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SUPREME COURT
STATE OF WASHINGTON
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No. 78637-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE FARM BUREAU FEDERATION, et
al.,

Respondents,

v.

CHRISTINE GREGOIRE, Governor of the State of
Washington, et al.,

Appellants.

BRIEF OF *AMICUS CURIAE*
ASSOCIATION OF WASHINGTON BUSINESS

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I. INTRODUCTION

The Association of Washington Business (“AWB”), the principal proponent of the general business community in Washington State, files this brief to address just one of the several issues the parties have presented to the Court: is what is commonly called the voter approval provision of Initiative 601 (“I-601”), RCW 43.135.035(2)(a), unconstitutional? AWB urges the court, should it reach this question,¹ to answer “No.”

The reason why is not otherwise presented by the parties in their briefing, although the arguments and issues related to constitutionality are raised by the parties.²

¹ AWB acknowledges Appellants’ contention, *State’s Opening Br.* at 22-23, 40, that the court need not reach the constitutional issue to determine the merits of this appeal. AWB would go further and argue this Court *should not* reach the constitutional issue because, as discussed *infra*, this case, including the validity and applicability of the voter approval provision, can be resolved on purely statutory grounds.

² Because the issue and arguments as to the constitutionality of the voter approval requirement of I-601 are raised by the parties, AWB as *amicus curiae* is not raising a new issue or new arguments of the kind disfavored by this Court. *See, e.g., Sundquist Homes, Inc. v. Snohomish County Public Utility Dist. No. 1*, 140 Wn.2d 403, 413, 997 P.2d 915 (2000). AWB is, however, offering an alternative explanation to underlie arguments addressed by the parties; this should not be confused with *amicus* raising a new issue or new argument.

The Legislature specifically re-enacted *and intended itself to be bound* by the voter approval provision *in 2005*, during the same session and the same biennium in which the disputed revenue and appropriation measures were passed. Laws of 2005, ch. 72 (Sub. Senate Bill 6078) § 2 (“RCW 43.135.035 . . . are each re-enacted and amended to read as follows[.]”). The Legislature, once subjecting itself to the voter approval requirement, simply failed to abide by it. There is no constitutional infirmity.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

AWB, founded in 1904, is the state’s oldest and largest general business membership organization. AWB represents over 6,000 large and small member businesses engaged in all aspects of commerce in Washington and who employ over 650,000 Washingtonians.

AWB was involved in the drafting, campaign, and voter approval of I-601, Laws of 1994 ch. 2, and has long worked

with the Legislature and successive governors to defend the core elements of that initiative, including the voter approval requirement. AWB and its members have been a major stakeholder, pro or con, in the amendments to I-601 that have taken place since 1993.³ Additionally, AWB took an active role in the 2005 session of the Legislature, opposing the disputed elements of the revenue and appropriation bills, Laws of 2005, ch. 514 (ESHB 2314) (revenue) and Laws of 2005, ch. 518 (ESSB 6090) (appropriations). The issues presented in this case, especially the question of I-601's constitutionality, go directly to these central AWB interests.

III. ISSUE OF CONCERN TO *AMICUS CURIAE*

Should the Court decide the question, is the voter approval provision of Initiative 601 unconstitutional? *Cf. State's Opening Br.* at 5 (Issue 4); *Resp'ts' Opening Br.* at 5-6 (Issue 5).

³ For a helpful guide to I-601 amendments, *see* Expenditure Limit Committee, *Chronology of Initiative 601 Amendments*, available at <http://www.elc.wa.gov/sub/chronology.pdf> (last visited Oct. 25, 2006).

IV. STATEMENT OF THE CASE

AWB adopts, as if set forth herein, the Statement of the Case provided by Respondents. *Resp'ts' Opening Br.* at 6-21.

V. ARGUMENT

The Appellants correctly state the maxim that the Court will not decide an issue on constitutional grounds if the issue can be resolved on statutory grounds. *See, e.g., Tunstall v. Bergeson*, 141 Wn.2d 201, 210, 5 P.3d 691 (2000). Here, there is a purely statutory basis, not thus far elaborated by either party, for resolving the validity of the voter approval provision of I-601.

A. THE COURT SHOULD RESOLVE THIS CASE ON PURELY STATUTORY GROUNDS.

The parties discuss the re-enactment and re-affirmation of I-601 that occurred in Referendum 49, Laws of 1994 ch. 321, codified at RCW 43.135.080(1), but dispute the effect or relevance of this re-enactment. Yet the parties do not mention that, as a specific part of the budgeting process that gave rise to

this lawsuit, the Legislature again clearly re-enacted RCW 43.135.035 in 2005, limited it to the 2005-07 budgeting process, bound itself to it, and yet failed to abide by it. There can be no dispute about the effect or relevance of this specific, timely re-enactment of the voter approval requirement.

1. RCW 43.135.035(2)(a) was re-enacted in 2005 in SSB 6078, making it applicable to the 2005 budget process.

In their discussion of legislative action during the 2005 session, *Resp'ts' Opening Br.* at 14-17, Respondents point out the adoption of ESHB 2314 and the dissimulative triangulation of funds between ESHB 2314 (revenue) and ESSB 6090 (appropriations) with the intent to artificially raise the expenditure limit.

Yet as part of this same budgeting activity, the Legislature also enacted Laws of 2005 ch. 72 (SSB 6078), “an act relating to state expenditure limitations.”⁴ This Court is familiar with SSB 6078 because of the litigation over whether

⁴ For the Court’s ease of reference, SSB 6078 (2005) is appended hereto as Exhibit A.

sections 1 and 2 of the act constituted an “emergency” so as to remove the provisions from the scope of the peoples’ power of referendum. *See Washington State Farm Bureau Fed. v. Reed*, 154 Wn.2d 668, 115 P.3d 301 (2005) (holding SSB 6078 not subject to referendum pursuant to act’s “emergency clause”).

Section 2 of SSB 6078, using specific legislative terms of art, “reenacted and amended” RCW 43.135.035. The amendment to section .035 was largely in subsection (1), changing the existing supermajority requirement for raising revenue thus:

However, for legislation enacted between the effective date of this 2005 act and June 30, 2007, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken with the approval of a majority of members elected to each house, so long as state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

SSB 6078, § 2(1). To be sure, the primary intent behind this amendment to subsection (1) was to reduce the number of affirmative votes needed to pass ESHB 2314 in order to raise

the revenue contained in that bill and necessary to implement ESSB 6090, the 2005-07 biennial operations budget.⁵

But another effect is evident from the plain language of the amendment to subsection (1). The amendatory language, for the purposes of the 2005-07 biennium, made section .035 a statute addressing not just “any” legislation but a statute that addresses legislation during the 2005-07 biennium only. That intent is *confirmed* by section 5 of SSB 6078, which amends section .035 to strike the 2005-07 language, an amendment that, under new section 7 of SSB 6078, becomes effective on July 1, 2007, the first day of the next fiscal biennium.

2. The re-enactment of the voter approval provision in SSB 6078 limited its current effect to the 2005-07 biennium.

By specifically referencing the revenue and appropriations legislation considered in 2005 for the 2005-07

⁵ Indeed, section 2 was subject to the “emergency clause” such that it became effective when it was signed by the Governor, on April 18, 2005, in the midst of the legislative session, rather than 90 days following the legislative session. See Exhibit A at 1 (Certificate of Enrollment).

biennium, this amendment to subsection (1) thereby had a limiting effect on the re-enactment of subsection (2) of section .035, which is the voter approval requirement.

Indeed, the 2005 re-enactment of the voter approval requirement stated, as it has always stated, “[i]f the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. . . .”. SSB 6078 § 2(2)(a).

What is critical for the Court to see in this 2005 re-enactment is that the words “legislative action under subsection (1) of this section” and “the action of the legislature” in subsection (2)(a) *now* refer, by virtue of the amendment to subsection (1) and limited to the 2005-07 biennium, to the

actions of the legislature taken with respect to revenue during the ensuing 2005-07 biennium.⁶

Accordingly, the proper interpretation of section .035 in light of the 2005 re-enactment and amendment is this: If the actions of the Legislature taken during the 2005-07 biennium -- in other words, the adoption of the biennial budget in 2005 -- results in expenditures in excess of the expenditure limit, then the expenditures shall not take effect unless put to a vote of the people. As Appellants point out, “[o]f course, the legislature did not refer ESHB 2314 to the people.” *State’s Reply Br. and Resp. to Cross-Appeal* at 27.

In sum, the Legislature (a) passed a law, SSB 6078, that freshly re-enacted the RCW 43.135.035 requirement that tax-raising measures which exceed the spending limitation of I-601

⁶ It is also critical for the Court to understand that the biennial budget is adopted in the first year of the ensuing biennium, here 2005, and may or may not be supplemented by additional operating expenditures in the second year of the biennium. *See* RCW 43.88.080; 43.88.020(7). So the clear focus of subsection (1) of section .035 is on bills passed in 2005 as part of the biennial budget and the revenue necessary to implement it.

go into effect only after a vote of the people; (b) in the same bill, limited the effect of .035 to the current 2005-07 biennium; (c) passed another measure, ESHB 2314, that raised revenue in excess of the spending limit; and (d) failed to submit ESHB 2314 to a vote of the people. In the same year that the Legislature re-enacted and bound itself to the spending limit and voter approval provisions, it also violated them.

Accordingly, should the Court agree with the trial court as to the improper triangulation of funds and the violation of the 2005 spending limit in ESHB 2314, it need only apply the express terms of SSB 6078 to the legislative action to resolve the matter on purely statutory grounds.

B. SHOULD THE COURT REACH THE CONSTITUTIONAL ISSUE, IT SHOULD DISTINGUISH *AMALGAMATED TRANSIT* AND UPHOLD THE VOTER APPROVAL PROVISION OF I-601.

Should the Court go further and reach the constitutional issue, many of the same arguments related to the re-enactment and limitation of the voter approval requirement in SSB 6078

(2005) also apply to distinguish the provision from section 2 of I-695, found invalid in *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000).

1. Appellants bear the heavy burden to show the voter approval provision is unconstitutional beyond a reasonable doubt.

First, because it is not addressed by the parties, it is important to call to the Court's attention the very important standard of review that applies to constitutional challenges. Parties challenging the constitutionality of a statute, here the Appellants, bear a "heavy burden." *Washington State Grange v. Locke*, 153 Wn.2d 475, 486, 105 P.3d 9 (2005). Statutes, whether enacted by the people or the Legislature, are presumed to be constitutional. *Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998). That presumption means that the party challenging the statute's constitutionality must establish its unconstitutionality beyond a reasonable doubt. *Amalgamated Transit*, 142 Wn.2d at 205. As noted, this is a "heavy burden" because "argument and research [must] show that there is no

reasonable doubt that the statute violates the constitution.” *Id.*
(citing *Belas v. Kiga*, 135 Wn.2d 913, 920, 959 P.2d 1037
(1998)).

2. Appellants must show that the voter approval provision cannot be constitutionally applied in any instance as it is currently written.

Moreover, Appellants style their attack on the constitutionality of the voter approval provision as a facial challenge, apparently arguing that after *Amalgamated Transit*, there can be no constitutional application of the voter approval provision. In that regard, then, the additional burden is on Appellants to “show that there is no set of circumstances in which the statute, *as currently written*, can be constitutionally applied.” *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004) (emphasis added).

The practical effect of this standard of review is that if there is *any* reasonable doubt whether the voter approval provision of I-601 differs from the I-695 provision found wanting in *Amalgamated Transit*, then this Court must uphold

it. Furthermore, if there is any instance where the statute, as currently written, can be applied constitutionally, then the Appellants' facial challenge must fail.

3. The voter approval provision of I-601 differs significantly from the voter approval requirement of I-695.

The key provisions of *Amalgamated Transit* that must be distinguished are the Court's statements that "[n]either the legislature nor the people acting in their legislative capacity has the power to condition a state law solely on voter approval . . .," *Amalgamated Transit*, 142 Wn.2d at 241 and, with respect to bills referred to the people by the Legislature, "[p]lainly it can do so, not, however, as conditional legislation, but rather through the referendum process set forth in article II, section 1(b)." *Id.* at 242.

It is critical to keep these statements in context. As the Court recently explained in *Larson*, indeed in a decision authored by the same justice of this Court, the *Amalgamated Transit* holding relates to a provision involving "all future tax

increases”. *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 759, 131 P.3d 892 (2006) (Madsen, J.) (citing *Amalgamated Transit*, 142 Wn.2d at 191). Indeed, the *Larson* court explained:

The court held that section 2 of Initiative 695, which required voter approval of all future tax legislation passed by the legislature but did not require a petition of the voters as to the specific piece of legislation, nor referral by the legislature, established a referendum procedure that was not allowed under the state constitution.

Larson, 156 Wn.2d at 759.⁷

a. RCW 43.135.035(2)(a) does not concern “all future taxes.”

First, the voter approval provision of I-601 does not concern “all future tax increases.” As it is currently written and operative, in light of SSB 6078, RCW 43.135.035(2)(a) applies only to revenue measures in excess of the state expenditure limit adopted during the 2005-07 biennium, the same period

⁷ Presumably the clause “referral by the legislature” as it appears in the electronic version of the decision available on Westlaw is meant to say “referral by the legislature” as that is the part of the process envisioned by Const. art. II, § 1(b).

during which this version of the voter approval provision is currently operative.

In this sense the voter approval provision of I-601 is in an entirely different statutory context than what concerned the Court in *Amalgamated Transit*. Rather than having the voters through initiative attempt to condition all future tax increases on voter approval without regard to the constitutional referendum procedures or the circumstances surrounding the future revenue measures, in this instance, the Legislature specifically re-enacted in SSB 6078 the voter approval provision as part of the same comprehensive statutory scheme that allowed it to pass the revenue measures in the first place. The Legislature saw fit to limit itself, through re-enactment of RCW 43.135.035 in 2005 to the procedures of that section for purposes of the 2005-07 budget. For whatever reason, while adopting the 2005-07 budget, the Legislature did not refer the revenue measure, ESHB 2314, to the people, and thus came out of compliance with it. This case isn't about the people

attempting to hold the Legislature accountable to conditional procedures at some uncertain date in the future. This case is about the Legislature choosing to bind itself to a procedure that it in turn fails to follow. The role of the Court, then, is to hold the Legislature accountable to its own duly enacted (or re-enacted, in this case) procedures. It is not to wonder, as it had to in *Amalgamated Transit*, about the constitutional scope of an initiative purporting to condition “all future tax increases” on a vote of the people.

b. The voter approval provision of I-601 complies with the requirements of Const. art. II, § 1(b) for referenda to the people by the Legislature.

Second, section 2 of Initiative 695 struck down in *Amalgamated Transit* simply said “[a]ny tax increase imposed by the state shall require voter approval.” Laws of 2000, ch. 1, § (2)(1). This blunt approach, as the Court correctly noticed, made no account for the referendum process of Const. art. II, § 1(b).

By contrast, the voter approval provision of RCW 43.135.035(2)(a) is in no way inconsistent with the constitutional power and process of the Legislature to refer measures under Const. art. II, § 1(b). All the constitution says about legislative referrals is that a referendum:

may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted . . .

Const. art. II, § 1(b) (emphasis added). In other words, the Legislature may order a referendum “as other bills are enacted.” Unlike the limitation on the peoples’ power of referendum, which requires a threshold petition number equal to four percent of the votes cast for governor at the last gubernatorial election, the constitutional power of the Legislature to refer its own actions to the people is rather plenary.

And so in accordance with this provision, RCW 43.135.035(2)(a), as re-enacted by the 2005 Legislature,

contemplates that the Legislature will refer an applicable revenue measure to the people. Indeed, section .035(2)(b) specifies the ballot title such a referendum would take.

This is not unlike the process in other instances of referenda originated by the Legislature. By way of example, the last bill referred by the Legislature for a popular vote was Referendum 51, Laws of 2002, ch. 202 (ESHB 2969), dealing with an increased gas tax for transportation improvements. Section 601 of ESHB 2969 declared the ballot title for the measure and section 602 declared that the act would be null and void unless approved by the voters.⁸ RCW 43.135.035(2)(a) and (b), read together, do not contemplate an altogether different process for referral of bills to the people when such bills are revenue measures resulting in a violation of the spending limit. In 2005 particularly, RCW 43.135.035(2)(a) contemplated a referral of bills specific to the 2005-07 fiscal biennium that resulted in a violation of the spending limit. This

comprehensive scheme is a far cry from the “[a]ny tax increase imposed by the state shall require voter approval” provision of I-695. As such it should be distinguished and upheld.

4. The voter approval provision can be constitutionally applied to the 2005 revenue measure insofar as it exceeds the spending limit.

Lastly, this is a facial challenge. Appellants must show there is no instance in which the voter approval provision as currently written and operative could be applied constitutionally. As the foregoing discussion should illustrate, the currently written and currently operative RCW 43.135.035 applies to legislation during the 2005-07 fiscal biennium under SSB 6078. As such it does not attempt to make any future tax increase conditional legislation. It is limited in scope and duration. It does not therefore suffer from the infirmity of I-695 identified in *Amalgamated Transit* and explained in *Larson*. It can be applied constitutionally to ESHB 2314; the

⁸ The relevant portions of Referendum 51 are appended hereto as Exhibit B.

Legislature simply decided not to. But since it can be constitutionally applied as currently written, it cannot be facially invalidated.

VI. CONCLUSION

For the reasons set forth above, the Court should decline to reach the constitutional issue presented; and if it does, it should uphold the voter approval provision of I-601.

Respectfully submitted this 27th day of October, 2006.

ASSOCIATION OF
WASHINGTON BUSINESS



Kristopher I. Tefft
WSBA #29366
Attorney for *Amicus Curiae*

EXHIBIT A

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6078

Chapter 72, Laws of 2005

59th Legislature
2005 Regular Session

STATE EXPENDITURE LIMITS

EFFECTIVE DATE: 7/01/07 - Except sections 1 and 2, which become effective 4/18/05.

Passed by the Senate April 16, 2005
YEAS 25 NAYS 16

BRAD OWEN

President of the Senate

Passed by the House April 15, 2005
YEAS 50 NAYS 43

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6078** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved April 18, 2005.

FILED

April 18, 2005 - 1:48 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6078

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by
Senators Regala and Kohl-Welles)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to state expenditure limitations; amending RCW
2 43.135.010, 43.135.025, 43.135.035, and 43.135.045; reenacting and
3 amending RCW 43.135.035; creating a new section; providing an effective
4 date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the citizens of
7 the state benefit from a state expenditure limit that ensures that the
8 state budget operates with stability and predictability, while
9 encouraging the establishment of budget priorities and a periodic
10 review of state programs and the delivery of state services. A state
11 expenditure limit can prevent budgeting crises that can occur because
12 of increased spending levels during periods of revenue surplus followed
13 by drastic reductions in state services in lean years. The citizens of
14 the state are best served by an expenditure limit that keeps pace with
15 the growth in the state's economy yet ensures budget discipline and
16 taxpayer protection. For these reasons, the legislature finds that
17 modifications to the state expenditure limit, after ten years of
18 experience following the initial implementation of Initiative Measure
19 No. 601, will recognize the economic productivity of the state's

1 economy and better balance the needs of the citizens for essential
2 government services with the obligation of the legislature for strict
3 spending accountability and protection of its taxpayers.

4 **Sec. 2.** RCW 43.135.035 and 2001 c 3 s 8 and 2000 2nd sp.s. c 2 s
5 2 are each reenacted and amended to read as follows:

6 (1) After July 1, 1995, any action or combination of actions by the
7 legislature that raises state revenue or requires revenue-neutral tax
8 shifts may be taken only if approved by a two-thirds vote of each
9 house, and then only if state expenditures in any fiscal year,
10 including the new revenue, will not exceed the state expenditure limits
11 established under this chapter. However, for legislation enacted
12 between the effective date of this 2005 act and June 30, 2007, any
13 action or combination of actions by the legislature that raises state
14 revenue or requires revenue-neutral tax shifts may be taken with the
15 approval of a majority of members elected to each house, so long as
16 state expenditures in any fiscal year, including the new revenue, will
17 not exceed the state expenditure limits established under this chapter.

18 (2)(a) If the legislative action under subsection (1) of this
19 section will result in expenditures in excess of the state expenditure
20 limit, then the action of the legislature shall not take effect until
21 approved by a vote of the people at a November general election. The
22 (~~office of financial management~~) state expenditure limit committee
23 shall adjust the state expenditure limit by the amount of additional
24 revenue approved by the voters under this section. This adjustment
25 shall not exceed the amount of revenue generated by the legislative
26 action during the first full fiscal year in which it is in effect. The
27 state expenditure limit shall be adjusted downward upon expiration or
28 repeal of the legislative action.

29 (b) The ballot title for any vote of the people required under this
30 section shall be substantially as follows:

31 "Shall taxes be imposed on in order to allow a
32 spending increase above last year's authorized spending adjusted for
33 inflation and population increases?"

34 (3)(a) The state expenditure limit may be exceeded upon declaration
35 of an emergency for a period not to exceed twenty-four months by a law
36 approved by a two-thirds vote of each house of the legislature and
37 signed by the governor. The law shall set forth the nature of the

1 emergency, which is limited to natural disasters that require immediate
2 government action to alleviate human suffering and provide humanitarian
3 assistance. The state expenditure limit may be exceeded for no more
4 than twenty-four months following the declaration of the emergency and
5 only for the purposes contained in the emergency declaration.

6 (b) Additional taxes required for an emergency under this section
7 may be imposed only until thirty days following the next general
8 election, unless an extension is approved at that general election.
9 The additional taxes shall expire upon expiration of the declaration of
10 emergency. The legislature shall not impose additional taxes for
11 emergency purposes under this subsection unless funds in the education
12 construction fund have been exhausted.

13 (c) The state or any political subdivision of the state shall not
14 impose any tax on intangible property listed in RCW 84.36.070 as that
15 statute exists on January 1, 1993.

16 (4) If the cost of any state program or function is shifted from
17 the state general fund on or after January 1, 1993, to another source
18 of funding, or if moneys are transferred from the state general fund to
19 another fund or account, the state expenditure limit committee, acting
20 pursuant to RCW 43.135.025(5), shall lower the state expenditure limit
21 to reflect the shift. For the purposes of this section, a transfer of
22 money from the state general fund to another fund or account includes
23 any state legislative action taken (~~(after July 1, 2000,)~~) that has the
24 effect of reducing revenues from a particular source, where such
25 revenues would otherwise be deposited into the state general fund,
26 while increasing the revenues from that particular source to another
27 state or local government account. This subsection does not apply to
28 the dedication or use of lottery revenues under RCW 67.70.240(3) or
29 property taxes under RCW 84.52.068, in support of education or
30 education expenditures.

31 (5) If the cost of any state program or function is shifted to the
32 state general fund on or after January 1, 2000, from another source of
33 funding, or if moneys are transferred to the state general fund from
34 another fund or account, the state expenditure limit committee, acting
35 pursuant to RCW 43.135.025(5), shall increase the state expenditure
36 limit to reflect the shift.

1 **Sec. 3.** RCW 43.135.010 and 1994 c 2 s 1 are each amended to read
2 as follows:

3 The people of the state of Washington hereby find and declare:

4 (1) The continuing increases in our state tax burden and the
5 corresponding growth of state government is contrary to the interest of
6 the people of the state of Washington.

7 (2) It is necessary to limit the rate of growth of state government
8 while assuring adequate funding of essential services, including basic
9 education as defined by the legislature.

10 (3) The current budgetary system in the state of Washington lacks
11 stability. The system encourages crisis budgeting and results in
12 cutbacks during lean years and overspending during surplus years.

13 (4) It is therefore the intent of this chapter to:

14 (a) Establish a limit on state expenditures that will assure that
15 the growth rate of state expenditures does not exceed the growth rate
16 (~~of inflation and state population~~) in Washington personal income;

17 (b) Assure that local governments are provided funds adequate to
18 render those services deemed essential by their citizens;

19 (c) Assure that the state does not impose responsibility on local
20 governments for new programs or increased levels of service under
21 existing programs unless the costs thereof are paid by the state;

22 (d) Provide for adjustment of the limit when costs of a program are
23 transferred between the state and another political entity;

24 (e) Establish a procedure for exceeding this limit in emergency
25 situations;

26 (f) Provide for voter approval of tax increases; and

27 (g) Avoid overfunding and underfunding state programs by providing
28 stability, consistency, and long-range planning.

29 **Sec. 4.** RCW 43.135.025 and 2000 2nd sp.s. c 2 s 1 are each amended
30 to read as follows:

31 (1) The state shall not expend from the general fund and related
32 funds during any fiscal year state moneys in excess of the state
33 expenditure limit established under this chapter.

34 (2) Except pursuant to a declaration of emergency under RCW
35 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b),
36 the state treasurer shall not issue or redeem any check, warrant, or
37 voucher that will result in a state general fund or related fund

1 expenditure for any fiscal year in excess of the state expenditure
2 limit established under this chapter. A violation of this subsection
3 constitutes a violation of RCW 43.88.290 and shall subject the state
4 treasurer to the penalties provided in RCW 43.88.300.

5 (3) The state expenditure limit for any fiscal year shall be the
6 previous fiscal year's state expenditure limit increased by a
7 percentage rate that equals the fiscal growth factor.

8 (4) For purposes of computing the state expenditure limit for the
9 fiscal year beginning July 1, ~~((1995))~~ 2007, the phrase "the previous
10 fiscal year's state expenditure limit" means the total state
11 expenditures from the state general fund and related funds, not
12 including federal funds, for the fiscal year beginning July 1, ~~((1989))~~
13 2006, plus the fiscal growth factor. ~~((This calculation is then
14 computed for the state expenditure limit for fiscal years 1992, 1993,
15 1994, and 1995, and as required under RCW 43.135.035(4).))~~

16 (5) A state expenditure limit committee is established for the
17 purpose of determining and adjusting the state expenditure limit as
18 provided in this chapter. The members of the state expenditure limit
19 committee are the director of financial management, the attorney
20 general or the attorney general's designee, and the chairs and ranking
21 minority members of the senate committee on ways and means and the
22 house of representatives committee on appropriations. All actions of
23 the state expenditure limit committee taken pursuant to this chapter
24 require an affirmative vote of at least ~~((three))~~ four members.

25 (6) Each November, the state expenditure limit committee shall
26 adjust the expenditure limit for the preceding fiscal year based on
27 actual expenditures and known changes in the fiscal growth factor and
28 then project an expenditure limit for the next two fiscal years. If,
29 by November 30th, the state expenditure limit committee has not adopted
30 the expenditure limit adjustment and projected expenditure limit as
31 provided in subsection (5) of this section, the attorney general or his
32 or her designee shall adjust or project the expenditure limit, as
33 necessary.

34 (7) "Fiscal growth factor" means the average ~~((of the sum of
35 inflation and population change for each of the prior three fiscal
36 years))~~ growth in state personal income for the prior ten fiscal years.

37 (8) ~~((("Inflation" means the percentage change in the implicit price~~

1 ~~deflator for the United States for each fiscal year as published by the~~
2 ~~federal bureau of labor statistics.~~

3 ~~(9) "Population change" means the percentage change in state~~
4 ~~population for each fiscal year as reported by the office of financial~~
5 ~~management.)~~ "General fund" means the state general fund.

6 (9) "Related fund" means the health services account, violence
7 reduction and drug enforcement account, public safety and education
8 account, water quality account, or student achievement fund.

9 **Sec. 5.** RCW 43.135.035 and 2005 c ... s 2 (section 2 of this act)
10 are each amended to read as follows:

11 (1) After July 1, 1995, any action or combination of actions by the
12 legislature that raises state revenue or requires revenue-neutral tax
13 shifts may be taken only if approved by a two- thirds vote of each
14 house, and then only if state expenditures in any fiscal year,
15 including the new revenue, will not exceed the state expenditure limits
16 established under this chapter. ~~((However, for legislation enacted~~
17 ~~between the effective date of this 2005 act and June 30, 2007, any~~
18 ~~action or combination of actions by the legislature that raises state~~
19 ~~revenue or requires revenue-neutral tax shifts may be taken with the~~
20 ~~approval of a majority of members elected to each house, so long as~~
21 ~~state expenditures in any fiscal year, including the new revenue, will~~
22 ~~not exceed the state expenditure limits established under this~~
23 ~~chapter.))~~

24 (2)(a) If the legislative action under subsection (1) of this
25 section will result in expenditures in excess of the state expenditure
26 limit, then the action of the legislature shall not take effect until
27 approved by a vote of the people at a November general election. The
28 state expenditure limit committee shall adjust the state expenditure
29 limit by the amount of additional revenue approved by the voters under
30 this section. This adjustment shall not exceed the amount of revenue
31 generated by the legislative action during the first full fiscal year
32 in which it is in effect. The state expenditure limit shall be
33 adjusted downward upon expiration or repeal of the legislative action.

34 (b) The ballot title for any vote of the people required under this
35 section shall be substantially as follows:

36 "Shall taxes be imposed on in order to allow a

1 spending increase above last year's authorized spending adjusted for
2 (~~(inflation and population increases)~~) personal income growth?"

3 (3)(a) The state expenditure limit may be exceeded upon declaration
4 of an emergency for a period not to exceed twenty-four months by a law
5 approved by a two-thirds vote of each house of the legislature and
6 signed by the governor. The law shall set forth the nature of the
7 emergency, which is limited to natural disasters that require immediate
8 government action to alleviate human suffering and provide humanitarian
9 assistance. The state expenditure limit may be exceeded for no more
10 than twenty-four months following the declaration of the emergency and
11 only for the purposes contained in the emergency declaration.

12 (b) Additional taxes required for an emergency under this section
13 may be imposed only until thirty days following the next general
14 election, unless an extension is approved at that general election.
15 The additional taxes shall expire upon expiration of the declaration of
16 emergency. The legislature shall not impose additional taxes for
17 emergency purposes under this subsection unless funds in the education
18 construction fund have been exhausted.

19 (c) The state or any political subdivision of the state shall not
20 impose any tax on intangible property listed in RCW 84.36.070 as that
21 statute exists on January 1, 1993.

22 (4) If the cost of any state program or function is shifted from
23 the state general fund (~~(on or after January 1, 1993,)~~) or a related
24 fund to another source of funding, or if moneys are transferred from
25 the state general fund or a related fund to another fund or account,
26 the state expenditure limit committee, acting pursuant to RCW
27 43.135.025(5), shall lower the state expenditure limit to reflect the
28 shift. For the purposes of this section, a transfer of money from the
29 state general fund or a related fund to another fund or account
30 includes any state legislative action taken that has the effect of
31 reducing revenues from a particular source, where such revenues would
32 otherwise be deposited into the state general fund or a related fund,
33 while increasing the revenues from that particular source to another
34 state or local government account. This subsection does not apply to
35 the dedication or use of lottery revenues under RCW 67.70.240(3) or
36 property taxes under RCW 84.52.068, in support of education or
37 education expenditures.

1 (5) If the cost of any state program or function (~~(is)~~) and the
2 ongoing revenue necessary to fund the program or function are shifted
3 to the state general fund or a related fund on or after January 1,
4 (~~(2000, from another source of funding, or if moneys are transferred to~~
5 ~~the state general fund from another fund or account)) 2007, the state~~
6 expenditure limit committee, acting pursuant to RCW 43.135.025(5),
7 shall increase the state expenditure limit to reflect the shift.

8 **Sec. 6.** RCW 43.135.045 and 2003 1st sp.s. c 25 s 920 are each
9 amended to read as follows:

10 (1) The emergency reserve fund is established in the state
11 treasury. During each fiscal year, the state treasurer shall (~~deposit~~
12 ~~in the emergency reserve fund all general fund state revenues in~~
13 ~~excess of the state expenditure limit for that fiscal year. Deposits))
14 transfer an amount from the state general fund to the emergency reserve
15 fund. The amount transferred shall equal the amount by which total
16 state revenue for the general fund and related funds exceeds the state
17 expenditure limit, multiplied by the percentage that general fund
18 expenditures are of total expenditures from the general fund and
19 related funds. Transfers shall be made at the end of each fiscal
20 quarter based on projections of state revenues, expenditures, and the
21 state expenditure limit. The treasurer shall make transfers between
22 these accounts as necessary to reconcile actual annual revenues and the
23 expenditure limit for fiscal year 2000 and thereafter.~~

24 (2) The legislature may appropriate moneys from the emergency
25 reserve fund only with approval of at least two-thirds of the members
26 of each house of the legislature, and then only if the appropriation
27 does not cause total expenditures to exceed the state expenditure limit
28 under this chapter.

29 (3) The emergency reserve fund balance shall not exceed five
30 percent of annual general fund--state revenues as projected by the
31 official state revenue forecast. Any balance in excess of five percent
32 shall be transferred on a quarterly basis by the state treasurer as
33 follows: Seventy-five percent to the student achievement fund hereby
34 created in the state treasury and twenty-five percent to the general
35 fund balance. The treasurer shall make transfers between these
36 accounts as necessary to reconcile actual annual revenues for fiscal
37 year 2000 and thereafter. When per-student state funding for the

1 maintenance and operation of K-12 education meets a level of no less
2 than ninety percent of the national average of total funding from all
3 sources per student as determined by the most recent published data
4 from the national center for education statistics of the United States
5 department of education, as calculated by the office of financial
6 management, further deposits to the student achievement fund shall be
7 required only to the extent necessary to maintain the ninety-percent
8 level. Remaining funds are part of the general fund balance and these
9 funds are subject to the expenditure limits of this chapter.

10 (4) The education construction fund is hereby created in the state
11 treasury.

12 (a) Funds may be appropriated from the education construction fund
13 exclusively for common school construction or higher education
14 construction.

15 (b) Funds may be appropriated for any other purpose only if
16 approved by a two-thirds vote of each house of the legislature and if
17 approved by a vote of the people at the next general election. An
18 appropriation approved by the people under this subsection shall result
19 in an adjustment to the state expenditure limit only for the fiscal
20 period for which the appropriation is made and shall not affect any
21 subsequent fiscal period.

22 (5) Funds from the student achievement fund shall be appropriated
23 to the superintendent of public instruction strictly for distribution
24 to school districts to meet the provisions set out in the student
25 achievement act. Allocations shall be made on an equal per full-time
26 equivalent student basis to each school district.

27 ~~((6) Earnings of the emergency reserve fund under RCW~~
28 ~~43.84.092(4)(a) shall be transferred quarterly to the multimodal~~
29 ~~transportation account, except for those earnings that are in excess of~~
30 ~~thirty five million dollars each fiscal year. Within thirty days~~
31 ~~following any fiscal year in which earnings transferred to the~~
32 ~~multimodal transportation account under this subsection did not total~~
33 ~~thirty five million dollars, the state treasurer shall transfer from~~
34 ~~the emergency reserve fund an amount necessary to bring the total~~
35 ~~deposited in the multimodal transportation account under this~~
36 ~~subsection to thirty five million dollars. The revenues to the~~
37 ~~multimodal transportation account reflected in this subsection provide~~
38 ~~ongoing support for the transportation programs of the state. However,~~

1 ~~it is the intent of the legislature that any new long-term financial~~
2 ~~support that may be subsequently provided for transportation programs~~
3 ~~will be used to replace and supplant the revenues reflected in this~~
4 ~~subsection, thereby allowing those revenues to be returned to the~~
5 ~~purposes to which they were previously dedicated. No transfers from~~
6 ~~the emergency reserve fund to the multimodal fund shall be made during~~
7 ~~the 2003-05 fiscal biennium.))~~

8 NEW SECTION. **Sec. 7.** (1) Sections 1 and 2 of this act are
9 necessary for the immediate preservation of the public peace, health,
10 or safety, or support of the state government and its existing public
11 institutions, and take effect immediately.

12 (2) Sections 3 through 6 of this act take effect July 1, 2007.

Passed by the Senate April 16, 2005.

Passed by the House April 15, 2005.

Approved by the Governor April 18, 2005.

Filed in Office of Secretary of State April 18, 2005.

EXHIBIT B

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2969

Chapter 202, Laws of 2002

57th Legislature
2002 Regular Session

TRANSPORTATION FUNDING

EFFECTIVE DATE: Contingent effective date: 12/30/02 - Except sections 401 and 402, which become effective 4/1/03; and section 601, which becomes effective 3/27/02.

Passed by the House March 14, 2002
Yeas 75 Nays 23

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 14, 2002
Yeas 30 Nays 17

BRAD OWEN
President of the Senate

Approved March 27, 2002

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2969** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

FILED

March 27, 2002 - 10:20 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2969

AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By House Committee on Transportation (originally sponsored by Representative Fisher)

Read first time 02/27/2002. Referred to Committee on .

1 AN ACT Relating to transportation improvement and financing;
2 amending RCW 44.40.010, 44.40.013, 44.40.015, 44.40.020, 44.40.025,
3 44.40.030, 44.40.040, 44.40.070, 44.40.090, 44.40.100, 44.40.140,
4 44.40.150, 46.16.070, 46.68.035, 82.38.030, 82.38.035, 82.38.045,
5 82.38.047, 82.38.075, 46.09.170, 46.10.170, 79A.25.070, 82.08.020,
6 82.12.020, 82.12.045, and 39.42.060; reenacting and amending RCW
7 43.84.092, 82.36.025, 46.68.090, and 46.68.110; adding new sections to
8 chapter 44.40 RCW; adding a new section to chapter 46.04 RCW; adding a
9 new section to chapter 46.68 RCW; adding a new section to chapter 47.26
10 RCW; adding a new section to chapter 43.135 RCW; adding a new section
11 to chapter 82.32 RCW; adding new sections to chapter 47.10 RCW;
12 creating new sections; providing effective dates; providing a
13 contingent effective date; providing for submission of certain sections
14 of this act to a vote of the people; and declaring an emergency.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

16 **PART I - ACCOUNTABILITY FOR TRANSPORTATION PROJECTS AND PROGRAMS**

17 NEW SECTION. **Sec. 101.** It is essential that the legislature
18 improve the accountability and efficiency of the department of

1 (11) Indebtedness incurred for the purposes of replacing the
2 waterproof membrane over the east plaza garage and revising related
3 landscaping construction pursuant to RCW 43.99Q.070; (~~and~~)

4 (12) Indebtedness incurred for the purposes of the state
5 legislative building rehabilitation, to the extent that principal and
6 interest payments of such indebtedness are paid from the capitol
7 building construction account pursuant to RCW 43.99Q.140(2)(b); and

8 (13) Indebtedness incurred for the purposes of financing projects
9 under section 507 of this act.

10 To the extent necessary because of the constitutional or statutory
11 debt limitation, priorities with respect to the issuance or
12 guaranteeing of bonds, notes, or other evidences of indebtedness by the
13 state shall be determined by the state finance committee.

14 NEW SECTION. Sec. 514. Sections 501 through 512 of this act are
15 each added to chapter 47.10 RCW.

16 **PART VI - REFERENDUM**

17 NEW SECTION. Sec. 601. (1) The secretary of state shall submit
18 this act, except for sections 102 through 120 of this act, to the
19 people for their adoption and ratification, or rejection, at the next
20 general election to be held in this state, in accordance with Article
21 II, section 1 of the state Constitution and the laws adopted to
22 facilitate its operation.

23 (2) If the people ratify this act as specified under subsection (1)
24 of this section, revenues generated shall be spent as detailed in
25 Senate Bill No. 6347, as enacted by the legislature.

26 (3) Pursuant to RCW 29.79.035, the statement of subject on the
27 ballot title shall read: "The legislature has passed House Bill No.
28 2969, financing transportation improvements through transportation fees
29 and taxes." The concise description on the ballot title shall read:
30 "This bill would improve highway capacity, public transportation,
31 passenger and freight rail, and transportation financing accountability
32 through increased weight fees on trucks and large vehicles, fuel excise
33 taxes, and sales taxes on vehicles."

