

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2006 AUG 28 P 4:22

NO. 78637-2

BY C.J. MERRITT

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE FARM BUREAU FEDERATION,
WASHINGTON STATE GRANGE, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS, BUILDING INDUSTRY
ASSOCIATION OF WASHINGTON, EVERGREEN FREEDOM
FOUNDATION, WASHINGTON ASSOCIATION OF REALTORS,
and STEVE NEIGHBORS,

Respondents/Cross-Appellants,

v.

CHRISTINE O. GREGOIRE, Governor of the State of Washington;
STATE EXPENDITURE LIMIT COMMITTEE; and
STATE OF WASHINGTON,

Appellants/Cross-Respondents.

STATE'S OPENING BRIEF

ROB MCKENNA
Attorney General

MAUREEN HART, WSBA #7831 -
Solicitor General

JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General
P.O. Box 40100
Olympia, WA 98504-0100
(360) 586-0728
Attorneys for
Appellants/Cross-Respondents

ORIGINAL

TABLE OF CONTENTS

I.	NATURE OF THE CASE.....	1
II.	ASSIGNMENTS OF ERROR	2
III.	ISSUES.....	4
IV.	STATEMENT OF THE CASE.....	5
	A. The State General Fund Expenditure Limit.....	7
	B. 2005 Legislation Relevant To The Spending Limit.....	10
	C. November 2005 Actions Of The ELC	12
	D. 2006 Legislation Relevant To The Spending Limit.....	13
	E. Respondents' Claim.....	14
	F. The Trial Court Decision.....	15
	G. Proceedings On Appeal.....	19
V.	SUMMARY OF ARGUMENT.....	20
VI.	ARGUMENT	23
	A. In Enacting Laws Of 2006, Ch. 56, § 7(6) (ESSB 6896, § 7(6)), The Legislature Adopted The ELC's Fiscal Year 2006 Projected Spending Limit, And Thereby Rendered This Case Moot.....	23
	B. The Legislature's Enactments In The 2005 Supplemental Operating Budget Increased The 2006 Fiscal Year Spending Limit By \$250 Million And The ELC Was Correct In So Concluding	29

1.	The Transfer Of Funds From The Health Services Account To The General Fund Increased The 2005 Expenditure Limit By \$250 Million, As Provided By Statute	29
2.	The Legislature’s \$250 Million Appropriation From The General Fund To The Violence Reduction And Drug Enforcement Account Was A Fiscal Year 2005 Expenditure From The General Fund, And Thus Properly Is Included in Projecting The Expenditure Limit For Fiscal Year 2006	32
3.	In Calculating The General Fund Spending Limit For Fiscal Year 2005 And In Projecting The Limit For Fiscal Years 2006 And 2007, The ELC Was Correct To Effectuate Laws Of 2005, Ch. 518, §§ 1607 And 1701 As The Legislature Intended	39
C.	Although The Court Need Not Reach The Issue, Under This Court’s Decision In <i>Amalgamated Transit</i> , 142 Wn.2d At 232-33, The Voter Approval Requirement Of RCW 43.135.035(2)(a) Is Of Doubtful Constitutionality	40
VII.	CONCLUSION	46

TABLE OF AUTHORITIES

Cases

<i>Amalgamated Transit Union Local 587 v. State</i> , 142 Wn.2d 183, 11 P.3d 762 (2000).....	passim
<i>Belas v. Kiga</i> , 135 Wn.2d 913, 959 P.2d 1037 (1998).....	26, 36
<i>Cedar Cy. Comm. v. Munro</i> , 134 Wn.2d 377, 950 P.2d 446 (1998).....	26
<i>City of Bellevue v. E. Bellevue Cmty. Coun.</i> , 138 Wn.2d 937, 983 P.2d 602 (1999).....	31
<i>City of Tacoma v. Luvene</i> , 118 Wn.2d 826, 827 P.2d 1374 (1992).....	38
<i>Clark v. Dwyer</i> , 56 Wn.2d 425, 353 P.2d 941 (1960).....	20, 25
<i>CLEAN v. State</i> , 130 Wn.2d 782, 928 P.2d 1054 (1996).....	38
<i>Coppernoll v. Reed</i> , 155 Wn.2d 290, 119 P.3d 318 (2005).....	23
<i>Dioxin/Organochlorine Center v. Pollution Control Hearings Bd.</i> , 131 Wn.2d 345, 932 P.2d 158 (1997).....	24
<i>Gerberding v. Munro</i> , 134 Wn.2d 188, 949 P.2d 1366 (1998).....	26
<i>Hallin v. Trent</i> , 94 Wn.2d 671, 619 P.2d 357 (1980).....	27
<i>In re Cross</i> , 99 Wn.2d 373, 662 P.2d 828 (1983).....	23

<i>In re Treatment of L.G.</i> , 78 Wn. App. 420, 897 P.2d 1275 (1995).....	24
<i>Larson v. Seattle Popular Monorail Auth.</i> , 156 Wn.2d 752, 131 P.3d 892 (2006).....	43
<i>Love v. King Cy</i> , 181 Wash. 462, 44 P.2d 175 (1935)	26
<i>Moses Lake Sch. Dist. 161 v. Big Bend Cmty. Coll.</i> , 81 Wn.2d 551, 503 P.2d 86 (1972), <i>appeal dismissed</i> , 412 U.S. 934, 93 S. Ct. 2776, 37 L. Ed. 2d 393 (1973).....	26
<i>State ex rel. Evans v. Amusement Ass'n of Wash., Inc.</i> , 7 Wn. App. 305, 499 P.2d 906 (1972).....	24
<i>State ex rel. Heavey v. Murphy</i> , 138 Wn.2d 800, 982 P.2d 611 (1999).....	20, 25, 35, 39
<i>State ex. rel. Distilled Spirits Inst., Inc. v. Kinnear</i> , 80 Wn.2d 175, 492 P.2d 1012 (1972).....	20, 25
<i>State v. Alvarez</i> , 128 Wn.2d 1, 904 P.2d 754 (1995).....	35
<i>State v. Clark</i> , 143 Wn.2d 731, 24 P.3d 1006 (2001).....	44
<i>State v. Costich</i> , 152 Wn.2d 463, 98 P.3d 795 (2004).....	36
<i>State v. Theilken</i> , 102 Wn.2d 271, 684 P.2d 709 (1984).....	31
<i>State v. WWJ Corp.</i> , 138 Wn.2d 595, 980 P.2d 1257 (1999).....	45
<i>Tunstall ex rel. Tunstall v. Bergeson</i> , 141 Wn.2d 201, 5 P.3d 691 (2000).....	40

<i>Wash. Ass'n of Neighborhood Stores v. State</i> , 149 Wn.2d 359, 70 P.3d 920 (2003).....	26, 28
<i>Wash. State Farm Bureau Fed'n v. Reed</i> , 154 Wn.2d 668, 115 P.3d 301 (2005).....	36, 37, 38

Constitutional Provisions

Wash. Const. art. II, § (1)(b).....	37, 38, 41
Wash. Const. art. II, § 37	14, 27, 28

Statutes

Laws of 1994, ch. 2 (Initiative 601).....	26
Laws of 2000, ch. 1, § 2(1) (Initiative 695).....	41
Laws of 2005, ch. 72 (SSB 6078).....	6
Laws of 2005, ch. 72, § 4.....	8, 13
Laws of 2005, ch. 514 (ESHB 2314).....	passim
Laws of 2005, ch. 514, §§ 101-16	18
Laws of 2005, ch. 514, §§ 201-02	18
Laws of 2005, ch. 514, § 1101.....	18
Laws of 2005, ch. 514, § 1102.....	18
Laws of 2005, ch. 514, § 1103.....	18
Laws of 2005, ch. 514, § 1302.....	15
Laws of 2005, ch. 514, §§ 1103-08	18
Laws of 2005, ch. 516 (ESB 6096).....	14
Laws of 2005, ch. 518 (ESSB 6090).....	passim

Laws of 2005, ch. 518, § 1607..... 11, 12, 14, 22

Laws of 2005, ch. 518, §§ 1607, 1701..... 5, 39

Laws of 2005, ch. 518, § 1701..... passim

Laws of 2006, ch. 56 (ESSB 6896)..... 6, 7, 14

Laws of 2006, ch. 56, § 7..... 16

Laws of 2006, ch. 56, § 7(6) passim

Laws of 2006, ch. 56, § 8..... 28

RCW 43.84.092(4)..... 7

RCW 43.88.020(12)..... 1, 7

RCW 43.135 5, 7, 29

RCW 43.135.025 passim

RCW 43.135.025(1) (2004)..... 7

RCW 43.135.025(5)..... 5, 8

RCW 43.135.025(6)..... passim

RCW 43.135.035 6, 9, 28

RCW 43.135.035(2)(a) passim

RCW 43.135.035(4)..... 36

RCW 43.135.035(4), (5) 9

RCW 43.135.035(5)..... passim

Other Authorities

Final Bill Report on ESSB 6896..... 25

Kristin L. Fraser, *Method, Procedure, Means, and Manner:
Washington's Law of Law-Making*,
39 GONZ. L. REV. 447 (2003-04) 26

I. NATURE OF THE CASE

In 2005, the legislature enacted Engrossed Substitute House Bill (ESHB) 2314 (Laws of 2005, ch. 514), an omnibus revenue measure. Parts of the act raised taxes for the state general fund, parts raised taxes for other funds, and other parts decreased taxes. ESHB 2314 took effect on July 1, 2005, the first day of the 2006 fiscal year.¹ The Snohomish County Superior Court invalidated parts of ESHB 2314 that raised taxes for the general fund (Parts I and II). The trial court concluded that the statute raised general fund revenues for expenditure in excess of the state expenditure limit on the general fund for fiscal year 2006 without first obtaining voter approval under RCW 43.135.035(2)(a).

To reach its conclusion, the trial court first determined that several statutes that established the state expenditure limit should not be given effect. By not giving effect to the statutes establishing the state expenditure limit, the trial court concluded that the fiscal year 2005 spending limit and the projected fiscal year 2006 general fund expenditure limit were approximately \$250 million dollars lower than the legislature had directed in statute. Based on this, the court concluded that Parts I and

¹ Fiscal years begin on July 1 of each year and end the following June 30. RCW 43.88.020(12). Fiscal years take their names from the calendar year in which they end. For example, “fiscal year 2006” is the fiscal year beginning July 1, 2005, and ending on June 30, 2006.

II of ESHB 2314 raised revenues in excess of the fiscal year 2006 spending limit and were invalid without voter approval under RCW 43.135.035(2)(a). The trial court erred when it failed to give effect to the legislative enactments establishing the expenditure limits in 2005 and again in 2006, which were well within the legislature's plenary authority to legislate, subject only to constitutional constraint.

II. ASSIGNMENTS OF ERROR

1. The Snohomish County Superior Court erred in entering paragraphs 3(ii), 6, and 7 at pages 3-4 of the Order Partially Granting Summary Judgment in Favor of Plaintiffs and Partially in Favor of Defendants and Denying Motion for Reconsideration dated May 1, 2006. CP 10-11. Specifically, the trial court erred in concluding that Parts I and II of Laws of 2005, ch. 514 (ESHB 2314) were invalid absent voter approval under RCW 43.135.035(2)(a). The trial court further erred in concluding that the constitutionality of RCW 43.135.035(2)(a) was not properly before the trial court.²

² The State also assigns error to the trial court's entry of paragraphs 4 and 5 of the same order, but since the trial court amended those paragraphs in its order granting reconsideration, the matter before this Court on appeal concerns the amended version of those paragraphs (to which the State also assigns error). Standing alone, the trial court's original order erred at paragraphs 4 and 5 in concluding that sections 1607 and 1701, Laws of 2005, ch. 518 (ESSB 6090) (part of the supplemental operating budget for fiscal year 2005) were ineffective to increase the state's general fund expenditure limit by \$250 million, and that the State Expenditure Limit Committee erred in giving effect to those provisions in establishing the final expenditure limit for fiscal year 2005. CP 11.

2. The Snohomish County Superior Court erred in entering the Order Granting Plaintiffs' Motion for Reconsideration dated July 20, 2006. CP 2432-34. The trial court erred in concluding that section 1701 of Laws of 2005, ch. 518 is ineffective in raising the state expenditure limit for 2005 by \$250 million, and that the State Expenditure Limit Committee's (ELC) final determination of the 2005 state expenditure limit in its November 2005 meeting is erroneously high by the said \$250 million. The trial court additionally erred in holding that the legislature's appropriation of \$250 million from the state general fund to the violence reduction and drug enforcement account specified in section 1607 of Laws of 2005, ch. 518 was not an expenditure from the general fund for purposes of calculating the 2006 general fund state expenditure limit. Similarly, the trial court erred in ruling that the ELC should not have included this \$250 million dollar appropriation in expenditures for fiscal year 2005 and, therefore, that it projected expenditure limits for fiscal years 2006 and 2007 that were too high by \$250 million, plus the associated fiscal growth factor. CP 2433-34.

The trial court additionally erred in ruling that Laws of 2006, ch. 56, § 7(6) (ESSB 6896) providing that, "In calculating the expenditure limit for fiscal year 2006, the calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005",

must be construed as referring to the expenditure limit as modified by the trial court. CP 2434.

As a result of these errors, the trial court erred in concluding that Parts I and II of ESHB 2314, Laws of 2005, ch. 514 raised revenue for expenditure in excess of the fiscal year 2006 state expenditure limit and, consequently, are invalid unless approved by a vote of the people.³ CP 2434.

III. ISSUES

1. In its 2006 session, after this litigation was commenced and days before the trial court ruled on summary judgment, the legislature enacted Engrossed Substitute Senate Bill (ESSB) 6896, Laws of 2006, ch. 56, § 7(6). That law provides: “In calculating the expenditure limit for fiscal year 2006, the calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005 adjusted as provided by this chapter” Does this law by its very terms establish the state’s expenditure limit for fiscal year 2006 and moot Respondents’ claim in this case?

³ The State also assigns error to the trial court’s decision not to consider the declarations of Irv Lefberg, Pam Davidson, and Candace Espeseth, submitted in support of the State’s Response to Plaintiffs’ Motion for Reconsideration. CP 2433. This error, however, becomes relevant only if Respondents assert, through their cross-appeal or otherwise, that the trial court erred in denying certain contentions pressed in their motion for reconsideration or in failing to consider the Declaration of Samuel A. Rodabough in the context of the same motion. The State accordingly conditionally assigns error to the court’s failure to consider the Lefberg, Davidson, and Espeseth declarations.

2. By their terms and by the terms of RCW 43.135, sections 1607 and 1701 of Laws of 2005, ch. 518 increase the fiscal year 2005 and projected fiscal year 2006 state expenditure limit by \$250 million, and were enacted for that purpose. In the absence of any constitutional infirmity, may a court simply decline to give effect to these laws?

3. The ELC is authorized by RCW 43.135.025(5) to project and finalize the state expenditure limit. May a court refuse to give effect to the Committee's determination of the state expenditure limit where the Committee followed sections 1607 and 1701 of Laws of 2005, ch. 518 and RCW 43.135 to calculate the limit?

4. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 232-33, 11 P.3d 762 (2000), holds that a law conditioning future tax increases on voter approval is invalid because it exceeds the initiative power of the people and the authority of the legislature. Under *Amalgamated Transit*, is RCW 43.135.035(2)(a), which requires voter approval of future tax increases, invalid?

IV. STATEMENT OF THE CASE

The trial court invalidated Parts I and II of Laws of 2005, ch. 514 (ESHB 2314) on the theory that they raise revenue for expenditure in excess of the projected state expenditure limit for fiscal year 2006 and

were not approved by the voters. In doing so, the trial court refused to give effect to several statutes enacted by the legislature relating to the spending limit for fiscal year 2005 and the projected limit for fiscal year 2006 (the fiscal years most relevant to this case) and to actions by the ELC (a statutory body created to adjust, finalize, and project the state expenditure limit) that applied those statutes. Accordingly, laws relating to the state expenditure limit, including laws enacted by the legislature in 2005 and 2006, directly affecting the spending limit for fiscal year 2005 and the projected expenditure limit for fiscal year 2006, as well as actions by the ELC in November of 2005, provide background necessary to understand this case.

The State thus begins its Statement of the Case by discussing statutes generally relating to the state expenditure limit. The principal statutes involved, RCW 43.135.025 and RCW 43.135.035, are set forth in Appendix A to this Brief, in the form in which they were in effect at the time the legislature enacted ESHB 2314 and the 2005 state operating budget.⁴ The State then discusses (a) statutes enacted by the legislature in

⁴ The legislature amended the statutes governing the expenditure limit in both 2005 and 2006, with varying effective dates for each amendment—sometimes providing for more than one version of the same statute to be in effect at different points in time. *See generally* Laws of 2005, ch. 72 (SSB 6078); Laws of 2006, ch. 56. With the exception of section 7 of Laws of 2006, ch. 56, which is discussed at some length in this brief, these enactments are not directly relevant to this case. They are noted principally

2005 affecting the state expenditure limit for 2005 and the projected spending limit for 2006, (b) actions of the ELC in November 2005, and (c) additional legislation enacted in 2006 by which the legislature established the 2006 spending limit (Laws of 2006, ch. 56), a copy of which is attached as Appendix B.

Finally, the Statement of the Case sets forth Respondents' claim, the trial court's erroneous decision on Respondents' claim, and the posture of this appeal.

A. The State General Fund Expenditure Limit

RCW 43.135.025(1) restricts expenditures from the state general fund each fiscal year to a fiscal year spending limit.⁵ It provides that, "The state shall not expend from the general fund during any fiscal year state moneys in excess of the state expenditure limit[.]" RCW 43.135.025(1) (2004). The spending limit applies only to the state general fund.⁶ Under the terms of RCW 43.135.035(2)(a), laws raising revenues

to minimize confusion that otherwise might be created concerning the version of RCW 43.135 applicable to this litigation (App. A).

⁵ Recall, as explained in footnote 1, that the state fiscal year begins on July 1 and ends the following June 30 (RCW 43.88.020(12)) and is identified by the year in which it ends. So, for example, "fiscal year 2005" is the fiscal year beginning July 1, 2004, and ending on June 30, 2005, and "fiscal year 2006" is the fiscal year beginning July 1, 2005, and ending on June 30, 2006.

⁶ The state treasury is composed of numerous accounts and funds established by law for various purposes. *See, e.g.*, RCW 43.84.092(4) (partial list of accounts in treasury). In considering whether the limit has been reached, only expenditures from the general fund matter. *See also* RCW 43.135.025(1) (2004), "The state shall not expend

that will result in expenditures in excess of the general fund spending limit must be approved by the voters. RCW 43.135.035(2)(a) provides in relevant part, “If the legislative action [that raises state revenue] 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.” Thus, in determining whether new revenues would cause expenditures to exceed the limit, only general fund revenues are relevant.⁷

Statutes also establish the ELC for the purpose of projecting, adjusting and finalizing the state expenditure limit “as provided in this chapter.” RCW 43.135.025(5). The ELC consists of the director of financial management, the chairs of the senate committee on ways and means, the house of representatives appropriations committee, and the attorney general or the attorney general’s designee.⁸ The ELC meets every November to “adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years

from the general fund during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.” (Emphasis added.)

⁷ Effective July 1, 2007, the expenditure limit is expanded to cover several “related funds” in addition to the general fund. Laws of 2005, ch. 72, § 4 (amending RCW 43.135.025).

⁸ Effective July 1, 2007, the committee members will also include the ranking minority members of the two legislative fiscal committees. Laws of 2005, ch. 72, § 4 (amending RCW 43.135.025).

[the then current and the following fiscal years].” RCW 43.135.025(6). The ELC is also charged with adjusting the spending limit to reflect additional statutory factors that cause the limit to change. See RCW 43.135.035(4), (5). Accordingly, the ELC is required to produce three numbers each November: a final adjusted expenditure limit for the fiscal year just concluded, and projected limits for the next two fiscal years. *Id.*

The expenditure limit may change over the course of a fiscal year and is not finally determined for any fiscal year until after that fiscal year is closed. The spending limit is calculated with respect to factors that change over time, including changes in a fiscal growth factor that reflects growth in population and inflation, transfers of programs and funds to and from the general fund, and general fund expenditures in the prior fiscal year. RCW 43.135.025, .035. The limit is adjusted based on these statutory factors until after the fiscal year is completed, at which time the final limit for that fiscal year is calculated and spending limits for the then-current and following fiscal year are projected. RCW 43.135.025(6). Until the fiscal year is actually concluded, ongoing events—including transfers of funds and general fund spending in the state budget—may result in adjustments to the limit as provided by law.

For example, and as relevant to this case, RCW 43.135.035(5) provides: “[I]f moneys are transferred to the state general fund from

another fund or account, the state expenditure limit committee . . . shall increase the state expenditure limit to reflect the shift.” (Emphasis added.) In addition, and as relevant to this case, the projected expenditure limit for any fiscal year is based on actual spending from the general fund in the prior fiscal year—a number that cannot be determined until its close. In this respect, under RCW 43.135.025(6), each November, the ELC is directed to “adjust the expenditure limit for the preceding fiscal year *based on actual expenditures* and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years.” RCW 43.135.025(6) (emphasis added). This is referred to as “rebasings” the spending limit. As a practical matter, rebasing the limit to expenditures in the prior fiscal year (for purposes of projecting the spending limit for the following two fiscal years) means that, if the legislature does not spend up to the general fund spending limit in the prior fiscal year, the projected spending limit for the following fiscal year is ratcheted downward to actual spending. Put differently, if general fund spending capacity in any fiscal year is not spent, it is lost in projecting the limit for the following fiscal year.

B. 2005 Legislation Relevant To The Spending Limit

As RCW 43.135.035(5) (quoted above) contemplates, transfers of funds to the general fund from other funds or accounts in the state treasury

increase the state expenditure limit. In 2005, the legislature made such a transfer to the general fund from another account in the state treasury, to increase the state expenditure limit. In ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701), part of the state supplemental operating budget for fiscal year 2005, the legislature transferred \$250 million dollars from the health services account to the state general fund.⁹ Section 1701 specifically provided that, “For transfers in this section to the state general fund, pursuant to RCW 43.135.035(5), *the state expenditure limit shall be increased by the amount of the transfer.*” ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701) (emphasis added).

In addition, as RCW 43.135.025(6) (also quoted above) contemplates, spending in the prior fiscal year is the starting point for projecting the spending limit for subsequent fiscal years. In the same 2005 supplemental budget, ESSB 6090, § 1607 (Laws of 2005, ch. 518, § 1607), the legislature spent \$250 million from the general fund by appropriating that amount for deposit in the violence reduction and drug enforcement account. As explained above, under RCW 43.135.025(6), the

⁹ More precisely, the 2005 legislation amended a provision enacted in 2004 that originally provided for a transfer of \$46.25 million from the health services account to the general fund, increasing that transfer by \$250 million to a total of \$296.25 million. The original \$46.25 million transfer is not at issue, only the \$250 million added by the 2005 legislation. Laws of 2005, ch. 518, § 1701.

expenditure limit projected for a fiscal year is rebased to spending from the general fund during the prior fiscal year.

C. November 2005 Actions Of The ELC

In November 2005, the ELC met and adopted a final expenditure limit for fiscal year 2005 and projected limits for fiscal year 2006 (the then current fiscal year) and fiscal year 2007.¹⁰ CP 460, 470, 473. In calculating the expenditure limit for these fiscal years, the ELC increased the spending limit for fiscal year 2005 by \$250 million, reflecting the legislature's transfer of \$250 million from the health services account to the general fund in Laws of 2005, ch. 518, § 1701, and the legislature's explicit direction that, "For transfers in this section to the state general fund, pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased by the amount of the transfer." Laws of 2005, ch. 518, § 1701; CP 460, 470.

For purposes of rebasing and projecting the fiscal year 2006 spending limit under RCW 43.135.025(6), the ELC similarly included the legislature's \$250 million appropriation from the general fund to the violence reduction and drug enforcement account (Laws of 2005, ch. 518, § 1607) in fiscal year 2005 spending from the general fund. CP 473. The

¹⁰ The Attorney General's designee recused herself from participating in the Committee's November 2005 meeting because this litigation was pending. CP 484.

ELC then projected the fiscal year 2006 and 2007 spending limits based on fiscal year 2005 spending, increased by the fiscal growth factor. The ELC projected that the expenditure limit for fiscal year 2006 would be \$12,813,200,000. CP 460, 470. The ELC projected that the expenditure limit for fiscal year 2007 would be \$13,319,600,000. CP 460, 473. The difference in these projections from fiscal year 2006 to fiscal year 2007 reflects the application of the fiscal growth factor, which measures changes in population and inflation.¹¹

D. 2006 Legislation Relevant To The Spending Limit

After this litigation was filed and shortly before the trial court made any ruling on the merits of this case, the legislature enacted an additional statute that explicitly adopted the ELC's November 2005 calculation of the projected expenditure limit for fiscal year 2006, ESSB 6896 (Laws of 2006, ch. 56, § 7(6)). In this statute, the legislature directly amended RCW 43.135.025(6), which addresses calculation of the spending limit, to include the following language:

In calculating the expenditure limit for fiscal year 2006, the calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005 adjusted as provided by this chapter and adjusted to include [specified appropriations].

¹¹ Effective July 1, 2007, the fiscal growth factor will be calculated differently, reflecting growth in state personal income rather than population and inflation. Laws of 2005, ch. 72, § 4 (amending RCW 43.135.025).

ESSB 6896, § 7(6) (Laws of 2006, ch. 56, § 7(6)); App. B.

The Governor signed this legislation two days before the hearing on summary judgment in this case. Laws of 2006, ch. 56 (date of approval by the Governor, attached as App. B); CP 2427 (date of summary judgment hearing).

E. Respondents' Claim

Respondents brought this action in July 2005, contending that ESHB 2314 raised revenue for expenditure in excess of the expenditure limit and, therefore, required voter approval under the terms of RCW 43.135.035(2)(a). CP 910-12.¹² In this respect, Respondents alleged that the transfer of \$250 million from the health services account to the general fund in ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701) and the appropriation in the same enactment (ESSB 6090, § 1607 (Laws of 2005 ch. 518, § 1607)) of \$250 million from the general fund to the violence reduction and education account, were not effective to increase the state expenditure limit by \$250 million. CP 912-13. The revenue generated by ESHB 2314 began to accrue in fiscal year 2006. Laws of 2005, ch. 514,

¹² Initially, Respondents also challenged the validity of the estate tax, ESB 6096 (Laws of 2005, ch. 516), upon the same basis, but subsequently conceded that since the estate tax was dedicated to the education legacy trust account and not the general fund, it was not subject to the expenditure limit. CP 414, 2429. Respondents also voluntarily dismissed another cause of action in which they challenged certain amendments to state expenditure limit statutes in SSB 6078 (Laws of 2005, ch. 72), based on an allegation that they conflicted with article II, section 37 of the state constitution. CP 866 n.1, 2429.

§ 1302 (effective date). Accordingly, the spending limit for fiscal year 2006 is the focal point of discussion. Although the trial court and parties make some reference to the spending limit for fiscal year 2007, the calculation of that limit is not particularly germane to the validity of ESHB 2314.

F. The Trial Court Decision

Respondents and the State moved the trial court for summary judgment. Following briefing and argument, the superior court granted summary judgment partially in favor of each side. CP 2427-31. After the trial court entered its order on summary judgment, and after the State appealed to this Court, Respondents sought reconsideration before the trial court. The trial court granted Respondents' motion in part, and amended the terms of its original summary judgment order. CP 2432-34.

As amended on reconsideration, the trial court's order concluded that, "Section 1701 of ESSB 6090 (Laws of 2005, ch. 518) is ineffective in raising the state expenditure limit for fiscal year 2005 by \$250 million, and that the State Expenditure Limit Committee's final determination of the 2005 state expenditure limit in its November 2005 meeting is erroneously high by said \$250 million". CP 2433. The trial court further concluded that, "The 'appropriation' of \$250 million from the state general fund to the Violence Reduction and Drug Enforcement Account

specified in section 1607 of ESSB 6090 (Laws of 2005, ch. 518) did not represent an actual expenditure and should not have been included in the State Expenditure Limit Committee's calculation of expenditures for fiscal year 2005, resulting in projected expenditure limits for fiscal years 2006 and 2007 that were too high by \$250 million, plus the associated fiscal growth factor." CP 2433-34.

In addition, the trial court declined to give effect to the legislature's 2006 statutory amendment explicitly establishing the expenditure limit for fiscal year 2006 as the limit projected by the ELC in November 2005 (Laws of 2006, ch. 56, § 7). This amendment specifically adopted, in statute, the ELC's November 2005 projection of the 2006 expenditure limit as the limit for fiscal year 2006. The trial court concluded that the legislature's specific adoption of the ELC's calculation instead "must be construed as referring to said expenditure limit as modified by this Court". CP 2434. Notably, the trial court had not made *any* ruling on the expenditure limit when Laws of 2006, ch. 56, § 7 was enacted.

Based upon those conclusions, the trial court further ruled "that Parts I and II of ESHB 2314 (Laws of 2005 ch. 514) raised revenue for expenditure in excess of the state expenditure limit and, therefore, are

ineffective unless and until submitted to a vote of the people and approved.” CP 2434.

In its original order on summary judgment, the trial court concluded that ESHB 2314 raised revenues in excess of the general fund state expenditure limit by \$69.6 million. The trial court reached this figure by comparing total appropriations from the general fund in the budget for fiscal years 2006 and 2007 to combined expenditure limits for 2006 and 2007 projected by the ELC, less \$250 million. CP 2430.¹³ The trial court’s order on reconsideration does not address the amount by which ESHB 2314 is alleged to exceed the state expenditure limit, and that amount is not critical in any event. What is important to understand, however, is that the only basis on which Respondents’ allege that ESHB 2314 raises revenues in excess of the spending limit is Respondents’ erroneous contention that the legislature’s enactments in 2005 and 2006 should not be given their stated and intended effect of increasing the spending limit for fiscal year 2005 and the projected limit for fiscal year 2006 by \$250 million. In other words, if the legislature’s enactments are effective to increase those limits by \$250 million, Respondents’ claim fails.

¹³ See also CP 460 (projected expenditure limits for fiscal years 2006 and 2007); CP 455 (legislative budget note showing total general fund appropriations for biennium).

Part I of ESHB 2314 raised revenue for the state general fund by applying the state sales and use taxes to the sale of extended warranties. Laws of 2005, ch. 514, §§ 101-16.¹⁴ Part II of ESHB 2314 also raised revenue for the state general fund by establishing an additional tax on the retail sale of spirits. Laws of 2005, ch. 514, §§ 201-02 (referred to as the “liquor liter tax”). Part XI of the act established the education legacy trust account in the state treasury (Laws of 2005, ch. 514, § 1101) and established an additional tax on cigarettes, the net effect of which was to generate revenue for the education legacy trust account. Laws of 2005, ch. 514, § 1102. Revenue from that fund is dedicated by statute for educational purposes.¹⁵ Laws of 2005, ch. 514, § 1103; *see also* Laws of 2005, ch. 514, §§ 1103-08 (further provisions governing the education legacy trust account). Other portions of the act provided for various state revenue decreases.

The trial court limited its ruling as to the validity of ESHB 2314 to the conclusion that Parts I and II required voter approval. CP 2434. Reasoning that only those two portions of the act raised net revenue for

¹⁴ Part I of the act also amended various statutes so as to reduce state revenue, but the net effect was an increase in revenue for the state general fund. CP 818.

¹⁵ The text describes the net effect on revenue of the new cigarette tax. The statute, Laws of 2005, ch. 514, § 1102, directs portions of the revenue into other funds, but only to make up for anticipated lost revenue from existing taxes due to a drop in demand anticipated to result from the new tax. CP 808, 818.

the general fund, the court found them severable from the remainder of the act. The result of this conclusion is that the trial court held that Part XI of ESHB 2314, which imposed a cigarette tax the net proceeds of which were dedicated to education and not the general fund, remained in effect as did tax reductions set forth in other parts of the act. CP 2434.¹⁶

G. Proceedings On Appeal

The State filed a notice of appeal to this Court from the trial court's original summary judgment order (CP 6-12) and subsequently filed a motion for a stay of the trial court's summary judgment order. That motion was granted and the trial court's order on summary judgment was stayed pending resolution of this appeal. Ruling Continuing Stay Pending Appeal. After the State's notice of appeal was filed, Respondents also filed a notice of appeal to the court of appeals. CP 1156-1273. By notation ruling, this Court transferred Respondents' appeal to this Court, to be treated as cross-review in this case. Notation Ruling, June 29, 2006. The State also filed a supplemental notice of appeal from the trial court's order on reconsideration. CP 2422-31. By notation ruling on an agreed

¹⁶ In addition, the trial court granted summary judgment to the State with regard to claims conceded by Respondents—i.e., their challenge to SSB 6078 (Laws of 2005, ch. 72), which amended the statutes governing the expenditure limit, and to ESB 6096 (Laws of 2005, ch. 516), the estate tax, which raised revenue dedicated to education and not to the general fund. CP 2429.

motion, the trial court's reconsideration order is stayed pending resolution of this appeal. Notation Ruling, July 28, 2006.

V. SUMMARY OF ARGUMENT

The state expenditure limit is statutory in nature, governed by provisions of RCW 43.135 rather than by any mandate of the state constitution. The power of the legislature to enact laws is unrestrained, except as limited by the state or federal constitution. *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 809, 982 P.2d 611 (1999) (quoting *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972) (citing *Clark v. Dwyer*, 56 Wn.2d 425, 353 P.2d 941 (1960))). In light of this seminal principle, there are three independent reasons why this Court should reverse the decision of the trial court and hold that ESHB 2314 did not raise revenue for expenditure in excess of the spending limit, and why ESHB 2314 is therefore valid.

First, before the trial court ruled in this case, the legislature resolved the question of whether ESHB 2314 raised revenue for expenditure in excess of the expenditure limit by expressly adopting, in statute, the ELC's calculation of a projected fiscal year 2006 spending limit. The statute governing the calculation of the spending limit for fiscal year 2006 now includes the statement that, "In calculating the expenditure limit for fiscal year 2006, the calculation shall be the expenditure limit

established by the state expenditure limit committee in November 2005 [subject to specified adjustments].” Laws of 2006, ch. 56, § 7(6) (ESSB 6896) (amending RCW 43.135.025(6)). This legislative action forecloses Respondents’ argument that the legislature’s 2005 enactments that were expressly intended to raise the expenditure limit were unsuccessful in doing so. Respondents’ challenge to the validity of ESHB 2314 was therefore rendered moot by this legislative action, as were their related arguments concerning the calculation of the spending limit.

Second, even if the legislature had not explicitly adopted the ELC’s November 2005 projection of the fiscal year 2006 spending limit, the supplemental state operating budget adopted by the legislature in 2005 increased the expenditure limit by \$250 million under the terms of the statutes governing the calculation of the limit. The legislature directed the transfer of \$250 million from the health services account in the state treasury to the state general fund. ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701). State law provides that the transfer of money into the general fund from another fund or account in the state treasury results in an increase in the spending limit in the amount of that transfer. RCW 43.135.035(5). In directing that the transfer occur, the legislature explicitly stated that it would have this effect, and this increase in the limit

was the legislature's objective. ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701).

Similarly, the legislature directly appropriated \$250 million from the general fund for deposit in the violence reduction and drug enforcement account. ESSB 6090, § 1607 (Laws of 2005, ch. 518, § 1607). By doing so, the legislature spent this amount from the general fund. The ELC properly included this \$250 million in fiscal year 2005 general fund spending when it "rebased" the expenditure limit for fiscal year 2005 and projected spending limits for fiscal years 2006 and 2007. RCW 43.135.025(6).

Third, although the Court should decide this appeal on the statutory grounds summarized above, if the Court disagrees, then the law established by this Court in *Amalgamated Transit*, 142 Wn.2d at 232-33, provides an additional basis for reversing the trial court. Respondents assert that the legislature was precluded from enacting the general fund revenue increases set forth in ESHB 2314 without first obtaining voter approval. They do so upon the authority of RCW 43.135.035(2)(a), which provides that legislative action that "will result in expenditures in excess of the state expenditure limit . . . shall not take effect until approved by a vote of the people at a November general election." Respondents' reliance on this statute thus squarely implicates this Court's prior holding in

Amalgamated Transit that a statute conditioning a future tax increase on voter approval is invalid because it exceeds the initiative power of the people and the authority of the legislature. *Amalgamated Transit*, 142 Wn.2d at 232.

VI. ARGUMENT

The trial court's judgment in this matter may, and should be, reversed as a matter of law for one of three independent and alternative reasons.¹⁷

A. **In Enacting Laws Of 2006, Ch. 56, § 7(6) (ESSB 6896, § 7(6)), The Legislature Adopted The ELC's Fiscal Year 2006 Projected Spending Limit, And Thereby Rendered This Case Moot**

In March 2006, while this litigation was pending and before the trial court ruled, the legislature amended RCW 43.135.025, the statute that defines the expenditure limit, to adopt the ELC's 2005 calculation of the projected fiscal year 2006 spending limit. Laws of 2006, ch. 56, § 7(6) (ESSB 6896, § 7(6)). This statutory amendment directly moots and forecloses Respondents' claim. *In re Cross*, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983) (a case is moot if a court can no longer grant effective relief). The subsequent amendment of a statute upon which a claim is

¹⁷ This Court reviews a grant of summary judgment *de novo*, engaging in the same inquiry as the trial court. *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005).

based renders that claim moot. *Dioxin/Organochlorine Ctr. v. Pollution Control Hearings Bd.*, 131 Wn.2d 345, 350, 932 P.2d 158 (1997) (combination of expiration of permits and amendment to statute rendered case moot); *In re Treatment of L.G.*, 78 Wn. App. 420, 423 n.3, 897 P.2d 1275 (1995) (amendment of statute on which claim was based rendered issue moot); *State ex rel. Evans v. Amusement Ass'n of Wash., Inc.*, 7 Wn. App. 305, 499 P.2d 906 (1972) (appeal became moot when statutes upon which declaratory and injunctive relief were based were amended or repealed).

Section 7 of ESHB 6896 amended RCW 43.135.025(6) to provide, “In calculating the expenditure limit for fiscal year 2006, *the calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005* adjusted as provided by this chapter and adjusted to include the fiscal year 2006 state general fund appropriations to the pension funding stabilization account, the health services account, and the student achievement fund in chapter . . . , Laws of 2006 (this act).” ESHB 6896, § 7(6).¹⁸ The legislature thus established the state expenditure limit for fiscal year 2006 at the amount calculated by the ELC

¹⁸ The 2006 appropriations referenced in section 7 are set forth in ESSB 6896, §§ 4, 5, 6.

in November 2005, subject to further adjustment as provided in statute.

Id.

This direct and explicit amendment to the statute defines the general fund spending limit for fiscal year 2006. “The state expenditure limit for Fiscal Year 2006 is declared to be the expenditure limit as adopted at the November 2005 meeting of the Expenditure Limit Committee and adjusted upward to include [specified appropriations].” Final Bill Report on ESSB 6896 at 2 (CP 448). The legislature’s statutory enactment adopting the ELC’s calculation of the 2006 expenditure limit forecloses Respondents’ claim that the provisions of the 2005 supplemental state operating budget were ineffective to increase the expenditure limit by \$250 million; that the ELC erred in including that amount; and that the fiscal year 2006 and 2007 spending limits are \$250 million dollars lower than the ELC determined them to be.

A seminal principle underlying our state constitution is that, except as prohibited by the state or federal constitution, the power of the legislature to enact laws is unrestrained. *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 809, 982 P.2d 611 (1999) (quoting *State ex. rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972) (citing *Clark v. Dwyer*, 56 Wn.2d 425, 353 P.2d 941 (1960))). As this Court phrased the proposition on another occasion, “the state constitution

is a limitation upon the power of the legislature rather than a grant thereof. Insofar as legislative power is not limited by the constitution it is unrestrained.”” *Cedar Cy. Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (quoting *Moses Lake Sch. Dist. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972), *appeal dismissed*, 412 U.S. 934 (1973)). Because the state expenditure limit is a creature of statute, the legislature is free to amend it at any time. By amending RCW 43.135.025 to adopt the very calculation of the expenditure limit that Respondents challenge, the legislature exercised this prerogative.¹⁹

The trial court disregarded the legislature’s clearly-expressed statutory definition of the 2006 fiscal year expenditure limit by concluding that the legislature must have meant to incorporate by reference the calculation of the limit, “as modified by this Court.” CP 2434. No party

¹⁹ Respondents emphasize the origins of portions of the spending limit statutes as provisions of an initiative measure. Laws of 1994, ch. 2 (Initiative 601). However, all statutes, including initiatives, result from the exercise of the same legislative authority. *Love v. King Cy*, 181 Wash. 462, 469, 44 P.2d 175 (1935); *see also Gerberding v. Munro*, 134 Wn.2d 188, 210 n.11, 949 P.2d 1366 (1998) (initiatives cannot be used to amend the state constitution); *Belas v. Kiga*, 135 Wn.2d 913, 920, 959 P.2d 1037 (1998) (“A referendum or an initiative measure is an exercise of the reserved power of the people to legislate, and the people in their legislative capacity remain subject to the mandates of the Constitution”). Except for certain limitations on the amendment and repeal of initiatives within the first two years after their enactment (const. art. II, § 1(c)), the legislature’s authority to amend them is the same as for any other statute; nor may one legislative enactment bind the actions of a future legislature. *Wash. Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 367, 70 P.3d 920 (2003); *see also* Kristin L. Fraser, *Method, Procedure, Means, and Manner: Washington’s Law of Law-Making*, 39 GONZ. L. REV. 447, 478 (2003-04) (“It would be more accurate to say that most things done by one legislature [or by the people through initiative] can be undone by another legislature”).

urged such a construction of the statute, and it is untenable because the amendment was signed into law (and became effective) two days before the trial court heard oral argument on summary judgment and before it made any ruling relating to the expenditure limit.²⁰ *See Hallin v. Trent*, 94 Wn.2d 671, 675, 619 P.2d 357 (1980) (statutes speak as of their effective date). The legislature expressly adopted the ELC's November 2005 calculation of the limit, not a version of that calculation as modified by a court ruling that had not even been made. ESSB 6896, § 7(6). The obvious purpose of incorporating the ELC's calculation by reference in the statute was to ensure full effect to that calculation.

For the first time in their reply memorandum on their motion for reconsideration, Respondents argued that ESSB 6896, § 7(6) violated article II, section 37 of the state constitution. Their argument on this point was that "ESSB 6896 purports to establish an expenditure limit without amending the statute that gives exclusive authority to the ELC to establish the state expenditure limit" contrary to article II, section 37 of the state constitution. CP 1024-25. The trial court declined to consider this argument, finding it not to have been properly raised. CP 2434. The argument is not well taken in any event, because ESSB 6896 (Laws of

²⁰ Laws of 2006, ch. 56 (date of approval by the Governor; attached as App. B); CP 2427 (date of summary judgment hearing).

2006, ch. 56, § 7(6)) sets forth and amends the very statute—in fact, the very paragraph—directing the ELC to calculate and adjust the limit.²¹ As such, it is the antithesis of amending a statute without setting it forth in full. *See Wash. Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359, 373, 70 P.3d 920 (2003) (amendment of a statute set forth within the act complies with article II, section 37).

The legislature's statutory enactment of the expenditure limit adopted by the ELC in November 2005 for fiscal year 2006 renders this case moot. Respondents' challenge to ESHB 2314 depended on establishing that the expenditure limit for fiscal year 2006 was lower than the ELC determined it to be in November 2005. *See* page 17, *supra*. The legislature's explicit enactment of the ELC's November 2005 calculation of the fiscal year 2006 expenditure limit knocks the premise squarely out from under Respondents' claim, and their claim fails. The Court need go no farther to reject it and reverse the judgment of the trial court.

²¹ The 2006 act also sets forth in full, and amends, RCW 43.135.035, which governs adjustments to the spending limit based upon transfers and cost shifts among funds and accounts in the treasury. Laws of 2006, ch. 56, § 8 (ESSB 6896).

B. The Legislature's Enactments In The 2005 Supplemental Operating Budget Increased The 2006 Fiscal Year Spending Limit By \$250 Million And The ELC Was Correct In So Concluding

Although the Court need not reach it, Respondents' claim fails for a second, independent reason. Even if the legislature had not explicitly adopted the ELC's November 2005 projection of the 2006 spending limit in ESSB 6896 (Laws of 2006, ch. 56, § 7(6)), Respondent's challenge to the validity of ESHB 2314 would fail. The legislature's enactments in the 2005 supplemental operating budget increased the 2006 fiscal year spending limit by \$250 million, and the Respondents err when they assert otherwise.

1. The Transfer Of Funds From The Health Services Account To The General Fund Increased The 2005 Expenditure Limit By \$250 Million, As Provided By Statute

As previously explained, the expenditure limit is subject to adjustments set forth in RCW 43.135, and often changes throughout the fiscal year. Only after the fiscal year is closed can all statutory adjustments be taken and the final limit calculated. RCW 43.135.025(6). Some of the statutory adjustments to the limit result from actions that the legislature might take within a state operating budget bill. The provisions of the 2005 state operating budget at issue in this case provide just such examples.

By statute, “if moneys are transferred to the state general fund from another fund or account, the state expenditure limit committee . . . shall increase the state expenditure limit to reflect the shift.” RCW 43.135.035(5). ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701), a section of the 2005 state supplemental operating budget, directed several transfers of money among funds and accounts in the state treasury, one of which was a transfer of \$250 million from the health services account to the general fund. The statute stated, “For transfers in this section to the state general fund, pursuant to RCW 43.135.035(5), the state expenditure limit shall be increased by the amount of the transfer.” ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701).

Under the terms of RCW 43.135.035(5) and the budget itself (ESSB 6090, § 1701), then, this transfer resulted in a \$250 million increase to the fiscal year 2005 expenditure limit. When the ELC met in November 2005, it included this transfer in its calculation of the expenditure limit for the fiscal year in which it occurred, fiscal year 2005, as directed by RCW 43.135.035(5) and ESSB 6090, § 1701 (Laws of 2005, ch. 518, § 1701). CP 468-69.

The statutory language is plain. RCW 43.135.035(5) states that if moneys are transferred to the state general fund from another fund or account, the state expenditure limit is increased. The primary purpose of

statutory construction is to give effect to the legislature's intent. *City of Bellevue v. E. Bellevue Cmty. Coun.*, 138 Wn.2d 937, 944, 983 P.2d 602 (1999). It is further axiomatic that the intent of the legislature is determined first by the language of the statute, and if that language is plain, it ends the inquiry. *Id.* If a statute's language is clear, "its plain meaning must be given effect without resort to rules of statutory construction." *State v. Theilken*, 102 Wn.2d 271, 275, 684 P.2d 709 (1984). Not only does RCW 43.135.035 clearly contemplate an adjustment to the limit as a result of this transfer, the legislature stated its intent that this occur in the text of the budget act, which is also a statute. Laws of 2005, ch. 518, § 1701. The statutory language defeats the Respondents' claim that the legislature did not effect an increase in the state expenditure limit for fiscal year 2005 by transferring \$250 million from the health services account into the state general fund.

2. The Legislature's \$250 Million Appropriation From The General Fund To The Violence Reduction And Drug Enforcement Account Was A Fiscal Year 2005 Expenditure From The General Fund, And Thus Properly Is Included in Projecting The Expenditure Limit For Fiscal Year 2006

Debate in this case over the expenditure limit is ultimately directed toward determining whether ESHB 2314 raises general fund revenue for expenditure in excess of the expenditure limit for fiscal year 2006, when revenue resulting from ESHB 2314 first began to accrue. ESHB 2314, § 1302 (establishing the effective date for the relevant portions of ESHB 2314 as July 1, 2005, the first day of fiscal year 2006).

The ELC projected the expenditure limit for fiscal year 2006 at its November 2005 meeting. In doing so, it began by “rebasin” the limit to reflect actual expenditures from the general fund in fiscal year 2005 as RCW 43.135.025(6) contemplates. CP 468, 470. Respondents contended (and the trial court concluded) that the legislature’s appropriation of \$250 million from the general fund for deposit in the violence reduction and drug enforcement account in section 1607 of ESSB 6090 (Laws of 2005, ch. 518) was not an expenditure from the general fund and should not have been included by the ELC in fiscal year 2005 spending from the general fund when projecting the spending limit for fiscal year 2006. CP 2433-34. This is not correct.

The legislature itself appropriated this amount from the general fund directly for deposit to the violence reduction and drug enforcement account. By this action, the legislature spent this amount from the general fund. Under RCW 43.135.025(6), spending from the general fund is included in projecting the following fiscal year's spending limit. Given the legislature's plainly stated objective of increasing the state expenditure limit by \$250 million, expressed in Laws of 2005, ch. 518, § 1701, it hardly may be doubted that the legislature considered its appropriation of \$250 million from the general fund to the violence reduction and drug enforcement account to be an expenditure from the general fund for purposes of rebasing and projecting the spending limit for fiscal year 2006. RCW 43.135.025(6). After all, it would not have served the legislature's explicit purpose to increase the fiscal year 2005 spending limit by transferring \$250 million from the health services account to the general fund, only to lose the benefit of that increase through rebasing, for lack of spending if from the general fund. In other words, it would not matter whether the \$250 million transfer from the health services account to the general fund increased the limit by \$250 million if that amount of money failed to carry over into the limit for fiscal year 2006 through rebasing to 2005 expenditures from the general fund.

Respondents do not suggest otherwise. Indeed, they acknowledge that increasing the spending limit was the precise purpose of these statutory actions by the legislature.²² Rather, Respondents contended that the legislature's enactments should be disregarded, because in Laws of 2005, ch. 518, § 1701, the legislature also transferred \$250 million from the violence reduction and drug enforcement account to the health services account. For this reason, Respondents contended that as a practical financial matter, the \$250 million transfer from the health services account to the general fund, and the \$250 million appropriation from the general fund to the violence reduction and drug enforcement account were illusory, and thus should be disregarded. The trial court accepted Respondents' argument, stating the "question[] posed to the Court" is, "Was this \$250 million increase in the expenditure limit an illusion, or was it a fact?" RT 52 ll 2-3 (Mar. 17, 2006); CP 1319. The trial court declined to give effect to the provisions in the supplemental budget increasing the spending limit because "the legislature exploited a loophole in I-601 for the express purpose of artificially increasing the expenditure limit[.]" RT 55 ll 7-11 (March 17, 2006); CP 1322.

²² If any additional evidence of the legislature's intent in this regard were necessary, its enactment of Laws of 2006, ch. 56, § 7(6) (ESSB 6896, § 7(6)) adopting the ELC's November 2005 projection of the spending limit for fiscal year 2006 would provide it.

Respondents' argument that the legislature's enactments should not be given their plainly stated and intended effect is directly at odds with the plenary power of the legislature to enact any law within constitutional constraints. *Heavey*, 138 Wn.2d at 809. The legislature's decision to increase the expenditure limit through enactments triggering application of RCW 43.135.025(6) and 43.135.035(5), rather than through some other form of enactment, does not diminish its legislative authority.

Respondents' argument also is directly at odds with the primary function of the judiciary in construing legislative enactments—i.e., to discern and give effect to legislative intent. *State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995). Indeed, here there is no question what the legislature intended. The Court simply is being asked to disregard its plain intent. The trial court disregarded the legislature's enactments in the 2005 supplemental budget to increase the spending limit by treating the legislature's *appropriation* of \$250 million from the general fund to the violence reduction and drug enforcement account as though it were a *transfer*. RT 57 II 3-9 (Mar. 17, 2006); CP 1324. The effect of doing so would be to entirely “wash out” or offset the increase in expenditure limit generated by the legislature's \$250 million transfer from the health services account to the general fund, a transfer that the legislature made precisely and explicitly to increase the expenditure limit. Laws of 2005,

ch. 518, § 1701; RCW 43.135.035(5). This is so because under RCW 43.135.035(4), “if moneys are transferred from the state general fund to another fund or account”, the expenditure limit is to be lowered by that amount. In this respect, the trial court failed to heed the plain language used by the legislature, *appropriating* funds from the general fund to the violence reduction and drug enforcement account. When the legislature uses two different terms in two different places within the same act (here, “transfer” and “appropriate”), a different meaning is intended. *State v. Costich*, 152 Wn.2d 463, 475-76, 98 P.3d 795 (2004). The legislature’s budget authority is plenary in nature. *Belas*, 135 Wn.2d at 919. The trial court’s ruling affirmatively rejected what the legislature clearly acted to accomplish and disregarded principles of statutory construction.

The basis for the trial court’s ruling declining to give their intended effect to the legislature’s enactments was its view that the increase in the limit was accomplished in an illusory way—that it was a “palpable attempt at dissimulation”. RT 57 ll 2-3 (Mar. 17, 2006); CP 1324. As support for this approach, the trial court erroneously relied on this Court’s decision in *Washington State Farm Bureau Federation v. Reed*, 154 Wn.2d 668, 115 P.3d 301 (2005). *Reed* provides no support for the superior court’s approach. The test that the trial court erroneously borrowed from *Reed* is based on the court’s power to review legislation

for *constitutionality*. It is used when a court endeavors to determine whether the legislature has satisfied a *constitutional* prerequisite to except a bill from the people's referendum power under article II, section (1)(b) of the Washington Constitution.

As this Court explained in *Reed*, for a law or bill to be exempt from referendum under article II, section 1(b), it must be “necessary for the immediate preservation of the public peace, health or safety, [or] support of the state government and its existing public institutions”. *Reed*, 154 Wn.2d at 671 n.2. The legislature declares its view that this *constitutional* standard is satisfied by reciting it in the bill or law, in a provision commonly referred to as an “emergency clause”. The question of whether the *constitutional* requirement is satisfied, however, ultimately is a judicial question. The test is:

“[S]uch legislative declaration of emergency and necessity for the enactment is conclusive and must be given effect, unless the declaration on its face is obviously false; and, in determining the truth or falsity of the legislative declaration, we will enter upon no inquiry as to the facts but must consider the question from what appears upon the face of the act, aided by the court's judicial knowledge. We must give to the action of the legislature and its declaration of an emergency every favorable presumption.” [Citation omitted.] Additionally, a legislative declaration of the existence of an emergency is deemed conclusive unless it is “obviously false and a palpable attempt at dissimulation.”

Reed at 675 (quoting *CLEAN v. State*, 130 Wn.2d 782, 808, 928 P.2d 1054 (1996)) (quoting *City of Tacoma v. Luvene*, 118 Wn.2d 826, 851, 827 P.2d 1374 (1992)).

This standard applies to determine whether legislation complies with article II, section 1(b)—in short, to determine whether an emergency clause is *constitutional*. It is in this context that the Court asks whether the legislature’s determination was a “palpable attempt at dissimulation”, and even in this *constitutional* context, the Court gives great deference to the legislature.²³ Where, as here, no claim of such a *constitutional* standard is presented, judicial deference is due to the enactments of the legislature.

In sum, neither *Reed* nor the cases that it cites suggest that the judiciary has authority to decline to give effect to constitutionally enacted statutory provisions based on its perception of legislative motive. There is no claim of constitutional infirmity in this case, let alone infirmity under article II section 1(b) and, thus, no basis for such an inquiry. The *Reed* test has no application; the trial court erred in applying it.²⁴

²³ This standard is not used to evaluate legislation except in narrow circumstances where the constitution itself establishes specific requirements to which the legislation must adhere, most commonly emergency clauses. *See also Legislature v. Lowry*, 131 Wn.2d 309, 320, 931 P.2d 135 (1997) (deferring to the legislature’s designation of “sections” in a bill for purposes of considering the Governor’s constitutional authority under article III, section 12, to veto only “sections or appropriation items” unless the legislature’s designation constitutes “a palpable attempt at dissimulation”).

²⁴ No party argued that the test for the constitutionality of an emergency clause has any application to this case. The Court apparently so concluded on its own.

Although Respondents, and the trial court, would conclude that there is something untoward in the legislature's chosen method of increasing the expenditure limit, there is not. Rather, it is consistent with principles of legislature power. Given that the expenditure limit is statutory and that the legislature's authority to enact, amend or repeal statutes is plenary, subject only to constitutional constraint, (*Heavey*, 138 Wn.2d at 809), the legislature's decision to increase the expenditure limit is not subject to second guessing based upon the feeling that it should have been accomplished another way.

3. In Calculating The General Fund Spending Limit For Fiscal Year 2005 And In Projecting The Limit For Fiscal Years 2006 And 2007, The ELC Was Correct To Effectuate Laws Of 2005, Ch. 518, §§ 1607 And 1701 As The Legislature Intended

In November 2005, the ELC finalized the spending limit for fiscal year 2005 and projected expenditure limits for fiscal years 2006 and 2007 of \$12,813,200,000 and \$13,319,600,000, respectively. CP 460, 470, 473. In doing so, the ELC gave effect to Laws of 2005, ch. 518, §§ 1607 and 1701 as the legislature directed and intended, consistent with RCW 43.135.025(6) and .035(5), respectively. For the reasons set forth above, and wholly apart from the legislature's subsequent enactment of the ELC's November 2005 calculation in Laws of 2006, ch. 56, § 7(6) (ESSB 6896, § 7(6)), the ELC's calculations were correct under the law. The trial court erred in concluding that the spending limits as calculated by the ELC were

approximately \$250 million too high, and so erred in concluding that ESHB 2314 raised general fund revenues for expenditure in excess of the fiscal year 2006 spending limit.

C. Although The Court Need Not Reach The Issue, Under This Court's Decision In *Amalgamated Transit*, 142 Wn.2d At 232-33, The Voter Approval Requirement Of RCW 43.135.035(2)(a) Is Of Doubtful Constitutionality

The Court need not reach the argument in this section of the State's brief to reverse the trial court's judgment, because the trial court's judgment should be reversed based on the statutory arguments in Section A or B above. *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 210, 5 P.3d 691 (2000) (where an issue may be resolved on statutory grounds, the court will avoid deciding the issue on constitutional grounds). If the Court disagrees, however, the law established by the Court's decision in *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000), provides a third and independent reason to reverse the decision below.

Respondents contend that the legislature lacked authority to increase taxes under ESHB 2314 absent voter approval under RCW 43.135.035(2)(a). Respondents' reliance upon the statutory requirement for voter approval of future tax increases thus squarely injected into this case the Court's invalidation of such provisions in *Amalgamated Transit*.

In *Amalgamated Transit*, this Court held that it is not within the initiative power of the people under article II, section 1(b) of the Washington Constitution, or within the power of the legislature itself, to require voter approval of future state tax increases.

Amalgamated Transit concerned challenges to Initiative 695. Insofar as it is relevant to this case, *Amalgamated Transit* considered a challenge to section 2(1) of Initiative 695 which provided that, "Any tax increase imposed by the state shall require voter approval." Laws of 2000, ch. 1, § 2(1). This Court held that section 2(1) of Initiative 695 established an impermissible referendum on future tax legislation without following the constitutional requirements for such referenda, set forth in article II, section (1)(b). In this respect, this Court specifically noted the inconsistency between Initiative 695 and the constitutional requirement that a petition for referendum signed by four percent of the voters in the last gubernatorial election be filed before a referendum election must be held on a bill. *Amalgamated Transit*, 142 Wn.2d at 232 ("As did the trial court, we conclude that section 2 calls for universal referenda on all legislation which would impose increased taxes without regard to whether a particular piece of legislation would engender enough interest or opposition for four percent of the voters to petition for referendum.")

The Court in *Amalgamated Transit* also rejected the argument that a statutory provision requiring voter approval of future tax increases would be within either the people's or the legislature's inherent legislative authority. "Neither the legislature nor the people acting in their legislative capacity has the power to *condition* a state law solely on voter approval, and accordingly section 2 is invalid". *Id.* at 241. Rather, according to the Court in *Amalgamated Transit*, the legislature, like the people, would be required to invoke and follow the referendum process provided by the state constitution.

This does not mean, however, that the people lack the authority to approve or disapprove legislation under the reserved initiative and referendum powers. They do. However, that right must be exercised in conformity with the constitutionally mandated procedures, including the four percent voter signature requirement each time the people petition for a referendum on a piece of legislation the Legislature has passed. Nor does it mean that the Legislature cannot refer a measure to the people for a statewide vote. Plainly 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.

In a case decided earlier this year, the Court similarly explained the holding of *Amalgamated Transit*, saying: "The people can petition for referendum of legislation that the legislature has passed" or "[a]lternatively the legislature may refer a measure to the people", but a

statutory requirement for voter approval of future tax legislation passed by the legislature is “not allowed under the state constitution.” *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 759, 131 P.3d 892 (2006) (citing *Amalgamated Transit*, 142 Wn.2d at 191).

Although the voter approval requirement of RCW 43.135.035(2)(a),²⁵ which originated as a provision of Initiative 601 and upon which Respondents rely, operates on a narrower class of revenue bills (those raising revenues in excess of the state expenditure limit), this difference does not appear to be a significant one under the rationale of the Court in *Amalgamated Transit*. The statute provides in relevant part: “If the legislative action under subsection (1) of this section [raising state revenues] 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.”

The Attorney General vigorously but unsuccessfully defended the voter approval provision of Initiative 695 in *Amalgamated Transit*. This Court rejected the arguments that the Attorney General pressed in defense of such provisions. There is no point in reiterating arguments that this

²⁵ A copy is attached as Appendix A, in the form in which it was effective as of the time the legislature enacted ESHB 2314 and the 2005 state operating budget. Although the statute has been amended numerous times, the language related to voter approval has not changed.

Court fully considered and previously rejected in *Amalgamated Transit*. It is, of course, within the authority of this Court to overrule *Amalgamated Transit* if it is demonstrated that its holding in this regard is clearly incorrect and harmful. Given the importance of *stare decisis* to the rule of law and to the predictability of the law's application, this Court has stated that it will only overrule a prior decision upon, "a clear showing that an established rule is incorrect and harmful." *State v. Clark*, 143 Wn.2d 731, 778, 24 P.3d 1006 (2001). Apart from arguments that the Attorney General fully pressed in *Amalgamated Transit*, and that the Court already considered and found unavailing, the State discerns no such clear showing.

At oral argument on the parties' summary judgment motions, the trial court recognized that if it were to consider the validity of RCW 43.135.035(2)(a), it "would have to declare subsection 2(a) of RCW 43.135.035 unconstitutional . . . [as] improperly [giving] the voters the right to stop a tax increase". RT 40 ll 16-20 (March 17, 2006). However, on its own initiative, the trial court concluded that the State had not timely raised the question and declined to rule on it. CP 2434. The trial court reached this conclusion in the absence of any argument by Respondents that the question was untimely.

The trial court erred in concluding that the issue was not timely raised. In its Answer, the State pled that the complaint failed to state a

claim upon which relief could be granted. CP 995. The unconstitutionality of a statute is not an affirmative defense listed in CR 8(c), or otherwise required to be pled with greater specificity. CR 8(c). Moreover, the State raised the question of the constitutionality of RCW 43.135.035(2)(a) under this Court's established law in *Amalgamated Transit* in the State's first brief on the merits of this case. CP 619-20.²⁶ Both sides fully briefed and argued the constitutional question below.²⁷ Even where a constitutional issue has not been raised *at all* in the lower court, this Court will consider constitutional issues raised for the first time on appeal where doing so relates to a manifest error affecting a constitutional right. *State v. WWJ Corp.*, 138 Wn.2d 595, 601, 980 P.2d 1257 (1999). Given this Court's established case law holding that statutes purporting to require voter approval of future tax increases are not valid, it would be incongruous for the Court to decline to consider the constitutionality of the provision, if necessary to its decision, particularly where the parties fully briefed and argued the issue below.

²⁶ Respondents did not independently inform the trial court of the decision of this Court in *Amalgamated Transit*.

²⁷ CP 619-20 (State's response to summary judgment); CP 423-428 (Plaintiffs' summary judgment reply); CP 111-14 (Defendants' Motion for Reconsideration); CP 25-29 (Plaintiffs' Opposition to Defendants' Motion for Reconsideration).

VII. CONCLUSION

For these reasons, this Court should reverse the decision of the Snohomish County Superior Court.

RESPECTFULLY SUBMITTED this 28th day of August, 2006.

ROB MCKENNA
Attorney General

Jeff J. Even
FOR

MAUREEN A. HART, WSBA #7831
Solicitor General

Jeff J. Even

JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General
PO Box 40100
Olympia, WA 98504-0100
360-586-0728

Counsel for
Appellants/Cross-Respondents

APPENDIX A

APPENDIX A

Statutes as effective on and after April 18, 2005

RCW 43.135.025 General fund expenditure limit—Computation—Annual limit adjustment—Definitions—Emergency exception—State treasurer duty, penalty—State expenditure limit committee. (1) The state shall not expend from the general fund during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.

(2) Except pursuant to a declaration of emergency under RCW 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b), the state treasurer shall not issue or redeem any check, warrant, or voucher that will result in a state general fund expenditure for any fiscal year in excess of the state expenditure limit established under this chapter. A violation of this subsection constitutes a violation of RCW 43.88.290 and shall subject the state treasurer to the penalties provided in RCW 43.88.300.

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

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

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

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

(7) "Fiscal growth factor" means the average of the sum of inflation and population change for each of the prior three fiscal years.

(8) "Inflation" means the percentage change in the implicit price deflator for the United States for each fiscal year as published by the federal bureau of labor statistics.

(9) "Population change" means the percentage change in state population for each fiscal year as reported by the office of financial management. [2000 2nd sp.s. c 2 § 1; 1994 c 2 § 2 (Initiative Measure No. 601, approved November 2, 1993).]

RCW 43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer. (Effective until July 1, 2007.) (1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. 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.

(2)(a) If 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. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

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

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

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

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of

emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

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

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

(5) If the cost of any state program or function is shifted to the state general fund on or after January 1, 2000, from another source of funding, or if moneys are transferred to the state general fund from another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift. [2005 c 72 § 2. Prior: 2001 c 3 § 8 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 2 § 2; (2002 c 33 § 1 expired June 30, 2003); 1994 c 2 § 4 (Initiative Measure No. 601, approved November, 1993).]

***Reviser's note:** "This 2005 act" has two effective dates. See note following RCW 43.135.010.

APPENDIX B

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6896

Chapter 56, Laws of 2006

59th Legislature
2006 Regular Session

PENSION FUNDING STABILIZATION ACCOUNT

EFFECTIVE DATE: 3/15/06 - Except section 10, which becomes effective 7/1/06.

Passed by the Senate March 6, 2006
YEAS 25 NAYS 22

BRAD OWEN

President of the Senate

Passed by the House March 7, 2006
YEAS 51 NAYS 47

FRANK CHOPP

Speaker of the House of Representatives

Approved March 15, 2006.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6896** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 15, 2006 - 2:12 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6896

Passed Legislature - 2006 Regular Session

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Doumit, Brown, Regala, Rockefeller and Kohl-Welles)

READ FIRST TIME 02/17/06.

1 AN ACT Relating to funding state budgetary reserves including an
2 adjustment to the state expenditure limit; amending RCW 43.135.025 and
3 43.135.035; reenacting and amending RCW 43.84.092 and 43.84.092; adding
4 new sections to chapter 41.45 RCW; making appropriations; providing an
5 effective date; providing expiration dates; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.45 RCW
8 to read as follows:

9 The pension funding stabilization account is created in the state
10 treasury. Moneys in the account may be spent only after appropriation.
11 Expenditures from the account may be used only for payment of state
12 government employer contributions for members of the public employees'
13 retirement system, the teachers' retirement system, the school
14 employees' retirement system, and the public safety employees'
15 retirement system. The account may not be used to pay for any new
16 benefit or for any benefit increase that takes effect after July 1,
17 2005. An increase that is provided in accordance with a formula that
18 is in existence on July 1, 2005, is not considered a benefit increase
19 for this purpose. Moneys in the account shall be for the exclusive use

1 of the specified retirement systems and invested by the state
2 investment board pursuant to RCW 43.33A.030 and 43.33A.170. For
3 purposes of RCW 43.135.035, expenditures from the pension funding
4 stabilization account shall not be considered a state program cost
5 shift from the state general fund to another account.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.45 RCW
7 to read as follows:

8 (1) The state investment board has the full power to invest,
9 reinvest, manage, contract, sell, or exchange investment moneys in the
10 pension funding stabilization account. The pension funding
11 stabilization account shall be considered to be a public pension or
12 retirement fund within the meaning of Article XXIX, section 1 of the
13 state Constitution, for the purpose of determining eligible investments
14 and deposits of the moneys therein. All investment and operating costs
15 associated with the investment of money shall be paid pursuant to RCW
16 43.33A.160 and 43.84.160. With the exception of these expenses, the
17 earnings from the investment of the money shall be retained by the
18 account.

19 (2) All investments made by the state investment board shall be
20 made with the exercise of that degree of judgment and care pursuant to
21 RCW 43.33A.140 and the investment policies established by the state
22 investment board.

23 (3) As deemed appropriate by the state investment board, moneys in
24 the account may be commingled for investment with other funds subject
25 to investment by the board.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.45 RCW
27 to read as follows:

28 (1) It is the intent of the legislature to provide for the
29 systematic funding of the plan 1 unfunded accrued actuarial liabilities
30 in a manner that promotes contribution rate adequacy and stability for
31 the affected systems. The rates established in this section shall be
32 collected in addition to the rates established pursuant to RCW
33 41.45.062.

34 (2) Beginning September 1, 2006, a 1.29 percent contribution is
35 established as part of the basic state and employer contribution rate

1 for the teachers' retirement system, to be used for the sole purpose of
2 amortizing the unfunded accrued actuarial liability in the teachers'
3 retirement system plan 1.

4 (3) Beginning September 1, 2006, a 0.87 percent contribution is
5 established as part of the basic state and employer contribution rate
6 for the school employees' retirement system, to be used for the sole
7 purpose of amortizing the unfunded accrued actuarial liability in the
8 public employees' retirement system plan 1.

9 (4) Beginning January 1, 2007, a 1.77 percent contribution is
10 established as part of the basic state and employer contribution rate
11 for the public employees' retirement system and the public safety
12 employees' retirement system, to be used for the sole purpose of
13 amortizing the unfunded accrued actuarial liability in the public
14 employees' retirement system plan 1.

15 (5) The contribution rates in this section shall be collected
16 through June 30, 2007, for the public employees' retirement system and
17 the public safety employees' retirement system and August 31, 2007, for
18 the teachers' retirement system and the school employees' retirement
19 system.

20 (6) Upon completion of the 2005 actuarial valuation, the pension
21 funding council and the state actuary shall review the contribution
22 rates for the plan 1 unfunded actuarial accrued liability for fiscal
23 year 2008 and fiscal year 2009 and by September 30, 2006, the pension
24 funding council shall adopt contribution rates to complete the three-
25 year phase-in schedule, adjusted for any material changes in benefits
26 or actuarial assumptions, methods, and experience. The expected
27 present value of projected contributions during the three-year phase-in
28 period shall be the same as the expected present value of projected
29 contributions that would have been collected without the phase-in, as
30 determined by the state actuary and adjusted for any material changes
31 in benefits or actuarial assumptions, methods, or experience.

32 NEW SECTION. **Sec. 4.** The sum of three hundred fifty million
33 dollars is appropriated for the fiscal year ending June 30, 2006, from
34 the general fund to the pension funding stabilization account for the
35 purposes of section 1 of this act.

1 NEW SECTION. **Sec. 5.** The sum of two hundred million dollars is
2 appropriated for the fiscal year ending June 30, 2006, from the general
3 fund to the health services account for the purposes of providing
4 fiscal stability for the account.

5 NEW SECTION. **Sec. 6.** The sum of two hundred seventy-five million
6 dollars is appropriated for the fiscal year ending June 30, 2006, from
7 the general fund to the student achievement fund for the purposes of
8 providing fiscal stability for the fund..

9 **Sec. 7.** RCW 43.135.025 and 2000 2nd sp.s. c 2 s 1 are each amended
10 to read as follows:

11 (1) The state shall not expend from the general fund during any
12 fiscal year state moneys in excess of the state expenditure limit
13 established under this chapter.

14 (2) Except pursuant to a declaration of emergency under RCW
15 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b),
16 the state treasurer shall not issue or redeem any check, warrant, or
17 voucher that will result in a state general fund expenditure for any
18 fiscal year in excess of the state expenditure limit established under
19 this chapter. A violation of this subsection constitutes a violation
20 of RCW 43.88.290 and shall subject the state treasurer to the penalties
21 provided in RCW 43.88.300.

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

25 (4) For purposes of computing the state expenditure limit for the
26 fiscal year beginning July 1, 1995, the phrase "the previous fiscal
27 year's state expenditure limit" means the total state expenditures from
28 the state general fund, not including federal funds, for the fiscal
29 year beginning July 1, 1989, plus the fiscal growth factor. This
30 calculation is then computed for the state expenditure limit for fiscal
31 years 1992, 1993, 1994, and 1995, and as required under RCW
32 43.135.035(4).

33 (5) A state expenditure limit committee is established for the
34 purpose of determining and adjusting the state expenditure limit as
35 provided in this chapter. The members of the state expenditure limit
36 committee are the director of financial management, the attorney

1 general or the attorney general's designee, and the chairs of the
2 senate committee on ways and means and the house of representatives
3 committee on appropriations. All actions of the state expenditure
4 limit committee taken pursuant to this chapter require an affirmative
5 vote of at least three members.

6 (6) Each November, the state expenditure limit committee shall
7 adjust the expenditure limit for the preceding fiscal year based on
8 actual expenditures and known changes in the fiscal growth factor and
9 then project an expenditure limit for the next two fiscal years. In
10 calculating the expenditure limit for fiscal year 2006, the calculation
11 shall be the expenditure limit established by the state expenditure
12 limit committee in November 2005 adjusted as provided by this chapter
13 and adjusted to include the fiscal year 2006 state general fund
14 appropriations to the pension funding stabilization account, the health
15 services account, and the student achievement fund in chapter . . . ,
16 Laws of 2006 (this act). If, by November 30th, the state expenditure
17 limit committee has not adopted the expenditure limit adjustment and
18 projected expenditure limit as provided in subsection (5) of this
19 section, the attorney general or his or her designee shall adjust or
20 project the expenditure limit, as necessary.

21 (7) "Fiscal growth factor" means the average of the sum of
22 inflation and population change for each of the prior three fiscal
23 years.

24 (8) "Inflation" means the percentage change in the implicit price
25 deflator for the United States for each fiscal year as published by the
26 federal bureau of labor statistics.

27 (9) "Population change" means the percentage change in state
28 population for each fiscal year as reported by the office of financial
29 management.

30 **Sec. 8.** RCW 43.135.035 and 2005 c 72 s 2 are each amended to read
31 as follows:

32 (1) After July 1, 1995, any action or combination of actions by the
33 legislature that raises state revenue or requires revenue-neutral tax
34 shifts may be taken only if approved by a two-thirds vote of each
35 house, and then only if state expenditures in any fiscal year,
36 including the new revenue, will not exceed the state expenditure limits
37 established under this chapter. However, for legislation enacted

1 between the effective date of this 2005 act and June 30, ((2007)) 2006,
2 any action or combination of actions by the legislature that raises
3 state revenue or requires revenue-neutral tax shifts may be taken with
4 the approval of a majority of members elected to each house, so long as
5 state expenditures in any fiscal year, including the new revenue, will
6 not exceed the state expenditure limits established under this chapter.

7 (2)(a) If the legislative action under subsection (1) of this
8 section will result in expenditures in excess of the state expenditure
9 limit, then the action of the legislature shall not take effect until
10 approved by a vote of the people at a November general election. The
11 state expenditure limit committee shall adjust the state expenditure
12 limit by the amount of additional revenue approved by the voters under
13 this section. This adjustment shall not exceed the amount of revenue
14 generated by the legislative action during the first full fiscal year
15 in which it is in effect. The state expenditure limit shall be
16 adjusted downward upon expiration or repeal of the legislative action.

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

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

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

31 (b) Additional taxes required for an emergency under this section
32 may be imposed only until thirty days following the next general
33 election, unless an extension is approved at that general election.
34 The additional taxes shall expire upon expiration of the declaration of
35 emergency. The legislature shall not impose additional taxes for
36 emergency purposes under this subsection unless funds in the education
37 construction fund have been exhausted.

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

4 (4) If the cost of any state program or function is shifted from
5 the state general fund on or after January 1, 1993, to another source
6 of funding, or if moneys are transferred from the state general fund to
7 another fund or account, the state expenditure limit committee, acting
8 pursuant to RCW 43.135.025(5), shall lower the state expenditure limit
9 to reflect the shift. For purposes of this section, expenditures from
10 the pension funding stabilization account shall not be considered a
11 state program cost shift from the state general fund to another
12 account. For the purposes of this section, a transfer of money from
13 the state general fund to another fund or account includes any state
14 legislative action taken that has the effect of reducing revenues from
15 a particular source, where such revenues would otherwise be deposited
16 into the state general fund, while increasing the revenues from that
17 particular source to another state or local government account. This
18 subsection does not apply to the dedication or use of lottery revenues
19 under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in
20 support of education or education expenditures.

21 (5) If the cost of any state program or function is shifted to the
22 state general fund on or after January 1, 2000, from another source of
23 funding, or if moneys are transferred to the state general fund from
24 another fund or account, the state expenditure limit committee, acting
25 pursuant to RCW 43.135.025(5), shall increase the state expenditure
26 limit to reflect the shift.

27 **Sec. 9.** RCW 43.84.092 and 2005 c 514 s 1105, 2005 c 353 s 3, 2005
28 c 339 s 22, 2005 c 314 s 109, 2005 c 312 s 7, and 2005 c 94 s 1 are
29 each reenacted and amended to read as follows:

30 (1) All earnings of investments of surplus balances in the state
31 treasury shall be deposited to the treasury income account, which
32 account is hereby established in the state treasury.

33 (2) The treasury income account shall be utilized to pay or receive
34 funds associated with federal programs as required by the federal cash
35 management improvement act of 1990. The treasury income account is
36 subject in all respects to chapter 43.88 RCW, but no appropriation is
37 required for refunds or allocations of interest earnings required by

1 the cash management improvement act. Refunds of interest to the
2 federal treasury required under the cash management improvement act
3 fall under RCW 43.88.180 and shall not require appropriation. The
4 office of financial management shall determine the amounts due to or
5 from the federal government pursuant to the cash management improvement
6 act. The office of financial management may direct transfers of funds
7 between accounts as deemed necessary to implement the provisions of the
8 cash management improvement act, and this subsection. Refunds or
9 allocations shall occur prior to the distributions of earnings set
10 forth in subsection (4) of this section.

11 (3) Except for the provisions of RCW 43.84.160, the treasury income
12 account may be utilized for the payment of purchased banking services
13 on behalf of treasury funds including, but not limited to, depository,
14 safekeeping, and disbursement functions for the state treasury and
15 affected state agencies. The treasury income account is subject in all
16 respects to chapter 43.88 RCW, but no appropriation is required for
17 payments to financial institutions. Payments shall occur prior to
18 distribution of earnings set forth in subsection (4) of this section.

19 (4) Monthly, the state treasurer shall distribute the earnings
20 credited to the treasury income account. The state treasurer shall
21 credit the general fund with all the earnings credited to the treasury
22 income account except:

23 (a) The following accounts and funds shall receive their
24 proportionate share of earnings based upon each account's and fund's
25 average daily balance for the period: The capitol building
26 construction account, the Cedar River channel construction and
27 operation account, the Central Washington University capital projects
28 account, the charitable, educational, penal and reformatory
29 institutions account, the common school construction fund, the county
30 criminal justice assistance account, the county sales and use tax
31 equalization account, the data processing building construction
32 account, the deferred compensation administrative account, the deferred
33 compensation principal account, the department of retirement systems
34 expense account, the developmental disabilities community trust
35 account, the drinking water assistance account, the drinking water
36 assistance administrative account, the drinking water assistance
37 repayment account, the Eastern Washington University capital projects
38 account, the education construction fund, the education legacy trust

1 account, the election account, the emergency reserve fund, The
2 Evergreen State College capital projects account, the federal forest
3 revolving account, the freight mobility investment account, the health
4 services account, the public health services account, the health system
5 capacity account, the personal health services account, the state
6 higher education construction account, the higher education
7 construction account, the highway infrastructure account, the high-
8 occupancy toll lanes operations account, the industrial insurance
9 premium refund account, the judges' retirement account, the judicial
10 retirement administrative account, the judicial retirement principal
11 account, the local leasehold excise tax account, the local real estate
12 excise tax account, the local sales and use tax account, the medical
13 aid account, the mobile home park relocation fund, the multimodal
14 transportation account, the municipal criminal justice assistance
15 account, the municipal sales and use tax equalization account, the
16 natural resources deposit account, the oyster reserve land account, the
17 pension funding stabilization account, the perpetual surveillance and
18 maintenance account, the public employees' retirement system plan 1
19 account, the public employees' retirement system combined plan 2 and
20 plan 3 account, the public facilities construction loan revolving
21 account beginning July 1, 2004, the public health supplemental account,
22 the Puyallup tribal settlement account, the real estate appraiser
23 commission account, the regional transportation investment district
24 account, the resource management cost account, the rural Washington
25 loan fund, the site closure account, the small city pavement and
26 sidewalk account, the special wildlife account, the state employees'
27 insurance account, the state employees' insurance reserve account, the
28 state investment board expense account, the state investment board
29 commingled trust fund accounts, the supplemental pension account, the
30 Tacoma Narrows toll bridge account, the teachers' retirement system
31 plan 1 account, the teachers' retirement system combined plan 2 and
32 plan 3 account, the tobacco prevention and control account, the tobacco
33 settlement account, the transportation infrastructure account, the
34 transportation partnership account, the tuition recovery trust fund,
35 the University of Washington bond retirement fund, the University of
36 Washington building account, the volunteer fire fighters' and reserve
37 officers' relief and pension principal fund, the volunteer fire
38 fighters' and reserve officers' administrative fund, the Washington

1 fruit express account, the Washington judicial retirement system
2 account, the Washington law enforcement officers' and fire fighters'
3 system plan 1 retirement account, the Washington law enforcement
4 officers' and fire fighters' system plan 2 retirement account, the
5 Washington school employees' retirement system combined plan 2 and 3
6 account, the Washington state health insurance pool account, the
7 Washington state patrol retirement account, the Washington State
8 University building account, the Washington State University bond
9 retirement fund, the water pollution control revolving fund, and the
10 Western Washington University capital projects account. Earnings
11 derived from investing balances of the agricultural permanent fund, the
12 normal school permanent fund, the permanent common school fund, the
13 scientific permanent fund, and the state university permanent fund
14 shall be allocated to their respective beneficiary accounts. All
15 earnings to be distributed under this subsection (4) (a) shall first be
16 reduced by the allocation to the state treasurer's service fund
17 pursuant to RCW 43.08.190.

18 (b) The following accounts and funds shall receive eighty percent
19 of their proportionate share of earnings based upon each account's or
20 fund's average daily balance for the period: The aeronautics account,
21 the aircraft search and rescue account, the county arterial
22 preservation account, the department of licensing services account, the
23 essential rail assistance account, the ferry bond retirement fund, the
24 grade crossing protective fund, the high capacity transportation
25 account, the highway bond retirement fund, the highway safety account,
26 the motor vehicle fund, the motorcycle safety education account, the
27 pilotage account, the public transportation systems account, the Puget
28 Sound capital construction account, the Puget Sound ferry operations
29 account, the recreational vehicle account, the rural arterial trust
30 account, the safety and education account, the special category C
31 account, the state patrol highway account, the transportation 2003
32 account (nickel account), the transportation equipment fund, the
33 transportation fund, the transportation improvement account, the
34 transportation improvement board bond retirement account, and the urban
35 arterial trust account.

36 (5) In conformance with Article II, section 37 of the state
37 Constitution, no treasury accounts or funds shall be allocated earnings
38 without the specific affirmative directive of this section.

1 **Sec. 10.** RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005
2 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are
3 each reenacted and amended to read as follows:

4 (1) All earnings of investments of surplus balances in the state
5 treasury shall be deposited to the treasury income account, which
6 account is hereby established in the state treasury.

7 (2) The treasury income account shall be utilized to pay or receive
8 funds associated with federal programs as required by the federal cash
9 management improvement act of 1990. The treasury income account is
10 subject in all respects to chapter 43.88 RCW, but no appropriation is
11 required for refunds or allocations of interest earnings required by
12 the cash management improvement act. Refunds of interest to the
13 federal treasury required under the cash management improvement act
14 fall under RCW 43.88.180 and shall not require appropriation. The
15 office of financial management shall determine the amounts due to or
16 from the federal government pursuant to the cash management improvement
17 act. The office of financial management may direct transfers of funds
18 between accounts as deemed necessary to implement the provisions of the
19 cash management improvement act, and this subsection. Refunds or
20 allocations shall occur prior to the distributions of earnings set
21 forth in subsection (4) of this section.

22 (3) Except for the provisions of RCW 43.84.160, the treasury income
23 account may be utilized for the payment of purchased banking services
24 on behalf of treasury funds including, but not limited to, depository,
25 safekeeping, and disbursement functions for the state treasury and
26 affected state agencies. The treasury income account is subject in all
27 respects to chapter 43.88 RCW, but no appropriation is required for
28 payments to financial institutions. Payments shall occur prior to
29 distribution of earnings set forth in subsection (4) of this section.

30 (4) Monthly, the state treasurer shall distribute the earnings
31 credited to the treasury income account. The state treasurer shall
32 credit the general fund with all the earnings credited to the treasury
33 income account except:

34 (a) The following accounts and funds shall receive their
35 proportionate share of earnings based upon each account's and fund's
36 average daily balance for the period: The capitol building
37 construction account, the Cedar River channel construction and
38 operation account, the Central Washington University capital projects

1 account, the charitable, educational, penal and reformatory
2 institutions account, the common school construction fund, the county
3 criminal justice assistance account, the county sales and use tax
4 equalization account, the data processing building construction
5 account, the deferred compensation administrative account, the deferred
6 compensation principal account, the department of retirement systems
7 expense account, the developmental disabilities community trust
8 account, the drinking water assistance account, the drinking water
9 assistance administrative account, the drinking water assistance
10 repayment account, the Eastern Washington University capital projects
11 account, the education construction fund, the education legacy trust
12 account, the election account, the emergency reserve fund, The
13 Evergreen State College capital projects account, the federal forest
14 revolving account, the freight mobility investment account, the health
15 services account, the public health services account, the health system
16 capacity account, the personal health services account, the state
17 higher education construction account, the higher education
18 construction account, the highway infrastructure account, the high-
19 occupancy toll lanes operations account, the industrial insurance
20 premium refund account, the judges' retirement account, the judicial
21 retirement administrative account, the judicial retirement principal
22 account, the local leasehold excise tax account, the local real estate
23 excise tax account, the local sales and use tax account, the medical
24 aid account, the mobile home park relocation fund, the multimodal
25 transportation account, the municipal criminal justice assistance
26 account, the municipal sales and use tax equalization account, the
27 natural resources deposit account, the oyster reserve land account, the
28 pension funding stabilization account, the perpetual surveillance and
29 maintenance account, the public employees' retirement system plan 1
30 account, the public employees' retirement system combined plan 2 and
31 plan 3 account, the public facilities construction loan revolving
32 account beginning July 1, 2004, the public health supplemental account,
33 the public works assistance account, the Puyallup tribal settlement
34 account, the real estate appraiser commission account, the regional
35 transportation investment district account, the resource management
36 cost account, the rural Washington loan fund, the site closure account,
37 the small city pavement and sidewalk account, the special wildlife
38 account, the state employees' insurance account, the state employees'

1 insurance reserve account, the state investment board expense account,
2 the state investment board commingled trust fund accounts, the
3 supplemental pension account, the Tacoma Narrows toll bridge account,
4 the teachers' retirement system plan 1 account, the teachers'
5 retirement system combined plan 2 and plan 3 account, the tobacco
6 prevention and control account, the tobacco settlement account, the
7 transportation infrastructure account, the transportation partnership
8 account, the tuition recovery trust fund, the University of Washington
9 bond retirement fund, the University of Washington building account,
10 the volunteer fire fighters' and reserve officers' relief and pension
11 principal fund, the volunteer fire fighters' and reserve officers'
12 administrative fund, the Washington fruit express account, the
13 Washington judicial retirement system account, the Washington law
14 enforcement officers' and fire fighters' system plan 1 retirement
15 account, the Washington law enforcement officers' and fire fighters'
16 system plan 2 retirement account, the Washington public safety
17 employees' plan 2 retirement account, the Washington school employees'
18 retirement system combined plan 2 and 3 account, the Washington state
19 health insurance pool account, the Washington state patrol retirement
20 account, the Washington State University building account, the
21 Washington State University bond retirement fund, the water pollution
22 control revolving fund, and the Western Washington University capital
23 projects account. Earnings derived from investing balances of the
24 agricultural permanent fund, the normal school permanent fund, the
25 permanent common school fund, the scientific permanent fund, and the
26 state university permanent fund shall be allocated to their respective
27 beneficiary accounts. All earnings to be distributed under this
28 subsection (4)(a) shall first be reduced by the allocation to the state
29 treasurer's service fund pursuant to RCW 43.08.190.

30 (b) The following accounts and funds shall receive eighty percent
31 of their proportionate share of earnings based upon each account's or
32 fund's average daily balance for the period: The aeronautics account,
33 the aircraft search and rescue account, the county arterial
34 preservation account, the department of licensing services account, the
35 essential rail assistance account, the ferry bond retirement fund, the
36 grade crossing protective fund, the high capacity transportation
37 account, the highway bond retirement fund, the highway safety account,
38 the motor vehicle fund, the motorcycle safety education account, the

1 pilotage account, the public transportation systems account, the Puget
2 Sound capital construction account, the Puget Sound ferry operations
3 account, the recreational vehicle account, the rural arterial trust
4 account, the safety and education account, the special category C
5 account, the state patrol highway account, the transportation 2003
6 account (nickel account), the transportation equipment fund, the
7 transportation fund, the transportation improvement account, the
8 transportation improvement board bond retirement account, and the urban
9 arterial trust account.

10 (5) In conformance with Article II, section 37 of the state
11 Constitution, no treasury accounts or funds shall be allocated earnings
12 without the specific affirmative directive of this section.

13 NEW SECTION. **Sec. 11.** Section 9 of this act expires July 1, 2006.

14 NEW SECTION. **Sec. 12.** Sections 7 and 8 of this act expire July 1,
15 2007.

16 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately, except section 10 of this act, which takes effect July 1,
20 2006.

Passed by the Senate March 6, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.