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SUPREME COURT
STATE OF WASHINGTON

2007 AUG -9 A 8:40

BY RONALD A APPENTER



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No. 80358-7

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON RULE OF LAW PROJECT, a voluntary associational endeavor of Stephen K. Eugster,

Appellant,

versus

ROB MCKENNA, Attorney General of the State of Washington; SAM REED, Secretary of State of the State of Washington; CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a Washington regional transit authority; REGIONAL TRANSPORTATION INVESTMENT DISTRICT PLANNING COMMITTEE, a Washington regional transportation investment district planning committee,

Respondents.

BRIEF OF APPELLANT

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I. INTRODUCTION

The purpose of this lawsuit is to have the court declare that SHB 1396 – the “single ballot” proposition for regional transportation investment districts and regional transportation authorities at the 2007 general election – is unconstitutional.¹

In addition, the purpose of the lawsuit is to have the court declare that the “investment plan” ballot proposition as contained in SHB 1396 and existing legislation unchanged by SHB 1396 (if declared unconstitutional) is unconstitutional.

Finally, the purpose of the lawsuit is to have the court declare that the tying of the passage of each of the propositions is unconstitutional (a) as found in SHB 1396 and (b) as found in legislation unchanged by SHB 1396, RCW 36.120.070 and RCW 81.112.030.²

As the court will see, proper application of the constitution and law to the circumstances of the case will not prevent Sound Transit and the Regional Transportation Investment District Committee from presenting the proposal of each at the November 6, 2007 election.

¹ SHB 1396 is attached as Appendix A.

² RCW 36.120.070 and RCW 81.112.030 unchanged by SHB 1396 may be found in Appendix B and C respectively.

II. ASSIGNMENTS OF ERROR; ISSUES PRESENTED

A. Assignment of Error.

Appellants (Plaintiffs) assign error to the "Memorandum Opinion on Constitutionality of SHB 1396" authored by the Honorable Richard D. Hicks and entered on July 6, 2007 (Decision). The Decision is a final order.

B. Issues Presented.

The issues presented by the Assignment of Error are as follows:

1. Does Washington Rule of Law Project, an associational endeavor of Stephen K. Eugster (a.k.a. Stephen K. Eugster), have standing to bring this action?
2. Does SHB 1396 violate Wash. Const. Art. II, § 19?
2. Does the dual majority requirement found in each of RCW 36.120.070 and RCW 81.112.030(10) violate Wash. Const. Art. II, § 19?
3. Does the "investment plan" to be proposed by the RTID under RCW 36.120.070 violate Wash. Const. Art. II, § 19?
4. Is SHB 1396 unconstitutional because it violates principles of one person one vote and fair and equal vote?
5. Does the Legislature have the power to adopt Section 5 of SHB 1396 which places a special limitation of action on constitutional

challenges to legislation and the power to direct the court as to the processing of the litigation challenging the constitutionality to legislation?

III. STATEMENT OF FACTS

A. Parties and Standing.

Appellant, Washington Rule of Law Project (WRLP), is a voluntary association and endeavor of Stephen K. Eugster. Complaint,³ CP 5. Stephen K. Eugster is a resident of the State of Washington, a taxpayer of the State of Washington, a taxpayer of taxes imposed within the area of Sound Transit, and a taxpayer of taxes to be imposed within the area of the Regional Transportation Investment District. *Id.*; Declaration of Stephen K. Eugster, May 19, 2007, CP 26 - 27; Declaration of Stephen K. Eugster dated May 30, 2007, CP 37; Declaration of Stephen K. Eugster dated July 1, 2007, CP 59.

Defendant Central Puget Sound Regional Transit Authority (Sound Transit) is a Washington regional transit authority under the provisions of RCW Ch. 82.112. Complaint, CP 5. Defendant Regional Transportation Investment District Planning Committee (RTID), is a Washington regional transportation investment district planning committee under the

³ Complaint refers to the verified complaint of Plaintiff herein.

provisions of RCW Ch. 36.120. Complaint, CP 5.

Washington Rule of Law Project and Stephen K. Eugster have requested the Washington State Attorney General, Rob McKenna, to take the action and actions set forth in Complaint to challenge the constitutionality of SHB 1396 and take certain other action. Washington State Attorney General Rob McKenna has declined to take action by letter of Maureen Hart, Solicitor General, Office of Rob McKenna Attorney General of Washington to Stephen K. Eugster dated May 17, 2007. *Id.*; Declaration of Stephen K. Eugster, May 19, 2007, CP 26 *and see* Exhibit A to the declaration at page CP 20 - 30.

B. Creation of Sound Transit.

Enabling legislation for the creation of regional transit authorities (such as the RTA) was passed by the Washington State Legislature in 1992. RCW Ch. 81.112. The Legislature authorized creation of regional transit authorities for the purpose of developing and operating high capacity transportation systems. *Id.*

A high capacity transportation system is an urban public transportation system that operates principally on exclusive rights-of-way and provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating

mainly on general purpose roadways. *Id.*

In 1993, the King, Pierce and Snohomish County Councils voted to establish the Central Puget Sound Regional Transit Authority (now known as Sound Transit). Sound Transit is vested with a high capacity transportation system development authority in the three-county area, including the imposition of voter-approved taxes for development and operation of such transportation systems. Complaint, CP 7 and following.

In 1996, voters in the urban areas of King, Pierce and Snohomish counties approved a plan and authorized funding to provide high capacity transportation services for the central Puget Sound region. Complaint, CP 7.

C. Regional Transportation Investment Districts.

In 2002, the Legislature authorized the creation of regional transportation investment districts (RTID) for the purpose of planning and financing regional transportation improvements within a multi-county region. RCW Ch. 36.120. Complaint, CP 7 and following.

RTID consists of King, Pierce and Snohomish counties.

An RTID is granted several local voter-approved funding options to fund the improvements, including a sales and use tax, vehicle license fee, parking tax, motor vehicle excise tax, employer tax, local option fuel

tax, and vehicle tolls. *Id.*

Eligible projects include capital improvements to highways of statewide significance, including associated multi-modal capital improvements, and, under limited circumstances, certain local street, road and highway improvements. *Id.*

D. Engrossed Substitute House Bill 2871, 2007 Sound Transit-RTID Joint Ballot.

During the 2006 legislative session, the Legislature enacted ESHB 2871, Chapter 311, Laws of 2006. ESHB 2871 requires, among other things, that Sound Transit and the RTID submit to regional voters at the 2007 general election the agencies' respective transit and highway improvement plans. More specifically, the RTID measure must ask the district's voters to approve formation of the district, the investment plan, and the revenue sources necessary to finance the plan. Complaint, CP 8 and following.

The Sound Transit measure must ask voters within its boundaries to support additional implementation phases of the authority's system and financing plan. *Id.*

The legislation also requires the RTID and Sound Transit measures be separate ballot measures. *Id.*

Furthermore, passage of each measure was made contingent on the passage of the other measure, thereby requiring both ballot measures to pass in order for either to pass. This is known as the “contingency requirement.” *Id.*

The list of eligible projects which the RTID may fund is expanded to permit operations, preservation and maintenance of tolled facilities backed by bond contracts and is required to include operational expenses for traffic mitigation relating to construction mitigation arising from specific projects in the RTID plan. *Id.*

The RTID plan must contain a SR 520 proposal that provides full project funding for seismic safety and corridor connectivity on the SR 520 project between Interstate 5 and Interstate 405. *Id.*

Seattle voters or the Seattle City Council must indicate the choice of preferred alternative on the Alaskan Way project by early November 2007. *Id.*

The Governor must make a finding of whether the finance and project implementation plans on the Alaskan Way and SR 520 projects are feasible and sufficient. *Id.*

E. Substitute House Bill 1396.

Pursuant to SHB 1396 at the 2007 general election, Sound Transit

and the RTID must submit to regional voters their respective transit and highway improvement plans in the form of a single ballot proposition, rather than as two separate ballot measures. The “contingency requirement”⁴ established in ESHB 2871 is maintained by requiring support of the single ballot measure by both a majority of voters in the Sound Transit taxing district and a majority of the voters in the RTID taxing district. Complaint 10 and following.

The text of the ballot proposition is codified in statute and requires that the ballot measure submitted to the voters take substantially the same form as the codified language. *Id.*

In addition, the ballot measure must include language stating that each taxing district may only impose taxes within its respective boundaries. *Id.*

An expedited appeal process is provided for any constitutional challenges to the bill. This expedited appeal process includes a statute of limitation on the initiation of any “constitutional challenge” to the act and set forth time periods which must be complied with for the case at the trial level and the case at the appeals level. *Id.* See Section 5 of SHB 1396.

Finally, an emergency clause is included, making the bill effective

⁴ Sometimes this is referred to as the “dual majority requirement.”

immediately. The bill became effective when Governor Gregoire signed it on May 15, 2007.

IV. SUMMARY OF ARGUMENT

The Single Ballot legislation is unconstitutional because it violates the Single-Subject-Rule and the Single-Subject-In-Title-Rule found in Wash. Const. Art. II, §19.

Not only is SHB 1396 unconstitutional in its creation, it is unconstitutional in what it seeks to do. What it seeks to do is made up of a number of acts which are, in and of themselves, unconstitutional. The legislation is not saved by the savings clause.

If the court agrees with WRLP that the legislation is unconstitutional, the Respondents will not be able to go forward this fall on separate ballots for their propositions. They will not because the laws which they will rely on in these respects are also unconstitutional because they violate the Single-Subject-Rule.

As a distinct matter, the so-called "investment plan" the RTID is to propose under SHB 1396 or RCW 36.120.070 unamended by SHB 1396 is, of necessity by virtue of its terms, a violation of the Single-Subject-Rule and thus, unconstitutional.

The legislation violates various principles of voting power – one

person, one vote, fair and equal vote. The district of the RTA is different in size from the district of RTID.

Last, the court must declare that legislation calling for a special statute of limitations on constitutional challenges to legislation and special rules of court with respect of such challenges is unconstitutional.

Nevertheless, each agency should be able to advance its transportation proposal at the November 6, 2007 election, but with some changes as to how the election proceeds and a limitation on the subjects of the RTID proposal and with doing away with the dual majority requirement for passage. The Conclusion describes what should be done. *See below at 34.*

V. ARGUMENT

A. **Summary Judgment Review Standards – Material Facts in Dispute as to Standing.**

The standard of review on appeal of a summary judgment order is de novo. *Ski Acres, Inc. v. Kittitas County*, 118 Wn.2d 852, 854, 827 P.2d 1000 (1992). Additionally, interpretation of a statute is a matter of law subject to de novo review. *See, e.g., State v. Karp*, 69 Wn. App. 369, 372, 848 P.2d 1304 (1993). The reviewing court performs the same inquiry as the trial court. *Margoles v. Hubbart*, 111 Wn.2d 195, 760 P.2d 324 (1988).

Evidence not presented before the trial court is not considered on appeal. *Id.*, and see, *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 390, 715 P.2d 1133 (1986).

There is only one possible factual issue upon which there is possible disagreement. It is the matter of standing. Here, if the trial court does not on the facts of the case as presented agree with WRLP that Stephen K. Eugster has taxpayer standing, then there must be a factual dispute as to the issue. No evidence contrary to Eugster's evidence as to his standing was presented to the court.

It is axiomatic that evidence submitted if not contradicted will be taken as true in summary judgment proceedings.

Indeed, in order to avoid the evidence submitted, the opposition in a summary judgment must present contrary evidence. See, *Bates v. Grace United Methodist Church*, 12 Wn. App. 111, 529 P.2d 466 (1974); *Winterroth v. Meats, Inc.*, 10 Wn. App. 7, 516 P.2d 522 (1973); *State v. Yard Birds, Inc.*, 9 Wn. App. 514, 513 P.2d 1030 (1973).

No contrary evidence was presented here. None of the Respondents presented any evidence whatsoever.

On the other hand, several declarations were filed by Stephen K. Eugster, each one dealing with facts establishing his taxpayer standing and

that he complied with the requirement of asking the Attorney General to act. Furthermore, the Complaint of the Appellant herein was a verified complaint. *See* the Eugster declarations at CP 26, 36, 43, and 59.

The Respondents have yet to answer the Complaint.

B. Law of Declaratory Judgments.

There is controversy between the parties as to the matters set forth herein and as described in each of the counts Appellant's Complaint. Complaint.

Under the Washington Declaratory Judgments Act, RCW Ch. 7.24, the court has authority to render declaratory judgments as to the constitutionality of acts, bills and statutes. The court should render declaratory judgments as to controversies expressed in the various counts of the Complaint. And, the court should grant such further relief as necessary to enforce the declaratory judgment rendered herein. RCW 7.24.040.

Declaratory judgment actions are governed by the Uniform Declaratory Judgments Act, chapter 7.24 RCW; A person may seek a declaration on "any question of . . . validity" of a statute when the statute affects the person's legal rights. RCW 7.24.020. *See also, Asarco Inc. v. Department of Ecology*, 145 Wn.2d 750, 769, 43 P.3d 471 (2002)

(Sanders, J. dissenting). Declaratory judgment actions are appropriate to determine the constitutionality of a statute. *See, e.g., Soundgarden v. Eikenberry*, 123 Wn.2d 750, 871 P.2d 1050 (1994).

The elements of a justiciable controversy under the Uniform Declaratory Judgments Act are: (1) parties must have existing and genuine rights or interests; (2) these rights or interests must be direct and substantial; (3) the determination will be a final judgment that extinguishes the dispute; (4) the proceeding must be genuinely adversarial in character. *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186, 157 P.3d 847 (2007) citing *State ex rel. O'Connell v. Dubuque*, 68 Wn.2d 553, 413 P.2d 972 (1966).

All elements are satisfied in this case.

C. WRLP (Stephen K Eugster) Has Taxpayer Standing to Challenge the Constitutionality of SHB 1396.

Appellant, a taxpayer, is authorized to challenge constitutionality of SHB 1396 because he, Stephen K. Eugster, is a taxpayer and he has asked, and the Attorney General has refused his request, that the Attorney General institute action. *State ex rel. Tattersall v. Yelle*, 52 Wn.2d 856, 859, 329 P.2d 841 (1958). Declaration of Stephen K. Eugster dated May

19, 2007, CP 26. The court has frequently recognized taxpayer standing.⁵

The trial judge was confused as to the solution to the taxpayer standing issue. *See* Memorandum Opinion, CP 68 - 71.

Washington law provides for taxpayer standing lawsuits.

This Court has repeatedly recognized that a taxpayer has standing to challenge illegal governmental acts on behalf of all taxpayers without the need to allege a direct, special, or pecuniary interest in the outcome. *State ex rel. Boyles v. Whatcom County Superior Court*, 103 Wn.2d 610, 614, 694 P.2d 27 (1985); *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 269, 534 P.2d 114 (1975); *Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994).

However, the taxpayers seeking to bring such action must show that the attorney general refused their demand to institute the action or that this request would have been useless.

In *O'Brien*, 85 Wn.2d at 269 the court said:

It is well settled that taxpayers, in order to obtain standing to challenge the act of a public official, need allege no direct, special or pecuniary interest in the outcome of their action, there being only a condition precedent to such standing that the Attorney General first decline a request to

⁵ *Calvary Bible Presbyterian Church of Seattle v. Board of Regents*, 72 Wn.2d 912, 918, 436 P.2d 189 (1968); *Reiter v. Wallgren*, 28 Wn.2d 872, 184 P.2d 571 (1947); *State ex rel. Lemon v. Langlie*, 45 Wn.2d 82, 273 P.2d 464 (1954).

institute the action. *Reiter v. Wallgren*, 28 Wash.2d 872, 184 P.2d 571 (1947); *Fransen v. State Board of Natural Resources*, 66 Wash.2d 672, 404 P.2d 432 (1965). That condition was met in this case, and we perceive no justifiable reason to apply a different standard where a county or municipality brings the action. In this case a question is raised as to the propriety of a rather substantial expenditure of public funds, and it should not matter whether that question is raised by a private citizen or a governmental entity. [Emphasis added.]

Thus, in Washington, litigant standing to challenge illegal governmental acts on the basis of status as a taxpayer has for years been recognized. *Boyles*, 103 Wn.2d at 614.⁶ Indeed, such standing has been encouraged. "The recognition of taxpayer standing has been given freely in the interest of providing a judicial forum when this state's citizens contest the legality of official acts of their government." *Boyles*, 103 Wn.2d at 614.

Contrary to the understanding of the of the trial court, the matter of taxpayer standing is not "flummoxed in Washington." Memorandum Opinion CP 71.

WRLP asked the Attorney General to act, and the Attorney General refused. Complaint CP 6; Eugster Declaration of May 19, 2007, CP 26.

⁶ See also, *Robinson v. City of Seattle*, 102 Wn. App. 795, 805, 10 P.3d 452 (2000); *Kightlinger v. Pub. Util. Dist. No. 1*, 119 Wn. App. 501, 506-07, 81 P.3d 876 (2003), case dismissed, 152 Wn.2d 1001 (2005); *Wash. Pub. Trust Advocates ex rel. City of Spokane v. City of Spokane*, 117 Wn. App. 178, 182, 69 P.3d 351 (2003).

D. The Single-Subject-Rule – General Principles.

I. The Constitutional Requirement.

Article II, § 19 of the Washington Constitution reads, “No bill shall embrace more than one subject, and that shall be expressed in the title.”

This has been interpreted as creating two distinct prohibitions: first, no bill shall embrace more than one subject (the Single-Subject-Rule); and second, no bill shall have a subject not expressed in the title (the Subject-In-Title-Rule). *City of Fircrest v. Jensen*, 158 Wn.2d 384, 143 P.3d 776 (2006) citing *State ex rel. Citizens v. Murphy*, 151 Wn.2d 226, 249, 88 P.3d 375 (2004). See also, *Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d 622, 632, 71 P.3d 644 (2003).

Violation of either the Single-Subject-Rule or the Subject-In-Title-Rule is sufficient to declare an offending bill unconstitutional. *Id.* citing *Patrice v. Murphy*, 136 Wn.2d 845, 852, 966 P.2d 1271 (1998).

E. Single-Subject-Rule.

“The court examines the body of the act to determine whether the title reflects the subject matter of the act.” *Wash. Fed’n of State Employees v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995). “Under Const. art. II, § 19, the title is construed with reference to the language used in the title. Moreover, a court examines the body of the act to

determine whether the title reflects the subject matter of the act.” *Id.* at 556, 901 P.2d 1028 (citation omitted).

“Section 19 is violated, and logrolling occurs, when the measure is drafted such that voters may be required to vote for something of which the voter disapproves in order to obtain approval of an unrelated law.” *Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d 622, 632, 71 P.3d 644 (2003) citing *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 212, 11 P.3d 762 (2000).

If the title of the bill is restrictive, provisions which are not fairly within such restricted title will not be given force.

If the title is general, the subject of the legislation must be accurately expressed in the title of the act and the provisions of the enactment must be connected by a rational unity. *See Amalgamated*, 142 Wn.2d at 209, 11 P.3d 762.

F. Subject-In-Title-Rule.

Purpose of the Subject-In-Title-Rule to ensure legislators and the public are on notice as to what the contents of the bill are. *Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d at 632 citing *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d at 205. A title complies with this requirement if it gives notice to voters which would

lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind. *Id.*; *Amalgamated*, 142 Wn.2d at 217, 11 P.3d 762. But the title need not be an index to the contents, nor must it provide details of the measure. *Id.*; *Amalgamated*, 142 Wn.2d at 217, 11 P.3d 762.

“[N]otice” “which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law” to an “inquiring mind.”

What notice would be given here? What sort of inquiring mind would respond to the notice? What might such an inquiring mind look for?

G. SHB 1396 Violates Wash. Const. Art II, §19.

I. Title to SHB 1396 Violates Single-Subject-Rule.

The title to SHB 1396 provides:

AN ACT Relating to a single ballot proposition for regional transportation investment districts and regional transit authorities at the 2007 general election; amending RCW 36.120.070 and 81.112.030; adding a new section to chapter 29A.36 RCW; creating new sections; and declaring an emergency.

The title to SHB 1396 violates the Single-Subject-Rule of Wash. Const. Art II, § 19 because it includes more than one subject.

On its very face, the title includes two discrete subjects. One is a proposition for “regional transportation investment districts” – the ballot proposition called for by RCW 36.120.070 unamended. The second is the

proposition of "regional transit authorities" – the ballot proposition called for by RCW 81.112.030, unamended.

The RTID is to be a separate municipal authority. The RTA is already a separate municipal authority.

The two subjects are explicitly cited in the title. The subject as to the RTID is set out in the amendment to RCW 36.120.070. The subject as to the RTA is set out in RCW 81.112.030. Under the bill, these two separate sections and voter propositions which are the separate subject of each of the sections are to be amended so that each of the subjects of the proposition are included in each of the sections.

There is another subject in the bill. This subject is not mentioned. And, it cannot be considered a part of the subject of either of the separate propositions being subjected to a single ballot. That section is the special statute of limitation section which for the legislation says that any constitutional challenge to the bill must be made within 20 days of its SHB 1396's effective date. This is not a procedural undertaking by the legislature, this is a substantive law. It is not a part of any "rational unity" with the subject of the bill.

Furthermore, the law is clear that the legislature cannot take two pieces of legislation and combine them into one piece of legislation

without violating the single subject rule. It is said: "However, the fact that two matters embraced in a statute might be considered as branches of the same subject does not make the statute valid where the legislature has treated them as separate and distinct." 82 C.J.S. Statutes § 218 (1953).

2. *Substance of SHB 1396 Violates Single-Subject-Rule.*

The substance of SHB 1396 is found in Section 1. This section says the "traffic congestion reduces personal and freight mobility and is detrimental to the economy, air quality, and the quality of life throughout the central Puget Sound area." It goes on to say "[e]ffective transportation solutions are essential for the future growth and development of the central Puget Sound area and the welfare of its citizens."

The section next "finds" that two types of "investments . . . are necessary to relieve traffic congestion and to improve mobility." The two types of "investments" are "[t]he transportation improvements proposed by [1] regional transportation investment districts and [2] regional transit authorities within the central Puget Sound region form integral parts of, and are naturally and necessarily related to, a single regional transportation system. The construction of road and transit projects in a comprehensive and interrelated manner will help reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, and improve the

health, welfare, and safety of the citizens of Washington.”

This intent section further establishes that there are two different propositions by acknowledging what already stands under the law “that under RCW 81.112.030 and RCW 36.120.070 regional transportation investment districts and regional transit authorities are required to submit to the voters propositions for their respective transportation plans on the same ballot at the 2007 general election and that the opportunity to propose a single ballot reflecting a comprehensive, systemic, and interrelated approach to regional transportation would further the legislative intent and provide voters with an easier and more efficient method of expressing their will.”

But there is something more than mere recognition; there is clear direction that the legislation is “logrolling” – the inclusion of legislation with other legislation so that the stronger more appealing legislation will cause the passage of the weaker, less appealing legislation.

This intent or purpose to logroll the two ballot propositions by putting them into one ballot proposition is confirmed in the last sentence of the Section:

It is therefore the policy and intent of the state of Washington that transportation plans required to be submitted for voter approval at the 2007 general election by a regional transportation investment district and a regional

transit authority must be submitted to voters in single ballot question seeking approval of both plans.

On its very face, by its clear language, SHB 1396 violates the Single-Subject-Rule, Wash. Const. Art II, § 19.

3. *SHB 1396, Section 2 and Section 3 Violate Wash. Const. Art II, § 19.*

The key or substantive provisions of SHB 1396 are found in Section 2 and in Section 3. The purpose of the bill is to take two ballot propositions which are to go before the electorate of the RTA and RTID – RCW 36.120.070 for the RTID and the other set out in one set out in RCW 81.112.030(10) for the RTA. These, as shown, are set forth in the Title to the Bill and in Section 1 of the Bill.

The amendment to RCW 36.120.070 found in Section 2 takes the ballot of the RTID which is to go to the voters in November 2007 and ties it into a single ballot “that includes, in conjunction with RCW 81.112.030(10), a plan to support an authority's system and financing plan, or additional implementation phases of the system and financing plan, developed under chapter 81.112 RCW.”

The amendment to RCW 81.112.030(10) found in Section 3(10) takes the ballot of the RTA which is to go to the voters in November 2007 and ties it to the RTID proposition – the “authority shall submit a

proposition to support a system and financing plan or additional implementation phases of the authority's system and financing plan as part of a single ballot proposition that includes a plan to support a regional transportation investment plan developed under chapter 36.120 RCW.”

No reasonable person could conclude that two separate subjects were not to be combined into a single piece of legislation.

This becomes more clear when one looks at the next part of each of the amendments to RCW 36.120.070 and RCW 81.112.030(10). The last sentence of each amendatory section says the same thing – that there indeed are two propositions and that both have to pass by a majority of voters in the different voting districts.

As to RCW 36.120.070 the sentence reads:

The regional transportation investment plan shall not be considered approved unless both a majority of the persons voting on the proposition residing in the proposed district vote in favor of the proposition and a majority of the persons voting on the proposition residing within the regional transit authority vote in favor of the proposition. [Emphasis added.]

As to RCW 81.112.030(10) the last sentence reads:

The authority's plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the

proposition. [Emphasis added.]

In addition, the fact of there being two separate propositions, two subjects, is further established by two other very obvious facts: First, there are two separate and distinct state agencies involved here. One is the RTA formed under RCW 81.112. The other is the RTID in the process of being formed under RCW Ch. 36.120.

Second, and even more compelling as evidence that two propositions are at stake, is the fact that the district of the RTA and the district of the RTID are different. The RTID includes the area of the RTA, but it includes more than just the area of the RTA. It includes a substantial portion of Snohomish County which is not part of the RTA. This area includes thousands of voters. Declaration of Stephen K. Eugster dated May 30, 2007 and Attachment B-2, CP 36 and CP 42.

Thus, the propositions are distinct because the voters of one district are not the same as the voters of the other district. (As we shall see, this fact also causes SHB 1396 to violate constitutionally protected weight of vote requirements – one person, one vote, fair and equal vote. See below at page 29.

4. *The Requirement of a Majority Vote in Each District – RTA and RTID Introduces a New Subject to the Legislation.*

The requirement of a majority vote by the voters of the RTA district and a majority vote of the voters of the RTID does something else which makes SHB 1396 unconstitutional in violation of the Single-Subject-Rule, Subject-In-Title-Rule.

The requirement of a dual majority adds a new and separate subject to the ballot. One is not just voting for one ballot. The one ballot is actually split into two ballots. Neither of the ballots can pass unless both pass. This subject is not a part of the propositions. It is a subject which is added to propositions.

As if this is not enough, this subject is not found in the title to the Bill.

And, it should be noted, this subject is not to be found in the ballot title called for by the legislature in Section 4 of SHB 1396. The ballot proposition simply says nothing about the necessity of majority votes from each of the two districts asked to vote on the "single ballot."

Section 4 of SHB 1396 adds a new section, RCW Ch. 29A.36.

This new section says:

The election on the single ballot proposition described in RCW 36.120.070 and 81.112.030(10) must be conducted by the auditor of each component county in accordance with the general election laws of the state, except as provided in this section. Notice of the election must be published in one or more newspapers of general circulation

in each component county in the manner provided in the general election laws. The single joint ballot proposition required under RCW 36.120.070 and 81.112.030(10) must be in substantially the following form:

"REGIONAL TRANSPORTATION INVESTMENT
DISTRICT (RTID)
AND
REGIONAL TRANSIT AUTHORITY (RTA)
PROPOSITION #1
REGIONAL ROADS AND TRANSIT SYSTEM

To reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, provide for an integrated regional transportation system, and improve the health, welfare, and safety of the citizens of Washington, shall a regional transit authority (ETA) implement a regional rail and transit system to link [insert geographic references] as described in [insert plan name], financed by [insert taxes] imposed by RTA, all as provided in Resolution No. [insert number]; and shall a regional transportation investment district (RTID) be formed and authorized to implement and invest in improving the regional transportation system by replacing vulnerable bridges, improving safety, and increasing capacity our state and local roads to further link major education, employment, and retail centers described in [insert plan name] financed by [insert taxes] imposed by RTID, all as provided in Resolution. No. [insert number]; further provided that the RTA taxes shall be imposed only within the boundaries of the RTA, and the RTID taxes shall be imposed only within the boundaries of the RTID?

Yes

No

5. *Mutual Dependence of Majorities in SHB 1396 Violates Wash. Const. Art II, § 19.*

Section 3(10) of SHB 1396 makes the so-called Single Ballot dependent upon majority votes in the "proposed district" and majority of votes in the regional transit authority as follows:

The authority's plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the proposition.

The foregoing language of Section 3 (10) of SHB 1396 adds new and separate subjects to the legislation. Such subjects were not set forth in the title to SHB 1396.

Section 3 (10) of SHB 1396 violates the Single-Subject-Rule because it makes each proposition dependent upon the passage of the other proposition, thus violating the Single-Subject-Rule of Wash. Const. Art II, § 19. Section 3 (10) of SHB 1396 is unconstitutional.

H. *The Investment Plan for RTID of SHB 1396 or Under RCW Unamended by SHB 1396 Violates Wash. Const. Art II, § 19.*

SHB 1396 in Section 2 and Section 3 provides for the approval of a regional transportation investment plan by the voters of the RTA and the RTID. The regional transportation investment plan is merely a euphemism

for a proposition calling for the development of separate and discrete transportation projects. Thus, the proposition of the regional investment plan calls for the presentation of more than one subject to the voters for their approval.

The investment plan proposition of SHB 1396 violates the Single-Subject-Rule of Wash. Const. Art II, § 19.

I. Even If SHB 1396 Is Declared Unconstitutional, Current Laws Unchanged by SHB 1396 Are Unconstitutional: Each of RCW 36.120.070 and RCW 12.030 (10) Violate Wash. Const. Art II, § 19.

I. RCW 36.120.070(2) – RTID Plan.

RCW 36.120.070(2), unchanged by SHB 1396, provides:

(2) In conjunction with RCW 81.112.030(10), at the 2007 general election the participating counties shall submit a regional transportation investment plan on the same ballot along with a proposition to support additional implementation phases of the authority's system and financing plan developed under chapter 81.112 RCW. The plan shall not be considered approved unless voters also approve the proposition to support additional implementation phases of the authority's system and financing plan.

RCW 36.120.070(2), unchanged by SHB 1396, makes the proposition of the authority dependent upon another proposition and its passage, the regional transportation investment plan. Because it makes each proposition dependent upon the passage of the other proposition,

each proposition consists of two subjects rather than one.

RCW 36.120.070(2) unchanged by SHB 1396 violates the Single-Subject-Rule of Wash. Const. Art II, § 19. RCW 36.120.070(2) unchanged by SHB 1396 is unconstitutional.

RCW 36.120.070(2), unchanged by SHB-1396, provides for a proposition for a regional transportation investment plan. The regional transportation investment plan is merely a euphemism for a proposition calling for the development of separate and discrete transportation projects. This proposition calls for the presentation of more than one subject to the voters for their approval.

RCW 36.120.070(1), unchanged by SHB 1396, violates the Single-Subject-Rule of Wash. Const. Art II, § 19.

RCW 36.120.070(1), unchanged by SHB 1396, is unconstitutional.

2. RCW 81.112.030 (10), RTA Plan.

RCW 81.112.030(10) unchanged by SHB 1396 provides:

(10) In conjunction with RCW 36.120.070, at the 2007 general election the authority shall submit a proposition to support additional implementation phases of the authority's system and financing plan on the same ballot along with a regional transportation investment plan developed under chapter 36.120 RCW. The proposition shall not be considered approved unless voters also approve the regional transportation investment plan.

RCW 81.112.030 (10) unchanged by SHB 1396 makes the

proposition of the authority dependent upon another proposition and its passage, the regional transportation investment plan. Because it makes each proposition dependent upon the passage of the other proposition, each proposition consists of two subjects rather than one.

RCW 81.112.030 (10), unchanged by SHB-1396, violates the Single-Subject-Rule of Wash. Const. Art II, § 19. RCW 81.112.030 (10), unchanged by SHB 1396, is unconstitutional.

J. Subject-In-Title-Rule Violations.

1. Title to SHB 1396 Violates Subject-In-Title-Rule.

The title to SHB 1396 violates the Subject-In-Title-Rule of Wash. Const. Art II, § 19 because it fails to disclose all of the subjects of the legislation. The imposition of the dual majority is not disclosed. The special statute of limitations is not disclosed. The fact that there are two subjects in what is being proposed is not disclosed.

2. Proposed Ballot Title.

The single joint ballot proposition does not disclose all of the subjects of the proposed legislation. What is not disclosed in the Title to the Bill which should be disclosed is not disclosed in the Ballot of Section 4, SHB 1396.

K. Voting Power – One Person One Vote; Free and Equal Vote.

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States requires that equal participation in state election processes be accorded all citizens. *Brower v. State*, 137 Wn.2d 44, 67, 969 P.2d 42 (1998). In establishing voting districts within a state, the districts must have “ ‘substantial equality of population’ ” in order to insure that “ ‘the vote of any citizen is approximately equal in weight to that of any other citizen in the State.’ ” *Id.* See also, *Reynolds v. Sims*, 377 U.S. 533, 565-66, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

Wash. Const. art. I., § 19 provides that “[a]ll Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” The right to vote is fundamental, and art. I, § 19 provides greater protection for a free and equal vote than does the federal constitution's one person-one vote equal protection right. Article I, section 19 requires “that otherwise qualified voters who are significantly affected by the results of an election be given an opportunity to vote in that election.” *City of Seattle v. State*, 103 Wn.2d 663, 673, 694 P.2d 641 (1985).

Article I, § 19 provides that “[a]ll Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent

the free exercise of the right of suffrage.” The right to vote is fundamental, and art. I, § 19 provides greater protection for a free and equal vote than does the federal constitution's one person-one vote equal protection right. *Foster v. Sunnyside Valley Irrig. Dist.*, 102 Wn.2d 395, 687 P.2d 841 (1984).

The voters of the RTA will also be voters of the RTID. A majority for purposes of the RTA will not, however, be the same for purposes of the RTID. This is so because the area of the RTID is larger and has more voters than the RTA.

Thus, the voters of the RTID have more voting power than the voters of the RTA. There may be a majority of votes cast in the RTA but this majority may not be large enough to make up a majority for purposes of the RTID.

SHB 1396 violates one person one vote under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. SHB 1396 violates right to a free and equal vote under Wash. Const. Art. I, § 19.

The dual majority provisions of RCW 36.120.070 and RCW 81.112.030(10) unamended by SHB 1396 also violate these constitutional requirements and are thus unconstitutional and should be severed from the

legislation.

L. Special Statute of Limitations: Section 5 of SHB 1396 Violates Wash. Const. Art. IV, §§ 1, 6.

Section 5 of SHB 1396 adds a provision to the law of Washington which purports to provide for “[a]n expedited appeal process is provided for any constitutional challenges to the bill.” This section amounts to a statute of limitations of twenty days on challenges to the constitutionality of the Bill. It also imposes case process time limits on such litigation.

The legislature does not have constitutional authority to deprive the Superior Court of the State of Washington of its constitutional powers. The constitutional power of review by Superior Court cannot be abridged by legislative enactment. Wash. Const. art. IV, §§ 1, 6. *See, State ex rel. Cosmopolis Consol. Sch. Dist. 99 v. Bruno*, 59 Wn.2d 366, 369, 367 P.2d 995 (1962).

It might be contended the time period is only “procedural.” But it is not, it is substantive. *Hutton v. State*, 25 Wn.2d 402, 171 P.2d 248 (1946).

RAP 18.22 is also implicated; *and see, In re Recall of West*, 156 Wn.2d 244, 249, footnote 1, 126 P.3d 798 (2006) (“While RCW 29A.56.270 (formerly RCW 29.82.160) is specifically superseded in part by RAP 18.22, the rule makes it clear that it supersedes only the portion

of the statute that 'relates to appellate procedure.'")

Section 5 of SHB 1396 is unconstitutional.

M. SHB 1396 Not Saved by "Savings Clause."

Section 6 of SHB 1396 provides "[i]f any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

The Section 6 of SHB 1396 savings clause will not work, cannot be used, because the various provisions of a legislative enactment are not severable because of the confused connection of constitutional and unconstitutional provisions. *Leonard v. City of Spokane*, 127 Wn.2d 194, 201 - 202, 897 P.2d 358 (1995).

VI. CONCLUSION – WHAT SHOULD BE DONE?

What are the conclusions to be reached as a result of the foregoing analysis of the facts and application of the law to the facts. The conclusion is one which does not bring the process presenting an RTA plan and an RTID plan to the electorate to an end. In fact, the conclusion the court should reach is one which allows matters to go forward to the fall election but in such a way that the law and the constitution are not violated.

SHB 1396 is unconstitutional in many ways. The unconstitutional

parts cannot be separated from the constitutional parts. In addition and separately, Section 4, the special constitutional law challenge statute of limitations is unconstitutional.

But declaring SHB unconstitutional does not affect the sections of the law which call for presentation of a ballot proposition by the RTA and the presentation of a Ballot proposition by RTID in November 2007.

However, the court must invalidate the dual majority requirements of the sections. This requirement adds a separate subject to each of the propositions. As to the RTA proposition, the RTID proposition is added. As to RTID proposition, the RTA proposition is added.

Making matters worse the voters of the RTID and the RTA are not the same. And furthermore, the majority of the RTID is different in number than the majority of the RTA.

This dual majority has to be eliminated for another reason and that is it violates the one person, one vote rules and the fair and equal vote rules.

Thus, the propositions can be presented this coming fall but only in such a way that both can fail, both can pass, or one or the other can pass.

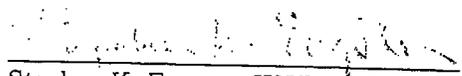
There is one further action the court must take. That is that it be certain that the investment plan not involve more than one subject. It

seems that any plan which treats projects as being discrete would violate the Single-Subject-Rule. Certainly, the addition to the plan of a transportation facility which does not exist or is not to be part of an existing facility is not part of a single subject. It is the introduction of a separate subject and one which is not found in the title. The so-called Cross Base Highway would be one such subject.

The approach described would be in conformity with the state constitution.

Respectfully submitted this 26th day of July, 2007.

EUGSTER LAW OFFICE PSC


Stephen K. Eugster, WSBA #2003
Washington Rule of Law Project

CERTIFICATION OF SERVICE

I hereby certify that on the 26th day of July, 2007, I caused a true and correct copy of the foregoing to be served upon the following individuals by the method(s) indicated.

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CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1396

Chapter 509, Laws of 2007

60th Legislature
2007 Regular Session

TRANSPORTATION PLANS--SINGLE BALLOT

EFFECTIVE DATE: 05/15/07

Passed by the House February 28, 2007
Yeas 96 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2007
Yeas 44 Nays 4

BRAD OWEN

President of the Senate

Approved May 15, 2007, 3:02 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1396 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 16, 2007

Secretary of State
State of Washington

A

SUBSTITUTE HOUSE BILL 1396

Passed Legislature - 2007 Regular Session

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Flannigan, Jarrett, B. Sullivan, Upthegrove, Rodne, Eddy, Kagi, Chase and Schual-Berke)

READ FIRST TIME 02/19/07.

1 AN ACT Relating to a single ballot proposition for regional
2 transportation investment districts and regional transit authorities at
3 the 2007 general election; amending RCW 36.120.070 and 81.112.030;
4 adding a new section to chapter 29A.36 RCW; creating new sections; and
5 declaring an emergency.

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

7 NEW SECTION. Sec. 1. The legislature finds that traffic
8 congestion reduces personal and freight mobility and is detrimental to
9 the economy, air quality, and the quality of life throughout the
10 central Puget Sound area. Effective transportation solutions are
11 essential for the future growth and development of the central Puget
12 Sound area and the welfare of its citizens.

13 The legislature further finds that investments in both transit and
14 road improvements are necessary to relieve traffic congestion and to
15 improve mobility. The transportation improvements proposed by regional
16 transportation investment districts and regional transit authorities
17 within the central Puget Sound region form integral parts of, and are
18 naturally and necessarily related to, a single regional transportation
19 system. The construction of road and transit projects in a

1 comprehensive and interrelated manner will help reduce transportation
2 congestion, increase road capacity, promote safety, facilitate
3 mobility, and improve the health, welfare, and safety of the citizens
4 of Washington.

5 The legislature further finds that under RCW 81.112.030 and
6 36.120.170 regional transportation investment districts and regional
7 transit authorities are required to submit to the voters propositions
8 for their respective transportation plans on the same ballot at the
9 2007 general election and that the opportunity to propose a single
10 ballot reflecting a comprehensive, systemic, and interrelated approach
11 to regional transportation would further the legislative intent and
12 provide voters with an easier and more efficient method of expressing
13 their will.

14 It is therefore the policy and intent of the state of Washington
15 that transportation plans required to be submitted for voter approval
16 at the 2007 general election by a regional transportation investment
17 district and a regional transit authority must be submitted to voters
18 in single ballot question seeking approval of both plans.

19 **Sec. 2.** RCW 36.120.070 and 2006 c 311 s 8 are each amended to read
20 as follows:

21 (1) Beginning no sooner than the 2007 general election, two or more
22 contiguous county legislative authorities, or a single county
23 legislative authority as provided under RCW 36.120.030(8), upon receipt
24 of the regional transportation investment plan under RCW 36.120.040,
25 may submit to the voters of the proposed district a single ballot
26 ((measure)) proposition that approves formation of the district,
27 approves the regional transportation investment plan, and approves the
28 revenue sources necessary to finance the plan. For a county to
29 participate in the plan, the county legislative authority shall, within
30 ninety days after receiving the plan, adopt an ordinance indicating the
31 county's participation. The planning committee may draft the ballot
32 ((measure)) proposition on behalf of the county legislative
33 authorities, and the county legislative authorities may give notice as
34 required by law for ballot ((measures)) propositions, and perform other
35 duties as required to submit the ((measure)) proposition to the voters
36 of the proposed district for their approval or rejection. Counties may
37 negotiate interlocal agreements necessary to implement the plan. The

1 electorate will be the voters voting within the boundaries of the
2 proposed district. A simple majority of the total persons voting on
3 the single ballot ((measure)) proposition is required for approval.

4 (2) (~~In conjunction with RCW 81.112.030(10), at the 2007 general~~
5 ~~election)) The participating counties shall submit a regional~~
6 ~~transportation investment plan ((on the same ballot along with a~~
7 ~~proposition to support additional implementation phases of the~~
8 ~~authority's system and financing plan developed under chapter 81.112~~
9 ~~RCW. The plan shall not be considered approved unless voters also~~
10 ~~approve the proposition to support additional implementation phases of~~
11 ~~the authority's system and financing plan)) at the 2007 general
12 election as part of a single ballot proposition that includes, in
13 conjunction with RCW 81.112.030(10), a plan to support an authority's
14 system and financing plan, or additional implementation phases of the
15 system and financing plan, developed under chapter 81.112 RCW. The
16 regional transportation investment plan shall not be considered
17 approved unless both a majority of the persons voting on the
18 proposition residing in the proposed district vote in favor of the
19 proposition and a majority of the persons voting on the proposition
20 residing within the regional transit authority vote in favor of the
21 proposition.~~

22 **Sec. 3.** RCW 81.112.030 and 2006 c 311 s 12 are each amended to
23 read as follows:

24 Two or more contiguous counties each having a population of four
25 hundred thousand persons or more may establish a regional transit
26 authority to develop and operate a high capacity transportation system
27 as defined in chapter 81.104 RCW.

28 The authority shall be formed in the following manner:

29 (1) The joint regional policy committee created pursuant to RCW
30 81.104.040 shall adopt a system and financing plan, including the
31 definition of the service area. This action shall be completed by
32 September 1, 1992, contingent upon satisfactory completion of the
33 planning process defined in RCW 81.104.100. The final system plan
34 shall be adopted no later than June 30, 1993. In addition to the
35 requirements of RCW 81.104.100, the plan for the proposed system shall
36 provide explicitly for a minimum portion of new tax revenues to be
37 allocated to local transit agencies for interim express services. Upon

1 adoption the joint regional policy committee shall immediately transmit
2 the plan to the county legislative authorities within the adopted
3 service area.

4 (2) The legislative authorities of the counties within the service
5 area shall decide by resolution whether to participate in the
6 authority. This action shall be completed within forty-five days
7 following receipt of the adopted plan or by August 13, 1993, whichever
8 comes first.

9 (3) Each county that chooses to participate in the authority shall
10 appoint its board members as set forth in RCW 81.112.040 and shall
11 submit its list of members to the secretary of the Washington state
12 department of transportation. These actions must be completed within
13 thirty days following each county's decision to participate in the
14 authority.

15 (4) The secretary shall call the first meeting of the authority, to
16 be held within thirty days following receipt of the appointments. At
17 its first meeting, the authority shall elect officers and provide for
18 the adoption of rules and other operating procedures.

19 (5) The authority is formally constituted at its first meeting and
20 the board shall begin taking steps toward implementation of the system
21 and financing plan adopted by the joint regional policy committee. If
22 the joint regional policy committee fails to adopt a plan by June 30,
23 1993, the authority shall proceed to do so based on the work completed
24 by that date by the joint regional policy committee. Upon formation of
25 the authority, the joint regional policy committee shall cease to
26 exist. The authority may make minor modifications to the plan as
27 deemed necessary and shall at a minimum review local transit agencies'
28 plans to ensure feeder service/high capacity transit service
29 integration, ensure fare integration, and ensure avoidance of parallel
30 competitive services. The authority shall also conduct a minimum
31 thirty-day public comment period.

32 (6) If the authority determines that major modifications to the
33 plan are necessary before the initial ballot proposition is submitted
34 to the voters, the authority may make those modifications with a
35 favorable vote of two-thirds of the entire membership. Any such
36 modification shall be subject to the review process set forth in RCW
37 81.104.110. The modified plan shall be transmitted to the legislative
38 authorities of the participating counties. The legislative authorities

1 shall have forty-five days following receipt to act by motion or
2 ordinance to confirm or rescind their continued participation in the
3 authority.

4 (7) If any county opts to not participate in the authority, but two
5 or more contiguous counties do choose to continue to participate, the
6 authority's board shall be revised accordingly. The authority shall,
7 within forty-five days, redefine the system and financing plan to
8 reflect elimination of one or more counties, and submit the redefined
9 plan to the legislative authorities of the remaining counties for their
10 decision as to whether to continue to participate. This action shall
11 be completed within forty-five days following receipt of the redefined
12 plan.

13 (8) The authority shall place on the ballot within two years of the
14 authority's formation, a single ballot proposition to authorize the
15 imposition of taxes to support the implementation of an appropriate
16 phase of the plan within its service area. In addition to the system
17 plan requirements contained in RCW 81.104.100(2)(d), the system plan
18 approved by the authority's board before the submittal of a proposition
19 to the voters shall contain an equity element which:

20 (a) Identifies revenues anticipated to be generated by corridor and
21 by county within the authority's boundaries;

22 (b) Identifies the phasing of construction and operation of high
23 capacity system facilities, services, and benefits in each corridor.
24 Phasing decisions should give priority to jurisdictions which have
25 adopted transit-supportive land use plans; and

26 (c) Identifies the degree to which revenues generated within each
27 county will benefit the residents of that county, and identifies when
28 such benefits will accrue.

29 A simple majority of those voting within the boundaries of the
30 authority is required for approval. If the vote is affirmative, the
31 authority shall begin implementation of the projects identified in the
32 proposition. However, the authority may not submit any authorizing
33 proposition for voter-approved taxes prior to July 1, 1993; nor may the
34 authority issue bonds or form any local improvement district prior to
35 July 1, 1993.

36 (9) If the vote on a proposition fails, the board may redefine the
37 proposition, make changes to the authority boundaries, and make
38 corresponding changes to the composition of the board. If the

1 composition of the board is changed, the participating counties shall
2 revise the membership of the board accordingly. The board may then
3 submit the revised proposition or a different proposition to the
4 voters. No single proposition may be submitted to the voters more than
5 twice. Beginning no sooner than the 2007 general election, the
6 authority may place additional propositions on the ballot to impose
7 taxes to support additional phases of plan implementation.

8 (10) (~~In conjunction with RCW 36.120.070,~~) At the 2007 general
9 election, the authority shall submit a proposition to support a system
10 and financing plan or additional implementation phases of the
11 authority's system and financing plan (~~on the same ballot along with~~
12 ~~a regional transportation investment plan developed under chapter~~
13 ~~36.120 RCW. The proposition shall not be considered approved unless~~
14 ~~voters also approve the regional transportation investment plan~~) as
15 part of a single ballot proposition that includes a plan to support a
16 regional transportation investment plan developed under chapter 36.120
17 RCW. The authority's plan shall not be considered approved unless both
18 a majority of the persons voting on the proposition residing within the
19 authority vote in favor of the proposition and a majority of the
20 persons voting on the proposition residing within the proposed regional
21 transportation investment district vote in favor of the proposition.

22 (11) Additional phases of plan implementation may include a
23 transportation subarea equity element which (a) identifies the combined
24 authority and regional transportation investment district revenues
25 anticipated to be generated by corridor and by county within the
26 authority's boundaries, and (b) identifies the degree to which the
27 combined authority and regional transportation investment district
28 revenues generated within each county will benefit the residents of
29 that county, and identifies when such benefits will accrue. For
30 purposes of the transportation subarea equity principle established
31 under this subsection, the authority may use the five subareas within
32 the authority's boundaries as identified in the authority's system plan
33 adopted in May 1996.

34 (12) If the authority is unable to achieve a positive vote on a
35 proposition within two years from the date of the first election on a
36 proposition, the board may, by resolution, reconstitute the authority
37 as a single-county body. With a two-thirds vote of the entire

1 membership of the voting members, the board may also dissolve the
2 authority.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 29A.36 RCW
4 to read as follows:

5 The election on the single ballot proposition described in RCW
6 36.120.070 and 81.112.030(10) must be conducted by the auditor of each
7 component county in accordance with the general election laws of the
8 state, except as provided in this section. Notice of the election must
9 be published in one or more newspapers of general circulation in each
10 component county in the manner provided in the general election laws.
11 The single joint ballot proposition required under RCW 36.120.070 and
12 81.112.030(10) must be in substantially the following form:

13 "REGIONAL TRANSPORTATION INVESTMENT DISTRICT (RTID)

14 AND

15 REGIONAL TRANSIT AUTHORITY (RTA)

16 PROPOSITION #1

17 REGIONAL ROADS AND TRANSIT SYSTEM

18 To reduce transportation congestion, increase road capacity,
19 promote safety, facilitate mobility, provide for an integrated
20 regional transportation system, and improve the health,
21 welfare, and safety of the citizens of Washington, shall a
22 regional transit authority (RTA) implement a regional rail and
23 transit system to link [insert geographic references] as
24 described in [insert plan name], financed by [insert taxes]
25 imposed by RTA, all as provided in Resolution No. [insert
26 number]; and shall a regional transportation investment
27 district (RTID) be formed and authorized to implement and
28 invest in improving the regional transportation system by
29 replacing vulnerable bridges, improving safety, and increasing
30 capacity on state and local roads to further link major
31 education, employment, and retail centers described in [insert
32 plan name] financed by [insert taxes] imposed by RTID, all as
33 provided in Resolution No. [insert number]; further provided
34 that the RTA taxes shall be imposed only within the boundaries
35 of the RTA, and the RTID taxes shall be imposed only within the
36 boundaries of the RTID?

1 Yes
2 No

3 NEW SECTION. Sec. 5. Any legal challenges as to the
4 constitutionality of this act must be filed in superior court along
5 with any supporting legal and factual authority within twenty calendar
6 days of the effective date of this act. Notice of a challenge along
7 with any supporting legal and factual authority must be served upon the
8 secretary of state, the attorney general, the district, and the
9 authority. Upon the filing of a challenge, the state, district, and
10 authority have ten calendar days to file any response to the challenge
11 along with any supporting legal and factual authority. The court shall
12 accord priority to hearing the matter and shall, within five calendar
13 days of the filing of the response to the challenge, render its
14 decision and file with the secretary of state a copy of its decision.
15 The decision of the superior court constitutes a final judgment. Any
16 appeal must be filed in the supreme court within ten calendar days
17 after the date of the superior court decision. The supreme court shall
18 issue its ruling on the appeal within thirty days of receipt by the
19 court.

20 NEW SECTION. Sec. 6. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. Sec. 7. This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

Passed by the House February 28, 2007.
Passed by the Senate April 17, 2007.
Approved by the Governor May 15, 2007.
Filed in Office of Secretary of State May 16, 2007.

Appendix B

RCW 36.120.070

Submission of ballot measures to the voters.

*** CHANGE IN 2007 *** (SEE 1396-S.SL) ***

(1) Beginning no sooner than the 2007 general election, two or more contiguous county legislative authorities, or a single county legislative authority as provided under RCW 36.120.030(8), upon receipt of the regional transportation investment plan under RCW 36.120.040, may submit to the voters of the proposed district a single ballot measure that approves formation of the district, approves the regional transportation investment plan, and approves the revenue sources necessary to finance the plan. For a county to participate in the plan, the county legislative authority shall, within ninety days after receiving the plan, adopt an ordinance indicating the county's participation. The planning committee may draft the ballot measure on behalf of the county legislative authorities, and the county legislative authorities may give notice as required by law for ballot measures, and perform other duties as required to submit the measure to the voters of the proposed district for their approval or rejection. Counties may negotiate interlocal agreements necessary to implement the plan. The electorate will be the voters voting within the boundaries of the proposed district. A simple majority of the total persons voting on the single ballot measure is required for approval.

(2) In conjunction with RCW 81.112.030(10), at the 2007 general election the participating counties shall submit a regional transportation investment plan on the same ballot along with a proposition to support additional implementation phases of the authority's system and financing plan developed under chapter 81.112 RCW. The plan shall not be considered approved unless voters also approve the proposition to support additional implementation phases of the authority's system and financing plan.

[2006 c 311 § 8; 2002 c 56 § 107.]

Appendix C

RCW 81.112.030

Formation — Submission of ballot propositions to voters.

*** CHANGE IN 2007 *** (SEE 1396-S.SL) ***

Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of

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parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to jurisdictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

(9) If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters. No single proposition may be submitted to the voters more than twice.

Beginning no sooner than the 2007 general election, the authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

(10) In conjunction with RCW 36.120.070, at the 2007 general election the authority shall submit a proposition to support additional implementation phases of the authority's system and financing plan on the same ballot along with a regional transportation investment plan developed under chapter 36.120 RCW. The proposition shall not be considered approved unless voters also approve the regional transportation investment plan.

(11) Additional phases of plan implementation may include a transportation subarea equity element which (a) identifies the combined authority and regional transportation investment district revenues anticipated to be generated by corridor and by county within the authority's boundaries, and (b) identifies the degree to which the combined authority and regional transportation investment district revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue. For purposes of the transportation subarea equity principle established under this subsection, the authority may use the five subareas within the authority's boundaries as identified in the authority's system plan adopted in May 1996.

(12) If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority.

[2006 c 311 § 12; 1994 c 44 § 1; 1993 sp.s. c 23 § 62; 1992 c 101 § 3.]

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(11) Additional phases of plan implementation may include a transportation subarea equity element which (a) identifies the combined authority and regional transportation investment district revenues anticipated to be generated by corridor and by county within the authority's boundaries, and (b) identifies the degree to which the combined authority and regional transportation investment district revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue. For purposes of the transportation subarea equity principle established under this subsection, the authority may use the five subareas within the authority's boundaries as identified in the authority's system plan adopted in May 1996.

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[2006 c 311 § 12; 1994 c 44 § 1; 1993 sp.s. c 23 § 62; 1992 c 101 § 3.]
