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**Memorandum**

To: RTID Executive Board  
From: Jeffery A. Richard  
Hugh D. Spitzer  
Date: March 11, 2004  
Subject: RTID Joint Ballot Measure

This memo addresses your question regarding a "joint" ("common") ballot measure with Sound Transit pursuant to RCW 36.120.190. The RTID does not have statutory authority to make expenditures for High Capacity Transportation (HCT) projects, except by a joint ballot measure with Sound Transit.

**JOINT (COMMON) BALLOT MEASURE**

RCW 36.120.190 permits the RTID to submit to the voters a "joint" (or "common") ballot measure that would authorize the RTID to impose any remaining HCT taxes that have not already been imposed by the local Regional Transit Authority (RTA) (i.e., Sound Transit). These HCT taxes could be spent on HCT projects such as light rail to SeaTac and/or Northgate. Section 201 of ESSSB 6140 (now codified at RCW 36.120.190) provides:

At the option of the planning committee, and with the explicit approval of the regional transit authority, the participating counties may choose to impose any remaining high capacity transportation taxes under chapter 81.104 RCW that have not otherwise been used by a regional transit authority and submit to the voters a common ballot measure that creates the district, approves the regional transportation investment plan, implements the taxes, and implements any remaining high capacity transportation taxes within the boundaries of the regional transportation investment district. Collection and expenditures of any high capacity transportation taxes implemented under this section must be determined by agreement between the participating counties or district and the regional transit authority electing to submit high capacity transportation taxes to the voters under a common ballot measure as provided in this section. If the measure fails, all such unused high capacity transportation taxes revert back to and remain with the regional transit authority. A project constructed with this funding is not considered a "transportation project" under RCW 36.120.020.

If the procedures of RCW 36.29.190 are followed, a single ballot measure will be submitted to the voters that: (1) creates the district; (2) approves the RTID plan; (3) implements the taxes to fund the plan; and (4) implements the HCT taxes pursuant to the agreement with the RTA.

Although the statute labels the procedure as a “common ballot measure,” it is not a joint RTID and RTA vote. Rather, it is a mechanism for voters to approve the RTID taxes and, with the same vote, approve an additional HCT tax which the RTA has waived.

### **I. HCT Taxes Eligible Under Joint Ballot Measure.**

The joint ballot measure permits the RTID to add to the ballot measure, further tax options consisting of those taxes that a transit agency or regional transit authority may impose under RCW 81.104.140. These taxes include:

- The special motor vehicle excise tax described in RCW 81.104.140(4)(b) and 81.104.160; and
- The sales and use tax described in RCW 81.104.140(4)(c) and RCW 81.104.170.

Because the Supreme Court’s recent I-776 decision (*Pierce County v. State of Washington*), it appears that the RTID no longer possesses the authority to impose the special motor vehicle excise tax described in RCW 81.104.140(4)(b). As a result, this memo assumes that any proposed joint ballot measure would impose only the sales and use tax described in RCW 81.104.140(4)(c) and RCW 81.104.170.

The joint ballot measure tax appears to “stack” on top of the similar sales tax that the RTID can impose under RCW 36.120.050. The RTA has not imposed its full HCT sales tax under RCW 81.104.140(4)(c) and RCW 81.104.170; accordingly, the RTID could impose an HCT sales tax of up to 0.5 percent through the joint ballot measure option. If the voters approve the joint ballot measure, the RTA loses its authority to impose the HCT sales tax imposed by the RTID.

### **II. Procedure for Joint Ballot Measure.**

The RTID planning committee must obtain the “explicit approval of the regional transit authority” in order to exercise the joint ballot measure option. The statute is silent as to what form that “explicit approval” must take. A memorandum of understanding between the RTID and Sound Transit as to the collection and expenditure of joint ballot HCT revenues would certainly satisfy the requirement for “explicit approval.” The RTA Board resolution approving the memorandum of understanding should state that the resolution constitutes “explicit approval.” There is no requirement for approval from non-RTA transit agencies.

If approved by the voters, the HCT taxes would be imposed by the RTID on all taxable activity within the three-county district. The taxes are not restricted to the Sound Transit district boundaries and are not imposed by Sound Transit. Moreover, the joint ballot measure is not a means by which Sound Transit could be authorized to spend Sound Transit revenues on new or

modified projects (e.g., light rail across Lake Washington), although the RTID could potentially fund such projects. Collection and expenditure of joint ballot measure HCT revenues must be determined by agreement between the RTID and Sound Transit.

### **III. Eligible Projects for Joint Ballot Measure Funding.**

A project constructed with joint ballot measure revenues is not considered a "transportation project" under RCW 36.120.020 and does not appear to be subject to the limitations of RCW 36.120.020(8)<sup>1</sup>, 36.120.060<sup>2</sup>, or RCW 36.120.140.<sup>3</sup> HCT tax revenues can be used solely for the purpose of providing high capacity transportation service (which includes the capital construction costs and supporting services), including light rail, commuter rail, express service and high occupancy vehicle lanes.

RCW 81.104.140 does require, however, that before the date of an election authorizing the RTID to impose HCT taxes under a joint ballot measure, the RTID must comply with the process prescribed in RCW 81.104.100(1) and (2) and with RCW 81.104.110. This process includes appointing an expert review panel to provide independent technical review for development of any system plan which is to be funded in whole or in part by the imposition of any voter-approved local option funding sources.

It is our understanding that the projects originally submitted to the voters as part of Sound Transit's Phase I projects (which would include light rail to Northgate and SeaTac) have fulfilled the procedural requirements of those statutes. Assuming that is true, the RTID could submit a joint ballot measure proposing to fund projects that had already been reviewed pursuant to RCW 81.104.100 and .110. Projects that have not already gone through the Sound Transit review process, such as extending light rail across Lake Washington, would need to go through that process prior to the election. This could pose a practical problem, because the RTID does not currently have the financial resources to conduct such a review.

### **IV. Joint Ballot Measure and County Equity**

RCW 36.120.040 requires that the plan must use tax revenues and related debt for projects that generally benefit a participating county in proportion to the general level of tax revenues generated within that participating county. This appears to refer only to the aggregate revenues and the aggregate expenditures. Expenditures from a specific tax source (e.g., HCT sales and use tax) in a given county would not be required to be proportionate to the amount of revenues generated by that specific tax in that county. The RTID could concentrate HCT expenditure in King County and increase highway expenditure in Pierce and Snohomish County to balance out aggregate revenues and aggregate expenditures.

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<sup>1</sup> Limiting RTID expenditures to highways of statewide significance, city streets, county roads or highways that intersect with a highway of statewide significance.

<sup>2</sup> Establishing performance criteria for transportation project selection.

<sup>3</sup> Limiting the ability to modify an RTID plan and establishing strict accountability provisions for cost overruns.