veto a single sentence from the 2019–21 state transportation budget exceeded the limited scope of his veto power by purporting to veto less than a full appropriation item. Engrossed Substitute H.B. 1160 (ESHB 1160), § 220, 66th Leg., Reg. Sess. (Wash. 2019). The Governor may sign or veto a bill, but the Constitution denies him the power to edit a bill or change its structure. The Governor may not veto less than a full section or appropriation item. Const. art. III, § 12 (*see* Appendix A).

The Constitution strikes a careful balance between the Legislature's authority to craft the language and structure of legislative bills and the Governor's constitutionally-limited authority to veto bills in part. Voters, in fact, responded to a history of gubernatorial overreach that effectively rewrote or amended bills through abuse of the veto power, as originally described in the Constitution, by amending article III, section 12 in 1974. The Governor's single-sentence vetoes in Section 220 of ESHB 1160 harken back to the abuses the voters reined in by amending article III, section 12.

Perhaps sensing the vulnerability of this micro-veto in this action, the Governor counterclaimed that Section 220 added substantive legislation to a budget bill in violation of article II, section 19, and amended codified statutes in violation of article II, section 37. Those claims fail because

Section 220 is not "substantive law" but simply a condition on the appropriation of state dollars—a quintessential exercise of legislative authority to determine how much money to appropriate, for which purpose, and upon what conditions. The Governor's veto of that condition impermissibly intrudes into the Legislature's domain.

II. ISSUES PRESENTED

1. Did the Governor exceed his constitutional authority to veto a section or appropriation item contained in a budget bill when he vetoed a single sentence in each of seven distinct appropriation items?

2. Does a one-sentence condition on the use of appropriated moneys that does not contradict any codified statute constitute an invalid attempt at substantive legislation in a budget bill?

3. Does such a condition on appropriated moneys represent a revision or amendment of another statute requiring the legislature to set forth the text of the earlier statute in full?

III. STATEMENT OF THE CASE

A. Legal Background: Codified Statutes Address Some, But Not All, of the Grants Addressed by Section 220 of the 2019–21 Transportation Budget

The Legislature enacted the 2019–21 transportation budget at its 2019 regular session as ESHB 1160 (Laws of 2019, ch. 416). The Governor partially vetoed ESHB 1160 in a number of places, but this case

concerns only the vetoes to one section, Section 220 (Appendix B and CP 44–50). That section appropriates moneys[1] to the Washington State Department of Transportation (WSDOT) to issue grants to local governments and nonprofit agencies. ESHB 1160 § 220.

Section 220 consists of six appropriations from various accounts, followed by a series of provisos restricting the use of some portion of the appropriated moneys. Seven provisos are at issue. Each proviso dedicates the stated amounts that are appropriated in section 220 for use only in specific grant programs as described in the proviso. The Legislature included in each proviso at issue the sentence, "[f]uel type may not be a factor in the grant selection process." ESHB 1160 § 220(1)(a), (1)(b), (2), (3)(a), (5)(a), (7), and (9) (the "fuel type condition"); CP 44–50 (showing vetoed fuel type condition in bold italic). The Governor vetoed the fuel type condition each time it appeared, but did not veto any other language within each appropriation item.

The Legislature has enacted codified statutes governing some, but not all, of the grant programs addressed in Section 220. *See generally* chapter 47.66 RCW. Section 220 appropriated moneys to WSDOT, followed by 15 numbered subsections restricting spending. These

[1] The term "moneys" describes the dollar amounts of specific appropriations. That term is used in the context of budget legislation to avoid confusion with terms such as "funds" or "accounts," which describe locations where moneys are held.

subsections must be considered individually, examining both their contents and their relationship to codified statutes.

Codified statutes provide for certain grant programs for local governments. The grant programs addressed in statute begin with "regional mobility grants." RCW 47.66.030. This program provides funding to local governments for various projects, "such as intercountry connectivity service, park and ride lots, rush hour transit service, and capital projects that improve the connectivity and efficiency of our transportation system." RCW 47.66.030(1)(a). For this program, WSDOT develops a prioritized list in one fiscal biennium for funding during the following fiscal biennium. RCW 47.66.030(1)(b). The Legislature then incorporates that list by reference into the budget act. *See, e.g.*, ESHB 1160 §§ 220(4), (5), and (8).[2] WSDOT selects projects based on a competitive process, considering various transportation plans and local land use plans. RCW 47.66.040(1).

Codified law also provides for three other grant programs. The rural mobility grant program "is to aid small cities and rural areas" identified in a particular WSDOT publication. RCW 47.66.100; *see also* WSDOT, *Public Transportation - Rural Mobility and Paratransit/Special Needs*

[2] The list incorporated by reference in Section 220 is LEAP Transportation Document 2019-2 ALL PROJECTS as developed April 27, 2019 (LEAP Document), available online at: http://leap.leg.wa.gov/leap/Budget/leapdocs/CTLEAPDoc2019-2_0428.pdf. The grant recipients for all grants specified on the LEAP Document consist of public agencies; no private recipients are designated on that list.

Competitive Grants (Consolidated), https://wsdot.wa.gov/transit/grants/public-transportation-rural-mobility-paratransit/special-needs-competitive-grants (last visited Feb. 1, 2020). The law also provides for a transit coordination grant program, which expires June 30, 2021. RCW 47.66.110. The transit coordination grant program provides funding to transit systems in the central Puget Sound to pursue integration efforts. *Id.* Finally, in 2019, the Legislature established by codified statute a green transportation capital grant program, under which WSDOT distributes moneys to local transit authorities to pay for capital projects needed to reduce carbon emissions. Laws of 2019, ch. 287, § 18 (codified at RCW 47.66.120).

The grant programs addressed in codified statutes provide funding to local governments only. RCW 47.66.030(1)(a) (providing regional mobility grants "to aid local governments"); RCW 47.66.100 (providing rural mobility grants to small cities); RCW 47.66.110 (authorizing transit coordination grants to certain transit systems); RCW 47.66.120 (describing the green transportation capital grant program as assisting transit authorities). Section 220, in contrast, provides moneys both to public agencies and to private grant recipients. ESHB 1160 § 220.

Section 220 makes appropriations for several transportation grants, some pursuant to programs established by the codified statutes described above, but others not. Unlike the grant programs established in codified

statutes, the recipients of many of the Section 220 grants are not limited to local governments and include private recipients. Finally, seven of Section 220's provisos contained the fuel type condition but the others did not.

The provisos in Section 220 can be divided along two axes. First, some provisos condition spending on specific grant programs that are addressed by codified statutes, while other grant programs exist only as creatures of the budget. They direct spending consistently with the use of the treasure accounts the money comes from, but are not governed by programmatic statutes. *See* RCW 47.66.070 (multimodal transportation account). Second, and key to this case, the Legislature included the fuel type condition in some provisos (which the Governor vetoed), while others never contained the fuel type condition.

The subsections that contained the fuel type condition consist of subsections 1(a), 1(b), 2, 3, 5, 7, and 9. The remainder did not. And of the subsections that contain the fuel type clause, four fund grant programs that are unaddressed in any codified statute. ESHB 1160 §§ 1(a), 1(b) , 3, and 7.

Among those, both subsections (1)(a) and (1)(b) address special needs transportation, which is not covered by any codified statute. Subsection (3) provides moneys "solely for vanpool grant program[s.]" ESHB 1160 § 220(3). But no codified statute addresses vanpool grant programs, and unlike the grant programs covered by RCW 47.66, the

recipients of these grants may include both public and private entities. And subsection (7) limits spending of a specified amount to commute trip reduction grants and activities. ESHB 1160 § 220(7). Part of the appropriation was dedicated to continuing a pilot project conducted by the Department of Commerce that included grants to private organizations. Other funded programs included mass transit subsidies for state employees residing in two counties and for certain grant programs to private recipients governed by the Commute Trip Reduction Board. *Id.* State law requires local governments and major employers to develop commute trip reduction plans. RCW 70A.15.4010; RCW 70A.15.4040. But neither they nor any provision of RCW 47.66 provide for the commute trip reduction grants funded through Subsection 7.

Among the other subsections, those without the fuel type clause, subsections 4 and 14 provide moneys for statutory grant programs. *See* RCW 47.66.030 (regional mobility grants provided by subsection (4); and RCW 46.77.120 (green transportation capital grants covered by subsection (14). The others, like four of the subsections that contained the fuel type clause, provided moneys solely for grant programs established only by the budget. ESHB 1160 § 220(8), (10), (11), (12), (13), and (15).

B. The Governor's Vetoes

After the Legislature adopted ESHB 1160, the Governor vetoed a single sentence—the fuel type condition—each of the seven times it appeared in Section 220. *Id.* His veto message contended that the fuel type condition "is a policy change . . . to existing statutory requirements" and thus "violates Article II, Section 37, by amending those statutes indirectly and failing to set those statutes forth in full." CP 53. According to the Governor, the fuel type condition also "constrains my ability to exercise my constitutionally authorized veto powers," and "courts will intervene to prevent obvious circumvention of the veto power by the Legislature." CP 54. The Governor acknowledged that "my veto authority is generally limited to subsections or appropriation items in an appropriation bill." *Id.* But "in this very rare and unusual circumstance," the Governor wrote, "I have no choice but to veto a single sentence in several subsections to prevent a constitutional violation and to prevent a forced violation of state law." *Id.*

C. Procedural History

This case arises from the Governor's attempt to veto parts of several appropriation items in a budget act. The Washington Constitution allows the Governor to veto whole acts, whole sections of acts, or whole appropriation items within a budget act. Const. art. III, § 12.

The Legislature brought this action to challenge the validity of the Governor's vetoes of less than a full appropriation item. The Governor argued that the vetoes were valid. He also counterclaimed that the vetoed provisos were unconstitutional as (1) substantive legislation in a budget bill, and (2) amendments to chapter 47.66 RCW. CP 9–10. The superior court granted summary judgment to the Legislature, agreeing that the Governor exceeded his constitutionally-limited veto power and upholding the validity of Section 220. CP 188. This Court granted direct review.

IV. ARGUMENT

A. Standard of Review

This Court reviews summary judgment orders de novo. *Strauss v. Premera Blue Cross*, 194 Wn.2d 296, 300, 449 P.3d 640 (2019). Summary judgment is appropriate where there is no dispute as to material fact and the moving party is entitled to judgment as a matter of law. CR 56.

B. The Governor's Veto of a Single Sentence Within Budget Provisos Exceeded His Constitutional Authority

Washington's Constitution strikes a careful balance between the Legislature's prerogatives to craft and organize bills and the Governor's authority to veto all or part of legislation. The Governor's excision of only a single sentence within seven larger appropriation items in Section 220 exceeded the constitutionally-limited scope of the veto power. The Governor's rationale offered in defense of those invalid vetoes threatens the

constitutional balance between the two branches. It would, if accepted, upset the delicate balance between the prerogatives of the two branches by disregarding the constitutional rule that a Governor may veto only a whole appropriation item and not any fragment within one.

1. The Constitution, to balance executive and legislative prerogatives, limits the Governor's veto authority

The Constitution vests the authority to propose, draft, and adopt laws in the Legislature. Const. art. II, § 1. The constitutional power over appropriations rests with the Legislature. Briffault ; *Ortblad v. State*, 85 Wn.2d 109, 116, 530 P.2d 635 (1975). The Governor participates in the legislative process in a limited way, through the veto power. Const. art. III, § 12; *Wash. State Grange v. Locke (Grange)*, 153 Wn.2d 475, 486–87, 105 P.3d 9 (2005) (the Governor acts in a legislative capacity when approving or vetoing a bill).

The Constitution's text, the history of its development, and this Court's prior analysis all respond to the danger that executive overreach poses to the constitutional balance. The Governor argues that any "language conditioning how an agency may spend an appropriation" is subject to being singled out and excised from a bill by veto, without deference to the legislative bill structure. Gov. Br. at 16–17. So sweeping is this claim that it would eviscerate the Constitution's express limits on the veto power.

The Constitution restricts the Governor's power to veto less than an entire bill—his partial (or "item") veto authority. The Governor "may not object to less than an entire section, except that if the section contains one or more appropriation items he may object to any such appropriation item or items." Const. art. III, § 12. It does not empower the Governor to look within an appropriation item and veto only part of it. *Id.*

This textual balance finds its origin in Washington's experience with the item veto. Article III, section 12 originally allowed the Governor to veto either an entire bill or "one or more sections or items while approving other portions of the bill." Const. art. III, § 12 (1889). The word "item" in the original text tempted governors to mischief. Historically, governors "generally vetoed entire bills, entire numbered sections, or entire appropriation items." *Grange*, 153 Wn.2d at 487 (citing *Wash. State Motorcycle Dealers Ass'n v. State* (*Motorcycle Dealers*), 111 Wn.2d 667, 671, 763 P.2d 442 (1988)). But governors grew bolder over time. "[I]n the 1950s, 1960s, and early 1970s, governors increasingly vetoed items that were less than entire sections of non-appropriation bills." *Id.*

This boldness "peaked in about 1971-72 when the then governor exercised 149 partial vetoes on bills passed by the 42nd Legislature, 123 of which removed less than an entire section from nonappropriation bills, and 26 of which removed less than an entire item from appropriation bills."

Motorcycle Dealers, 111 Wn.2d at 671–72. In some instances "[t]his 'item veto' power [was] interpreted by . . . [g]overnors to apply to any element of a bill down to a single word." *Id.* at 672.

To reestablish the constitutional balance, the Legislature proposed, and the voters adopted, a constitutional amendment to limit the Governor's authority to partially veto a bill to "one or more sections or appropriation items." Const. art. III, § 12 (as amended by Amend. 62). Gone are the days in which the Governor could veto words, phrases, or selective passages in the guise of vetoing a section or item—that is, unless the Governor succeeds in this case.

This Court's treatment of the veto power reflects this constitutional balance. Courts "act as an impartial referee of constitutional disputes between the legislative and executive branches of government in cases of the gubernatorial veto." *Wash. State Legis. v. Lowry*, 131 Wn.2d 309, 331, 931 P.2d 885 (1997). This Court accordingly reviews the propriety of vetoes with an eye toward preserving the constitutional balance between the two branches. *Wash. State Legis. v. State* (*Locke*), 139 Wn.2d 129, 137, 985 P.2d 353 (1999) (citing *Lowry*, 131 Wn.2d at 330–31). The Governor emphasizes the reasons for granting the Governor partial veto authority in the first place (*see Lowry*, 131 Wn.2d at 316–17); but so too must the balance reflect the Legislature's interest in forestalling the type of executive overreach that the

Constitution was amended to preclude by limiting the Governor to vetoing no less than a whole appropriation item. *Id.* at 322–23.

2. The Governor's vetoes of less than a whole appropriation item in Section 220 are invalid

a. Analysis of an item veto begins with the Legislature's structure of the bill

The Governor proposes to read *Lowry* and *Locke*, the two key cases, in a way that allows the Governor to characterize even tiny passages within an appropriation item as a separate item subject to veto. That reading discards the constitutional deference due the Legislature that this Court has held is crucial to the constitutional balance.

This Court has previously described an "appropriations item" as "any budget proviso with a fiscal purpose contained in an omnibus appropriations bill." *Lowry*, 131 Wn.2d at 323. A "budget proviso" includes "full provisos to an appropriations bill, that is, full subsections of the section of an appropriations bill." *Id.* at 323 n.8. Applied to Section 220, this means that, at least at this first analytic step, each of the 15 numbered subsections within Section 220 constitute appropriation items.

The court necessarily begins with deference to the Legislature's division of a bill into sections and subsections. "We defer to the Legislature's designation of a section in a bill just as we defer to the Legislature's finding of facts." *Id.* at 320 (citing *CLEAN v. State*, 130 Wn.2d

782, 928 P.2d 1054 (1996) *as amended* (Jan. 13, 1997); *City of Tacoma v. Luvene*, 118 Wn.2d 826, 851, 827 P.2d 1374 (1992); *State ex rel. Hamilton v. Martin*, 173 Wash. 249, 257, 23 P.2d 1 (1933)). Abandoning this deference would upset the constitutional balance between legislative and executive roles in promulgating statutes. It would leave the Court to consider the Governor's purposes in wielding a veto pen in isolation, unfettered by consideration of the history of gubernatorial overreach that prompted the amendment of article III, section 12 into its present form. *See Grange*, 153 Wn.2d at 487; *see also Lowry*, 131 Wn.2d at 322 (noting the history of abusive vetoes).

The Governor dismisses reliance on *Lowry* for its deference to the Legislature. But this Court adhered to the starting proposition that the Legislature's drafting of a subsection validly encompasses a whole appropriation item even when this Court later considered whether anything less than a full subsection of an appropriations bill might constitute a separate appropriations item. *Locke*, 139 Wn.2d at 139. Indeed, in doing so the *Locke* court quoted approvingly the very footnote from *Lowry* that the Governor so readily dismisses. *Id.* (quoting *Lowry*, 131 Wn.2d at 323 n.8). The *Locke* court explained: "Although we generally defer to the Legislature as to its divisions within legislation, such deference is not absolute." *Locke*, 139 Wn.2d at 141.

Locke recognized that the treatment of something less than a whole subsection as a separate proviso might be necessary to avoid legislative drafting designed to artificially limit the Governor's item veto authority. *Locke*, 139 Wn.2d at 141. But the court retained its presumption as a starting point for the analysis that the Legislature's choice to divide a section into subsections effectively demarcated separate appropriation items, and that the Governor would bear the burden of proving that legislative drafting amounted to circumvention of the Governor's veto. *Id.*

Thus the Governor cannot exercise veto authority "in such a manner as to improperly intrude upon the Legislature's constitutional budgetary prerogatives." *Id.* at 139. To allow the Governor to excise a single sentence from an appropriation item without first finding a legislative attempt to circumvent the veto power would be to condone an invasion of the Legislature's constitutional authority to craft bills. *Id.* at 140–41; *cf. Brown v. Owen*, 165 Wn.2d 706, 720, 206 P.3d 310 (2009) (noting the Legislature's authority over the legislative process).

It follows that judicial review of the validity of a veto begins with deference to the Legislature's choice of how to structure an appropriations bill, and with the understanding that an appropriations item normally equates to a numbered subsection of a bill section. *Lowry*, 131 Wn.2d at 323 n.8; *Locke*, 139 Wn.2d at 139 (noting concern for preserving "the

Legislature's constitutional budgetary prerogatives"). That the analysis may not always end there does not yield the result the Governor seeks.

b. The fuel type condition did not constitute a whole appropriation item

The Legislature chose to divide Section 220 into 15 numbered subsections, comprising 16 provisos (because subsection (1) contains two provisos). ESHB 1160 § 220; *Lowry*, 131 Wn.2d at 323 n.8 ("The budget provisos to which the Governor's line item veto extends include full provisos to an appropriations bill, that is, full subsections of the section of an appropriations bill."). To consider whether less than a full proviso might constitute a distinct item subject to veto, the touchstone for the Court's analysis is the "desire to preserve the proper constitutional balance between the legislative and executive branches." *Locke*, 139 Wn.2d at 139.

This Court in *Locke* limited its inquiry into whether less than a full proviso constituted an item to those rare instances in which the Legislature invokes "artful legislative drafting" to substantially deprive the Governor of the fair opportunity to exercise the veto. *Id.* (quoting *Lowry*, 131 Wn.2d at 320-21). But the Court "generally defer[s] to the Legislature as to its divisions within legislation, [but] such deference is not absolute." *Id.* at 141.

The Governor's power to excise passages within subsections "is not unfettered." *Id.* at 142. "The issue then becomes what is a whole proviso?"

Id. This entails an examination of the legislative language and its operative effect, while still accounting for the Legislature's bill structure. *Id.* at 143.

Provisos are of two types, "dollar provisos" and "nondollar provisos." *Lowry*, 131 Wn.2d at 314. The consequences differ if the Governor vetoes either type of proviso. It does not follow, as the Governor suggests, that every dollar proviso in Section 220 also inevitably includes a nondollar proviso. Nor does it follow that every nondollar proviso can be further divided into multiple nondollar provisos that the Governor may single out for veto.

"Dollar provisos" are those in which "the Legislature provides that the money appropriated may be used *solely* for a particular purpose." *Lowry*, 131 Wn.2d at 324. "[I]f the Governor vetoes such proviso language, the overall agency appropriation is reduced by the amount referenced in the proviso." *Id.*

"Nondollar provisos condition an agency appropriation on the agency's taking or not taking certain action." *Id.* at 325. Courts approve nondollar provisos as "a legitimate expression of the Legislature's oversight function over agencies and programs[ ]" so long as they do not amount to "a device to revive substantive legislation that perished during a legislative session." *Id.* at 325–26; *see also Locke*, 139 Wn.2d at 141 (looking to whether vetoed language had previously been included in legislation that

failed to pass). Veto of a nondollar proviso does not reduce the agency's overall appropriation. *Lowry*, 131 Wn.2d at 330.[3]

The Governor's argument suggests to two potential errors: that (1) any subsection that both states a dollar proviso and contains additional language necessarily also includes a nondollar proviso; and (2) any subsection that contains more than one sentence necessarily contains more than one nondollar proviso.

With regard to the first point, subsections (1)(a), (1)(b), (3), and (7) each consist of only a single, unitary, dollar proviso. Those subsections each establish a grant program that exists only in the budget. ESHB 1160 § 220. They each dedicate specific dollar amounts to providing grants for objects of spending that are not addressed in codified statutes.[4] The Legislature

[3] In treating nondollar provisos as separate "items" subject to the item veto power, Washington has adopted the minority position among states with parallel constitutional provisions. *See, e.g.*, *Jubelirer v. Rendell*, 598 Pa. 16, 55, 49, 953 A.2d 514 (2008) (interpreting Pennsylvania Constitution to "prohibit[ ] the Governor from effectively vetoing portions of the language defining an appropriation without disapproving the funds with which the language is associated" and noting that "most of our sister courts have restricted 'item' for purposes of those [item veto] provisions to items of appropriation") (collecting cases); *Alaska Legis. Council v. Knowles*, 21 P.3d 367, 371, 373 & nn.38 & 39 (Alaska 2001) (defining "item[ ] in appropriations bills" as "a sum of money dedicated to a particular purpose" and noting that "[m]any courts have defined 'item' in a way that makes the amount of an appropriation an essential part of the item") (collecting cases); *see also Lowry*, 131 Wn.2d at 333 (Madsen, J., dissenting in part) ("I disagree with the majority when it concludes that a nondollar proviso included in an appropriations bill is subject to the appropriation item veto. . . . [A]n appropriation item involves a discernible sum of money, as the majority of cases deciding this issue under similar constitutional provisions have held.").

[4] The only relevant statutes are those creating the treasury accounts from the appropriations are drawn. *See* RCW 47.66.070 (creating the multimodal transportation account "for transportation purposes").

conditions some appropriations in this manner as an exercise of its budgetary authority, to direct agency spending without contradicting any codified statute. The "language . . . and operative effect" of these subsections constitute an operative whole. *Locke*, 139 Wn.2d at 143. They all begin by limiting the spending of certain sums for a particular purpose, and then describe that purpose. Because these particular objects of spending are not addressed in codified statutes, the appropriation taken alone would provide no guidance to WSDOT as to how to spend the money. For example, Section 220(1)(a) provides moneys for grants "to nonprofit providers of special needs transportation." ESHB 1160 § 1(a). Several sentences, including but not limited to the fuel type condition, follow to describe those grants. If the language that follows the first sentence were treated as a separate nondollar proviso, it would be subject to veto. This would leave only the dedication of money with no description of its purpose, and would make no sense. Accordingly, all of Section 220(1)(a) must be viewed as a single dollar proviso, not subject to division. The same is true of subsections (1)(b), (3), and (7) for the same reasons.

With regard to the second point, the Governor errs in assuming that any sentence (or perhaps any phrase or word) can be singled out as a separate nondollar proviso. That view conflicts with *Locke*, in which this Court invalidated a veto on the basis that it did not include an entire

appropriations item. *Locke*, 139 Wn.2d at 144. In that case, the Legislature divided a particular subsection into three paragraphs, (a), (b), and (c). Those paragraphs were preceded by language that characterized the entire subsection. *Id.* at 144. The language and operative effect of the language conditioning spending constituted a unity. *Id.* at 144. The *Locke* court invalidated the Governor's attempt to veto all three paragraphs, (a), (b), or (c), but by this Court's reasoning the Governor similarly could not have chosen to veto only one or two of those paragraphs.

The same is true of the subsections of Section 220 that contained the fuel type condition. Even if the Governor were correct that any of the subsections set forth more than one proviso, this would fail to establish that a single sentence could be excised from subsections that contain multiple sentences. *See* ESHB 1160 § 220(5). The operative effect of the Legislature's language is unitary, to set forth a set of spending directives. The same is true as to subsections (2) and (9), neither of which address programs that necessitated consideration of fuel type. The Governor may no more extract a single sentence from these unitary appropriation items than he could do the same thing for a single sentence in substantive legislation. Const. art. III, § 12.

The Governor complains that the Legislature's structuring of Section 220 "impeded" his veto authority. But this concern arises only if

the Legislature's structure of a bill is so contrived that it "so alters the natural sequences and divisions of a bill to circumvent the Governor's veto power." *Lowry*, 131 Wn.2d at 320. This analysis is based on the text of the bill and its effect on the constitutional division of legislative power, rather than on subjective intent in structuring a bill in a particular way. *See Eyman v. Wyman*, 191 Wn.2d 581, 603–04, 424 P.3d 1183 (2018) (lead opinion of Gordon McCloud, J.). The Governor's argument substitutes the legitimate concern with bill drafting that goes out of its way to impede the Governor's veto with the dramatically different notion that the Legislature has an affirmative obligation to maximize the Governor's veto power. It gives "too little deference to the Legislature's direction of how money may be spent." *Lowry*, 131 Wn.2d at 323. This view would effectively read out of the Constitution the limitation on the veto power to "appropriation items" by placing on the Legislature an obligation to multiply items to maximize the Governor's discretion on vetoes. Taken to its logical extreme, it would mean that every sentence in a budget bill—and perhaps parts of sentences—would constitute appropriations item, in total disregard of article III, section 12.

Neither does the structure of a budget bill broaden the deference due the Governor. The Governor makes much of the observation that the Legislature often structures budget bills by making lump sum appropriations followed by provisos that condition only some of the

moneys, leaving much of the appropriation as lump sums. *Lowry*, 131 Wn.2d at 321. The Governor argues that legislative drafting is not entitled to deference where the Legislature structures an appropriation section without "true" line items. But structuring appropriations of lump sums, only a portion of which are restricted by proviso, actually grants discretion to the executive rather than impeding it. Lump sum appropriations allow the Governor to direct agencies in more detail as to spending choices. This broadens the Governor's spending discretion, rather than diminishing it.

Moreover, all seven of the subsections that contained the fuel type condition function operationally as "true" line item appropriations. Almost all of the lump sum appropriations subjected to the fuel type condition were fully committed by the various provisos.[5] Therefore even if it made sense to more strictly scrutinize provisos for this reason, it would not apply here.

[5]Subsections (1), (3), (7), and (9) (containing the fuel type condition) condition appropriations from the multimodal transportation account—state appropriation. Subsection (8), (12), (13), (14), and (15) also condition appropriations from the same account. The conditioned dollars from those nine subsections total $124,477,000 against a total appropriation of $128,554,000 from that account. ESHB 1160 § 220. This leaves only about 3 percent of the total appropriation as an unconditioned lump sum. Subsection (7), in addition, conditions the full appropriation from the state vehicle parking account. *Id.*

Subsections (2), and (5) (containing the fuel type condition) condition appropriations from the rural mobility grant program account—state appropriation. The conditioned dollars from those two subsections total $32,223,000, which constitutes 100 percent of the appropriation from that account. *Id.* This leaves no lump sum appropriation. *Id.*

Subsection (5) (containing the fuel type condition) conditions appropriations from the regional mobility grant program account—state appropriation. Subsection (4) also conditions the appropriation from that same account. The conditioned dollars from those two subsections total $96,630,000, 100 percent of the appropriation from that account.

Finally, the Governor's argument that a single sentence may be excised as a separate nondollar proviso risks plunging this Court back into the type of subjective analysis that it rejected decades ago. This Court has acknowledged that its own precedent predating Amendment 62's revision to article III, section 12 played a role in encouraging gubernatorial overreach. *Motorcycle Dealers*, 111 Wn.2d at 671 (citing *Cascade Tel. Co. v. Tax Comm'n of Wash.*, 176 Wn. 616, 30 P.2d 976 (1934), for the proposition that "a 'section' in the original Const. art. III, § 12 would be construed to mean any portion of a bill with separate, distinct, and independent subject matter"; and *State ex rel. Ruoff v. Rosellini*, 55 Wn.2d 554, 348 P.2d 971 (1960), as "holding that an 'item' under original Const. art. III, § 12 was not limited to matters in an appropriation bill").

Prior to Amendment 62, Washington courts employed two judicially-created doctrines to check the governors' abuse of the partial veto power—the "affirmative-negative test and the separate subject test." *Grange*, 153 Wn.2d at 487–88. The Governor's theory that the fuel type condition constitutes a whole proviso bears a disturbing resemblance to these discarded approaches. "Under the affirmative-negative test, if the veto amounted to destructive or negative action preventing some provision from becoming law, then the veto was permissible, but if the veto improperly added 'a new or different result from that which the Legislature intended,'

the veto was improper." *Id.* at 488 (quoting *Motorcycle Dealers*, 111 Wn.2d at 676). "Under the separate subject test, [the] court would uphold a veto of a portion of a nonappropriation bill, regardless of the numbered sections created by the legislature, if 'the portion vetoed contained separate, distinct and independent subject matter.'" *Id.* (quoting *Motorcycle Dealers*, 111 Wn.2d at 677).

This Court abandoned both those tests after the voters approved Amendment 62. *Wash. Fed'n of State Emps.*, *v. State* (*Wash. Fed'n*), 101 Wn.2d 536, 546, 682 P.2d 869 (1984) (abandoning the affirmative-negative test); *Motorcycle Dealers*, 111 Wn.2d at 678 (abandoning the separate subject test). The Court abandoned both tests "because they proved to be 'subjective, unworkable and . . . no one could safely predict whether any given partial veto would be upheld or struck down." *Grange*, 153 Wn.2d at 488 (quoting *Motorcycle Dealers*, 111 Wn.2d at 676–77) (ellipsis by the *Grange* court). Their "use by the judiciary is an intrusion into the legislative branch, contrary to the separation of powers doctrine [citations omitted], and substitutes judicial judgment for the judgment of the legislative branch." *Wash. Fed'n*, 101 Wn.2d at 546.

The Governor's proposed test similarly risks becoming as subjective and unworkable as the now-abandoned approaches that predated Amendment 62. Only substantial deference to the Legislature's drafting

choices provides the necessary restraint to foreclose the kind of subjective analysis this Court renounced.

For these reasons, none of the Governor's vetoes of the fuel type condition withstand constitutional scrutiny. The Governor's veto of a standard appropriations condition "is an attempt to enact into law a provision the legislature never approved," and "an intrusion of executive power into the legislature's domain." Richard Briffault, *The Item Veto in State Courts*, 66 Temp. L. Rev. 1171, 1184 (1993).

3. The Governor's views on the constitutionality of a proviso do not expand his veto power

The Governor's veto message asserts that the fuel type condition constituted substantive legislation in a budget bill. CP 52–55. The Governor counterclaimed that the vetoed provisos were unconstitutional both for that reason and because it constituted amendments to chapter 47.66 RCW that were not set forth in full. CP 9–10.

But such concerns provide no independent basis for vetoing less than a whole appropriation item. *Cf. Philadelphia II v. Gregoire*, 128 Wn.2d 707, 711–13, 911 P.2d 389 (1996) (the fact that the Attorney General correctly believed that a proposed initiative would be unconstitutional if enacted did not authorize refusing to write a ballot title). Whether a statute is or is not constitutional is quintessentially a judicial question, not one that

expands the Governor's veto authority. *See In re Salary of Juvenile Dir.*, 87 Wn.2d 232, 241, 552 P.2d 163 (1976) ("Should the executive veto be insufficient to restrain the legislature then the courts would be able to declare unconstitutional acts void.") (quoting M.J.C. Vile, *Constitutionalism and the Separation of Powers* 158 (1967)); *see also Lowry*, 131 Wn.2d at 333-34 (Madsen, J., concurring in part and dissenting in part) (disagreeing with majority that nondollar proviso should be "subject to the veto power" and noting that "substantive provisos conditioning appropriations in an appropriations bill may be challenged as unconstitutional under art. II, § 19"); *see also* footnote 3, *supra*.

C. The Fuel Type Condition is Constitutional

Perhaps sensing the shaky ground on which his vetoes rest under article III, section 12, the Governor argues in two counterclaims that the fuel type condition is itself unconstitutional under sections 19 and 37 of article II. The trial court correctly concluded that the Governor's two counterclaims are without merit. This Court should affirm because the Governor fails to meet his "heavy burden of proving unconstitutionality beyond a reasonable doubt." *Retired Pub. Emps. Council of Wash. v. Charles*, 148 Wn.2d 602, 623, 62 P.3d 470 (2003).

Both the Governor's counterclaims depend on his assertion that the fuel type condition "would have changed" prior substantive statutes by

"preclud[ing] consideration of" a factor WSDOT "is otherwise required to consider in awarding the [Section 220] grants." Gov. Br. at 41. But the fuel type condition comports with both article II, section 19 and section 37 because it is not "substantive law" and does not conflict with any permanent statute. It is instead a simple condition on the appropriation of money—a paradigmatic exercise of legislative authority.

1. The fuel type condition comports with article II, section 19 because it does not create substantive law

The trial court correctly concluded that the fuel type condition does not violate article II, section 19 of the Washington Constitution because it is "not substantive legislation or law and does not directly conflict with existing statutes." CP 196. Under article II, section 19, an "appropriations bill may not constitutionally be used for the enactment of substantive law which is in conflict with the general law as codified." *Flanders v. Morris*, 88 Wn.2d 183, 191, 558 P.2d 769 (1977). Since this principle derives from article II, section 19, the ultimate issue is whether the legislation violates the single-subject or subject-in-title rules of that section. Whether it is "substantive law" must be construed within that context, not as a freestanding rule about "substantive legislation."

This Court has provided "three indicators that a part of a budget bill may be substantive law: (1) it has been treated in a separate substantive bill

in the past; (2) its duration extends beyond the two-year time period of the budget; and (3) the policy defines rights or eligibility for services." *Retired Pub. Emps. Council*, 148 Wn.2d at 629 (citing *Locke*, 139 Wn.2d at 147). None of those factors indicate that the fuel type condition is substantive law.

a. No substantive laws address fuel type as a factor in multimodal transportation grants

The Governor's argument hinges almost entirely on the first factor, whether the fuel-type condition "has been treated in a separate substantive bill in the past." *Locke*, 139 Wn.2 at 147. Invoking three previously enacted statutes and one enacted contemporaneously with Section 220, the Governor contends that the "fuel type restriction would have changed" each of those statutes by "preclud[ing] consideration of an important component" (*i.e.*, fuel type) "that [WSDOT] is otherwise required to consider in awarding the grants." Gov. Br. at 41. That assertion is demonstrably false, as even a cursory review of the statutes he cites reveals.

(i) The fuel type condition does not conflict with past substantive statutes

RCW 47.66.040, the statute that directly governs multimodal transportation project selection, does not mandate fuel type as a criterion. Rather, it requires WSDOT to "consider[ ]" ten broad criteria "in selecting programs and projects," none of which mentions the type of fuel utilized in

a given project. RCW 47.66.040(2).[6] The Governor points to three of those criteria as somehow mandating consideration of fuel type—"energy efficiency," "federal and state air quality requirements," and the objectives of the "the commute trip reduction act." Gov. Gr. at 40. In fact, none of those criteria has the effect the Governor ascribes to it.

First, the broadest criterion, "energy efficiency issues," does not compel WSDOT to consider fuel type in awarding multimodal transportation grants. Fuel type is but one factor that may influence the energy efficiency of a project. Others include the mode of transportation employed (*e.g.*, rail versus truck), vehicle weight, passenger occupancy, and any number of demand factors. *See, e.g.*, Nat'l Research Council, *Real Prospects for Energy Efficiency in the United States* 121 (2010), https://www.nap.edu/read/12621/chapter/5#123. The Legislature could not possibly have intended RCW 47.66.040(2) to command WSDOT to weigh every single factor related to "energy efficiency issues" before awarding any multimodal transportation grant. *See* Laws of 1993, ch. 393, § 6(2)(b).

[6] The first five criteria concern "[o]bjectives" of various regulatory programs: the (1) "growth management act," (2) "high capacity transportation act," (3) "commute trip reduction act," (4) transportation demand management programs; (5) "federal and state air quality requirements," and (6) "federal Americans with Disabilities Act and related state accessibility requirements." RCW 47.66.040(2)(a). The final four criteria reflect broader policy goals: (7) "[e]nhancing the efficiency of regional corridors in moving people among jurisdictions and modes of transportation," (8) "energy efficiency issues," (9) "reducing delay for people and goods," and (10) "freight and goods movement as related to economic development, regional significance, rural isolation, the leveraging of other funds, and safety and security issues." RCW 47.66.040(2)(b).

The 1993 Legislature was unlikely to have thought about fuel type at all, given that it was not until 1997 that the first mass-produced hybrid car came to market. *See* Hiroko Tabuchi, *Toyota Aims to Remain King of the Hybrids*, N.Y. Times, Jan. 6, 2011, https://www.nytimes.com/2011/01/07/business/global/07toyota.html. And it is highly doubtful in 2005—the last time the statue was amended, Laws of 2005, ch. 318, § 5(2)(b)—that the Legislature saw fuel type specifically as a mandatory consideration given the overwhelming predominance of petroleum in transportation projects. Even as late as 2009, petroleum accounted for more than 95 percent of energy use in the transportation sector. Nat'l Research Council, *Hidden Costs of Energy*, 154, https://www.nap.edu/read/12794/chapter/5. The Governor gives no reason to suppose that by requiring consideration of "energy efficiency issues," the Legislature meant to compel WSDOT's consideration of fuel type. Moreover, the statutory use of the discretionary word "consider" clearly conveys something other than a single mandatory outcome when taking these factors into account.

Second, neither federal nor state "air quality requirements" dictate that certain fuel types be preferred, much less required, in transportation projects. *See, e.g.*, 40 C.F.R. §§ 50.1-.19 (National Ambient Air Quality Standards (NAAQS)); WAC 173-476-010 to -900 (establishing state ambient air quality standards). The federal NAAQS program seeks to

reduce "levels of the existing listed criteria air pollutants—lead, ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and particulate matter"—but the U.S. Environmental Protection Agency (EPA) has never promulgated a NAAQS for greenhouse gases associated with transportation fuels. *See* Howard M. Crystal *et al.*, *Returning to Clean Air Act Fundamentals: A Renewed Call to Regulate Greenhouse Gases Under the National Ambient Air Quality Standards (NAAQS) Program*, 31 Georgetown Envtl. L. Rev. 234, 235 (2019). Although the fuel-type condition prevents WSDOT from rejecting a grant applicant based on the type of fuel called for in the project, it does nothing to preclude the agency from rejecting the project because of applicable air quality requirements.

Third, the Governor mentions the Commute Trip Reduction Act in passing, *see* Gov. Br. at 42, but he does not explain how this traffic-reduction statute creates any tension with the fuel type condition. *See* RCW 70A.15.4000. Nor did he make any such argument in the trial court. *See* CP 87 (mentioning "energy efficiency issues" and "air quality requirements" criteria but not "commute trip reduction act" criterion). This undeveloped argument raised for the first time on appeal is therefore forfeited. *See* RAP 2.5(a); *Hansen v. Friend*, 118 Wn.2d 476, 485, 824 P.2d 483 (1992); *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986).

Because RCW 47.66 does not require fuel type to be a criterion in the grant selection process, the Governor searches for another statute that might support his "substantive law" argument. None does.

For one, RCW 43.19.648(2) requires local governments to transition "publicly owned vessels, vehicles, and construction equipment" to "electricity or biofuel," but only "to the extent determined practicable by" Department of Commerce regulations. *See* Gov. Br. at 41. Those regulations clarify that "practicability" is to be "determined by multiple dynamic factors including cost and availability of fuels and vehicles, changes in fueling infrastructure, operations, maintenance, technical feasibility, implementation costs, and other factors." WAC 194-29-020(7). The Commerce rules permit local governments to rely on gasoline-fueled vehicles where impracticable to switch. *See* WAC 194-29-070. And nothing in the regulations or the statute requires electric or biofuel to be used in all multimodal transportation projects, many of which do not even involve "publicly owned vessels, vehicles, and construction equipment," RCW 43.19.648(2). The fuel type condition is consistent with statute.

It is also compatible with RCW 47.04.280(1)(e), *see* Gov. Br. at 41, which states that one of the Legislature's six "policy goals" for the "transportation system" is to "enhance Washington's quality of life through transportation investments that promote energy conservation, enhance

healthy communities, and protect the environment." That general and hortatory provision does not codify as substantive law a specific mandate that fuel type be considered in awarding transportation grants. *See, e.g.*, *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 496 (1st Cir. 1992) ("It is elementary that these hortatory pronouncements do not, in themselves, work an alteration in the [parties'] rights, duties, or obligations."). This statute, too, lacks the broad reach the Governor attributes to it.

Far from adding any new grant criterion to those provided in prior substantive statutes, Section 220 merely prohibits an administrative agency from adopting a new one. Section 220 thus conditions the spending of money, rather than creating any new substantive law.

(ii) House Bill 2042 does not require fuel type to be a factor in transportation grants

The Governor also fails to demonstrate any conflict between the fuel type condition and House Bill 2042, which the Legislature adopted in the same session as Section 220. *See* Gov. Br. 41 (citing Engrossed Second Substitute H.B. 2042, 66th Leg., Reg. Sess., ch. 287 §§ 1, 18 (Wash. 2019)). That bill instructed WSDOT to create a new capital grant program "to assist transit authorities in reducing the carbon output of their fleets." E2SHB 2042 § 1 (Laws of 2019, ch. 287). The Governor asserts that House Bill 2042 "address[ed] th[e] same policy in substantive legislation" as the

fuel type condition, Gov. Br. at 41, suggesting (as he explicitly argued in the trial court) that House Bill 2042 "embraced the polar opposite policy position," CP 88. But that assertion is impossible to square with the texts and drafting histories of these two interconnected pieces of legislation.

First, House Bill 2042's green transportation capital grant program ("green grant program") is a separate and distinct program from Section 220 grants subject to the fuel type condition. The green grant program specifically funds transit authorities' "capital projects" designed "to reduce the carbon intensity of the Washington transportation system," such as "[e]lectrification of vehicle fleets" and "construction of charging and fueling stations." E2SHB 2042 § 18(1)(A) (codified at RCW 47.66.120). That discrete green grant program is distinct from the seven Section 220 transportation grants subject to the fuel type condition, some of which do not even go to transit authorities at all. *See, e.g.*, ESHB 1160 § 220(1)(a) (grant for "nonprofit providers of special needs transportation"). Only subsection 14 conditioned moneys for the green grant program, and that subsection did not contain the fuel type condition. ESHB 1160 § 220(14). It is entirely reasonable for the Legislature to promote green energy projects through the House Bill 2042 program while simultaneously directing that certain *other* grants be awarded without consideration of fuel type. The

Governor gives no reason to graft House Bill 2042's specific green energy purpose onto altogether separate transportation grants.

Second, the Governor's notion that the fuel type condition somehow thwarted legislative policy embodied in House Bill 2042 overlooks the legislative process that led to each bill's enactment. In fact, both statutes emerged together after multiple amendments and bicameral compromise.

The fuel type condition was added by the House Transportation Committee Chairman's proposed substitute bill, which the Committee adopted as Substitute H.B. 1160.[7] After adoption by the full House and amendment on the floor, the bill went to the Senate.[8] The Senate adopted its own version, which did not contain the fuel type condition.[9] The transportation budget then went to conference committee.

Meanwhile, House Bill 2042 was introduced in the House. Among its sponsors were Transportation Committee Chairman Jake Fey and Representative Vandana Slatter, both of whom were also sponsors of the transportation budget bill, HB 1160.[10] The section of original House Bill 2042 establishing the green grant program directed WSDOT to establish the program and submit a "list of all projects requesting funding

[7] *See* SHB 1160, https://bit.ly/3oTe0uS.
[8] ESHB 1160, https://bit.ly/36Kvkfl.
[9] ESHB 1160, S. amend., https://bit.ly/3tqJtYX.
[10] HB 1160, https://bit.ly/2O8ItIP.

to the legislature," but did not itself appropriate any money to fund the program.[11] The House adopted House Bill 2042 with unrelated amendments as E2SHB 2042.[12] The Senate passed E2SHB 2042 with additional amendments to other sections and one amendment to Section 18.[13] The Senate amendment specified that the program was "[s]ubject to the availability of amounts appropriated for this specific purpose through the 2023-2024 biennium."[14] The House adopted the Senate version of the bill.[15]

That same day, the conference committee on the transportation budget issued what would become the final, enacted bill.[16] That final bill restored the fuel type sentence to seven appropriation items in Section 220. But it also increased Section 220 grants by more than $15 million above the Senate version.[17] The final transportation budget also established a key link

[11] HB 2042, § 21, Feb. 14, 2019, https://bit.ly/3jfzAZq.

[12] HB 2042, Bill History (Apr. 23, 2019), https://app.leg.wa.gov/billsummary?BillNumber=2042&Initiative=false&Year=2019.

[13] *Id.* (Apr. 28, 2019).

[14] HB 2042 § 18(1)(a), https://bit.ly/3jgMZ3t; *see also id.* at 40.

[15] HB 2042, Bill History (Apr. 28, 2019) https://app.leg.wa.gov/billsummary?BillNumber=2042&Year=2019&Initiative=false.

[16] ESHB 1160, https://bit.ly/3cOYayS.

[17] As it originally passed the House, section 220 appropriated $262,133,000 to WSDOT for transportation grants. ESHB 1160 § 220, https://bit.ly/3jjKiOt. The version that passed the Senate appropriated only $237,652,000 for transportation grants, and included no funding for the green transportation program established by E2SHB 2042. Engrossed Senate Striking Amendment S3472.E, § 220, https://bit.ly/3tqJtYX. The conference report, which both houses adopted as the final bill, appropriated a total of $261,865,000 to WSDOT for transportation grants, slightly less than the version that first passed the House but about $15 million more than the version that first passed the Senate. Conference Report S4615.3, § 220, https://bit.ly/3cOYayS. That final version included $12,000,000 for the green transportation capital grants program under E2SHB 2042. *Id.* § 220(14).

between the budget and House Bill 2042 by appropriating $12 million solely for its green transportation capital grant program, without the fuel type condition.[18]

Finally, and perhaps most importantly, the final transportation budget bill made $10 million in appropriations for multimodal transportation funding *contingent* on the enactment of House Bill 2042.[19] In other words, the Governor's characterization of the bills as at cross-purposes is incongruent, given this dynamic legislative interplay. What emerges from the interwoven legislative history is not the logrolling story that the Governor tries to tell. *See* Gov. Br. at 44. Rather, it is one of complex legislative compromise—a bargain the Governor's veto unraveled in one fell swoop. The final transportation budget advanced green transportation projects by funding House Bill 2042's green grants in the amount of $12 million, while at the same time precluding WSDOT's consideration of fuel type in awarding certain other grants. As adopted by the Legislature, Section 220 did not countermand any "substantive law" embodied in House Bill 2042. To the contrary, Section 220 funded the very green grant program that House Bill 2042 created.

---

[18] ESHB 1160 § 220(14).

[19] *Id.* § 214. Section 220's first subsection provides: "If . . . [House Bill 2042] is not enacted by June 30, 2019, [a total of $10 million] of the amount in the subsection lapses." ESHB 1160 § 220(1)(a), (b).

In sum, neither House Bill 2042 nor the other statutes invoked by the Governor embody substantive law that Section 220's fuel type condition in any way displaced.

b. The fuel type condition does not extend past the budgetary biennium

The second section 19 factor clearly undercuts the Governor's assertion that the fuel type sentence is substantive law. The transportation budget's appropriations and attached conditions—including the fuel-type condition—do not extend beyond the two-year time period of the budget. This would seem obvious from the plain text, as ESHB 1160 expressly sets forth the state transportation budget for the "2019-2021 Fiscal Biennium," that is, the "period ending June 30, 2021." ESHB 1160 at 1, § 1(1).

According to the Governor, the fuel type condition "demonstrates an intent to extend beyond the current biennium." Gov. Br. at 42. The Governor did not make this argument below, raising it for the first time on appeal. *Cf.* CP 88–89 (no argument on second or third factors); CP 133 (same). So it, too, is forfeited. *See* RAP 2.5(a); *Hansen*, 118 Wn.2d at 485.

The Governor's new argument also lacks merit. That the Legislature may have "include[d] the same grant selection criteria in [successive] years of transportation budget bills" is of no moment. Gov. Br. at 42. The key question is whether the challenged provision "creates a rule of action, a

segment of substantive law, to be effective far beyond the period of the biennium." *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 54 Wn.2d 545, 551, 342 P.2d 588, 592 (1959). The fuel type condition does not; it pertains to appropriations made in the transportation budget of 2019–2021 only.

The Governor points to a single sentence in subsection 5(a) that references the 2021–2023 biennium: "Additionally, when allocating funding for the 2021–2023 biennium, no more than thirty percent of the total grant program may directly benefit or support one grantee." ESHB 1160 § 220(5)(a). Given this express reference to a subsequent biennium, the Governor might have a point were it not for two critical facts: (1) that sentence addresses actions by WSDOT during the 2019–21 biennium to propose grants to be funded in 2021–23 (*see* RCW 46.77.030(1)(a)); and (2) that is not the sentence he vetoed. The fuel type condition appears later in the subsection and does not purport to constrain WSDOT beyond 2021.

Finally, the Governor claims that the fuel type condition in that same single subsection (ESHB 1160 § 220(5)(a)) "can only be interpreted as an attempt to set policy and direct actions for future biennia" because the grantee "projects had already been identified prior to session." Gov. Br. at 43. But section 220(5) both imposes an additional eligibility criterion for the current biennium, *see* ESHB 1160 § 220(5)(a), and requires WSDOT to

"review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress," *id.* § 220(5)(a). If not, WSDOT may "terminate[ ]" the grant and reallocate the money to other designated projects. *Id.* For this subsection, then, the fuel type condition logically applies only to any additional dollars that may be reallocated from terminated projects. It does not reflect an attempt to extend the fuel type condition beyond 2021.

c. The fuel type condition does not define rights or eligibility for services

As for the third factor under article II, section 19, the fuel type condition does not "define[ ] rights or eligibility for services." *Locke*, 139 Wn.2d at 147. No grant applicant has a "right" to transportation dollars. And while the fuel type condition precludes WSDOT from considering one factor (fuel type) in the grant selection process, it does not address recipient "eligibility" at all, let alone "define[ ]" it. Rather, it "merely . . . qualif[ies] the . . . appropriation" by "creat[ing] conditions to its disbursement." *Yelle*, 54 Wn.2d 551–52 (internal quotation marks and citation omitted).

Again for the first time on appeal, the Governor argues that the fuel type condition "necessarily shapes the eligibility for prospective grantees." Gov. Br. at 43. And again, the Governor's forfeited argument misses the mark. The question is not whether a budgetary condition

"shapes . . . eligibility," but whether it "*defines* rights or eligibility for services." *Locke*, 139 Wn.2 at 147 (emphasis added). As explained above, eliminating one potential factor from WSDOT's consideration does not "define[ ] . . . eligibility" for Section 220 grants. *Id.* Nor can such grants be considered "rights" or "services" of any kind. *Compare Retired Pub. Emps. Council*, 148 Wn.2d at 631 (budget bill changing state retirement system contribution rates was not substantive law because state employees "do not have specific pension rights in the physical system and individual statutes in effect when they began work"), *with Flanders*, 88 Wn.2d at 184–85 (an appropriations bill that altered the eligibility requirement for receipt of public assistance was substantive law). Transportation grants are simply state moneys provided to local governments and private actors at the Legislature's discretion. *See id.* at 191 (recognizing that "the legislature must place conditions and limitations on the expenditures of monies" in appropriations bills).

Thus, the conditions the Legislature placed on multimodal transportation grants, including the fuel type condition, are not substantive law but part of the normal, appropriations process. By vetoing one of those conditions, it is the Governor who upset the delicate bicameral compromise in Section 220 and rewrote the budget to impose his own policy preferences. Because the Governor has "failed to show beyond a reasonable doubt that"

Section 220 contains "substantive law that was incapable of passing on its own merits," the Court should affirm the trial court's grant of summary judgment to the Legislature on the Governor's article II, section 19 counterclaim. *Retired Pub. Emps. Council*, 148 Wn.2d at 630.

2. The fuel type condition complied with article II, section 37 of the Washington Constitution

The trial court also correctly rejected the Governor's article II, section 37 counterclaim. That constitutional provision "prohibits enactment of legislation that revises or amends other acts without setting them forth at full length." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 192, 11 P.3d 762 (2000), *as amended* (Nov. 27, 2000), *opinion corrected*, 27 P.3d 608 (2001). The purpose of the provision is "to protect against the fraud and deceit of legislators." *Retired Pub. Emps. Council*, 148 Wn.2d at 634. Because "nearly every legislative act of a general nature changes or modifies some existing statute," *Black v. Cent. Puget Sound Reg'l Transit Auth.*, 195 Wn.2d 198, 206, 457 P.3d 453 (2020) (alterations, internal quotation marks, and citations omitted), "section 37 does not apply in all cases where a new act, in effect, amends another," *Retired Pub. Emps. Council*, 148 Wn.2d at 632 (internal quotation marks and citation omitted). "It is therefore not enough to ask whether one reading an existing statute would be unaware that a new enactment changes it." *Id.* Rather, the critical

inquiry is whether the new enactment "caus[es] confusion, ambiguity and conflict in respect to existing law." *Amalgamated Transit Union Local 587*, 142 Wn.2d at 257.

This Court applies a two-prong test to challenges under section 37. The first prong asks whether the new enactment is a "complete act, such that the rights or duties under the statute can be understood without referring to another statute." *Black*, 195 Wn.2d at 205 (internal quotation marks and citations omitted). The second prong considers "whether a straightforward determination of the scope of rights or duties under the existing statutes would be rendered erroneous by the new enactment." *Id.* (alterations, quotation marks, and citations omitted).

Although the Governor correctly recites this test, he misapplies each prong to the fuel type condition. *See* Gov. Br. at 45. The condition is valid under section 37 because Section 220 is a "complete act" and does not "render[] erroneous" a reading of RCW 47.66.040. *Black*, 195 Wn.2d at 205 (internal quotation marks and citations omitted). Section 220, including the fuel type condition, merely conditions money appropriated in the transportation budget, and does not "revise[] or amend[]" RCW 47.66 or any other substantive statute. *Amalgamated Transit Union Local 587*, 142 Wn.2d at 192.

a. Section 220 is a complete act

First, Section 220 is a "complete act, such that the rights or duties under the statute can be understood without referring to another statute." *Black*, 195 Wn.2d at 205 (internal quotation marks and citations omitted). Neither the transportation grant program statutes nor the transportation budget creates any "rights" on behalf of potential grantees. *See, e.g.*, *Retired Pub. Emps. Council*, 148 Wn.2d at 631 ("Retirees and Employees therefore do not have specific pension rights in the physical [retirement] system and individual statutes in effect when they began work."). The only duties Section 220 imposes are on WSDOT—namely, to spend no more than the amounts appropriated solely for the purposes specified and subject to various conditions set forth therein. All that is "readily ascertainable" from Section 220's "text alone." *Black*, 195 Wn.2d at 207.

The Governor claims that the fuel type condition "purport[s] to set forth additional criteria the Department is to consider" but without "referenc[ing] RCW 47.66." Gov. Br. at 47. That is untrue. The fuel type condition does not compel WSDOT to consider any "additional criteria." Rather, it *prohibits* the agency from adopting a single criterion that is *not* otherwise statutorily required. And as previously described, the programs established in subsections (1)(a), (1)(b), (3) and (7) are not subject to RCW 46.77 at all. *See supra* at 6–7. To the extent WSDOT must consider

the "legislative backdrop of RCW 47.66" to award and administer the grants, Gov. Br. at 47, that is a routine part of any agency's grant-making process and has nothing to do with the fuel type condition itself. The fuel type condition "does not require the reader to search unreferenced statutes to discover the full effect of" the transportation budget. *Black*, 195 Wn.2d at 213. Section 220 is a complete act.

b. The fuel type condition does not "render erroneous" RCW 47.66.040

Second, the fuel type condition "does not render a straightforward determination of the scope of rights or duties under any other existing statutes erroneous." *Id.* at 212. As explained above, the transportation budget affects no one's statutory rights. And to the extent it imposes duties on WSDOT, they do not "render . . . erroneous" any statutory obligations the agency has in administering multimodal transportation grant programs.

Echoing his earlier "substantive law" argument, the Governor contends that the fuel type condition violates section 37 because RCW 47.66.040 "requires [WSDOT] to consider 'state air quality requirements' and 'energy efficiency issues' in selecting and awarding multimodal transportation grants." Gov. Br. at 47 (quoting RCW 47.66.040(2)(a)- (b)). But the fuel type condition does not "render . . . erroneous" that statutory mandate. The fuel type condition in no

way conflicts with state air quality requirements, which do not mandate any specific fuel type in vehicles. *See* WAC 173-476-010 to -900. And the statutory requirement that WSDOT *consider* "energy efficiency *issues*," RCW 47.66.040(2)(b) (emphasis added), can hardly be construed as an inflexible command to base its final decisions on each and every factor implicating energy efficiency in awarding transportation grants. The agency certainly has discretion to determine how and to what extent to take energy efficiency into account. *See generally ASARCO, Inc. v. Puget Sound Air Pollution Control Agency*, 112 Wn.2d 314, 322, 771 P.2d 335, 339 (1989) ("An agency may fill in the gaps of a statutory framework if necessary to effectuate a general statutory scheme."). The fuel type condition does not prevent WSDOT from considering "energy efficiency issues" generally—nor even fuel efficiency specifically—in the award of transportation grants. It merely requires, as a condition on the appropriation of moneys, that WSDOT not single out "fuel type" as a specific "factor in the grant selection process." That is perfectly consistent with the statutory factors set forth in RCW 47.66.040.

It is exceedingly unlikely that the fuel type condition—or any other of the many appropriations conditions in Section 220—would cause WSDOT "grant administrators and applicants" any "confusion," as the Governor claims. Gov. Br. at 48. WSDOT certainly knows how to

administer its own grant programs, including where in the RCWs to look for any statutory provisions relevant thereto. As for multimodal transportation grant "applicants," which are predominantly local governments and transit agencies, these sophisticated entities with legal departments and expert staffs are likely to be highly familiar with the regulatory framework under which they pursue state money annually. In any event, "the second prong cannot be answered in isolation because complete acts may well result in a reader of an existing statute being unaware there is new law on the subject." *Retired Pub. Emps. Council*, 148 Wn.2d at 632. The fuel type condition meets the second prong because it at most supplements, rather than "renders erroneous," any preexisting statutory rights or duties.

c. True appropriation conditions do not violate article II, section 37

Finally, as the Attorney General has explained in a formal opinion regarding article II, section 37, "the Legislature is generally free, when making appropriations in an appropriation act, to limit the use to which the money appropriated can be put by state agencies and institutions." Wash. Att'y Gen. Op. 1987 No. 6 at 7 (1987).[20] The Governor's theory of section 37 would doom practically any appropriations condition pertaining

[20] Attorney General's Opinions are generally entitled to great weight. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011).

to a program covered by a codified statute. Take Section 220 itself. Although the Governor challenges only the fuel type condition, Section 220 contains any number of other conditions that would apparently violate section 37 under the Governor's sweeping theory because they "set forth additional criteria the Department is to consider" in awarding grants. Gov. Br. at 47. Nothing in this Court's precedents supports construing section 37 so broadly as to invalidate routine conditions in appropriations bills.

To the contrary, the Governor cites no case in which this Court invalidated an appropriation condition under section 37. In *Flanders*, the Legislature had used an appropriation bill to impose a minimum age requirement for receipt of public assistance benefits, while the "codified public assistance laws" contained no such requirement. *Flanders*, 88 Wn.2d at 184. This Court unanimously struck down the provision because it "add[ed] restrictions to public assistance eligibility" and thus "defines . . . rights" to public assistance. *Id.* at 188. At the same time, the court recognized that the legislature may constitutionally "place conditions and limitations on the expenditures of monies." *Id.* at 191.

The fuel type condition is just such a limitation. It in no way changes the eligibility requirements for multimodal transportation grants or otherwise amends the statute authorizing WSDOT to make them. Unlike the categorical restriction of general assistance eligibility in *Flanders*, no

transportation project eligible for a grant under RCW 47.66.040 would be ineligible on account of the fuel type condition.

In *Wash. Educ. Ass'n v. State* (*WEA*), 93 Wn.2d 37, 604 P.2d 950, 951 (1980), the challenged budget provision was even more prescriptive than in *Flanders*. The *WEA* court struck down an appropriation provision that prohibited any school district from "grant[ing] . . . any percentage salary increase" above certain thresholds "from any fund source whatsoever." *WEA*, 93 Wn.2d at 38. That sweeping restriction came into direct conflict with the "existing statutory scheme" governing school districts' powers, which included the "power to spend funds, from whatever source, as they choose on teacher salaries." *Id.* at 41 (citing RCW 28A.58.010, .100(1)). Because the appropriation measure barred districts from exercising that power, it "purport[ed] to amend . . . [their] authority" under an earlier statute that was "not fully set forth" therein. *Id.* This Court unanimously concluded that the appropriation bill was both not a "complete act" and "rendered erroneous" a "straightforward determination of the scope of rights or duties" under earlier law. *Id.*

The fuel type condition creates no such conflict. Its requirement that WSDOT eschew fuel type as a factor in grant selection is in perfect harmony with the mandatory criteria of RCW 47.66.040, for fuel type is not among those general criteria. It would be one thing if the transportation budget had

appropriated money on the condition that WSDOT not consider "energy efficiency issues" (or any other statutorily mandated factor) at all. But the fuel type condition has no such amendatory effect. The interplay of the transportation budget with the substantive grant program statutes is inherent in all appropriations measures. *See Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 640-41, 71 P.3d 644 (2003). The most that can be said of the fuel type condition is that it supplements RCW 47.66.040. But "[c]omplete acts" that merely "supplement prior acts or sections thereof without repealing them . . . are excepted from section 37." *Id.* at 642. That is exactly what Section 220 does, and for that reason it is constitutional.

In sum, the fuel type condition is a standard "condition upon an appropriation of" money granted by WSDOT. Wash. Att'y Gen. Op. 1987 No. 6 at 6. It is "not . . . an attempt to limit or amend the statutory authority granted to" WSDOT "in permanent statutes" but rather an exercise of the Legislature's appropriation power. *Id.* at 10. The fuel type condition is both "complete in itself" and plainly "disclose[s] the act's impact on existing laws." *Amalgamated Transit Union Local 587*, 142 Wn.2d at 246.

V. CONCLUSION

For the reasons above, the Legislature respectfully requests that the Court affirm the trial court's entry of summary judgment.

RESPECTFULLY SUBMITTED this 5th day of February 2021.

ROBERT W. FERGUSON
Attorney General

s/ Jeffrey T. Even
JEFFREY T. EVEN, WSBA 20367
Deputy Solicitor General
ZACHARY PEKELIS JONES, WSBA 44557
LAURYN K. FRAAS, WSBA 35553
Assistant Attorneys General
Office ID 91087
800 5th Ave., Ste. 2000
Seattle, WA 98104-3188
jeffrey.even@atg.wa.gov
zach.jones@atg.wa.gov
lauryn.fraas@atg.wa.gov
Attorneys for Respondent Washington State Legislature

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification to all counsel of record.

DATED this 5th day of February 2021, at Seattle, Washington.

s/ Jeffrey T. Even
JEFFREY T. EVEN
WSBA No. 20367
Assistant Attorney General

SOLICITOR GENERAL OFFICE

February 05, 2021 - 4:30 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98835-8
Appellate Court Case Title:	Washington State Legislature v. Jay Inslee
Superior Court Case Number:	19-2-04397-8

The following documents have been uploaded:

- 988358_Briefs_20210205162412SC612450_8616.pdf
  This File Contains:
  Briefs - Attorneys Response Brief
  The Original File Name was LegislatureResponse.pdf

A copy of the uploaded files will be sent to:

- Jacob.Giem@atg.wa.gov
- alicia.young@atg.wa.gov
- grace.summers@atg.wa.gov
- lauryn.fraas@atg.wa.gov
- tera.heintz@atg.wa.gov
- zach.jones@atg.wa.gov

Comments:

Sender Name: Kristin Jensen - Email: kristinj@atg.wa.gov
Filing on Behalf of: Jeffrey Todd Even - Email: jeffrey.even@atg.wa.gov (Alternate Email: Jeff.Even@atg.wa.gov)

Address:
PO Box 40100
1125 Washington St SE
Olympia, WA, 98504-0100
Phone: (360) 753-4111

Note: The Filing Id is 20210205162412SC612450