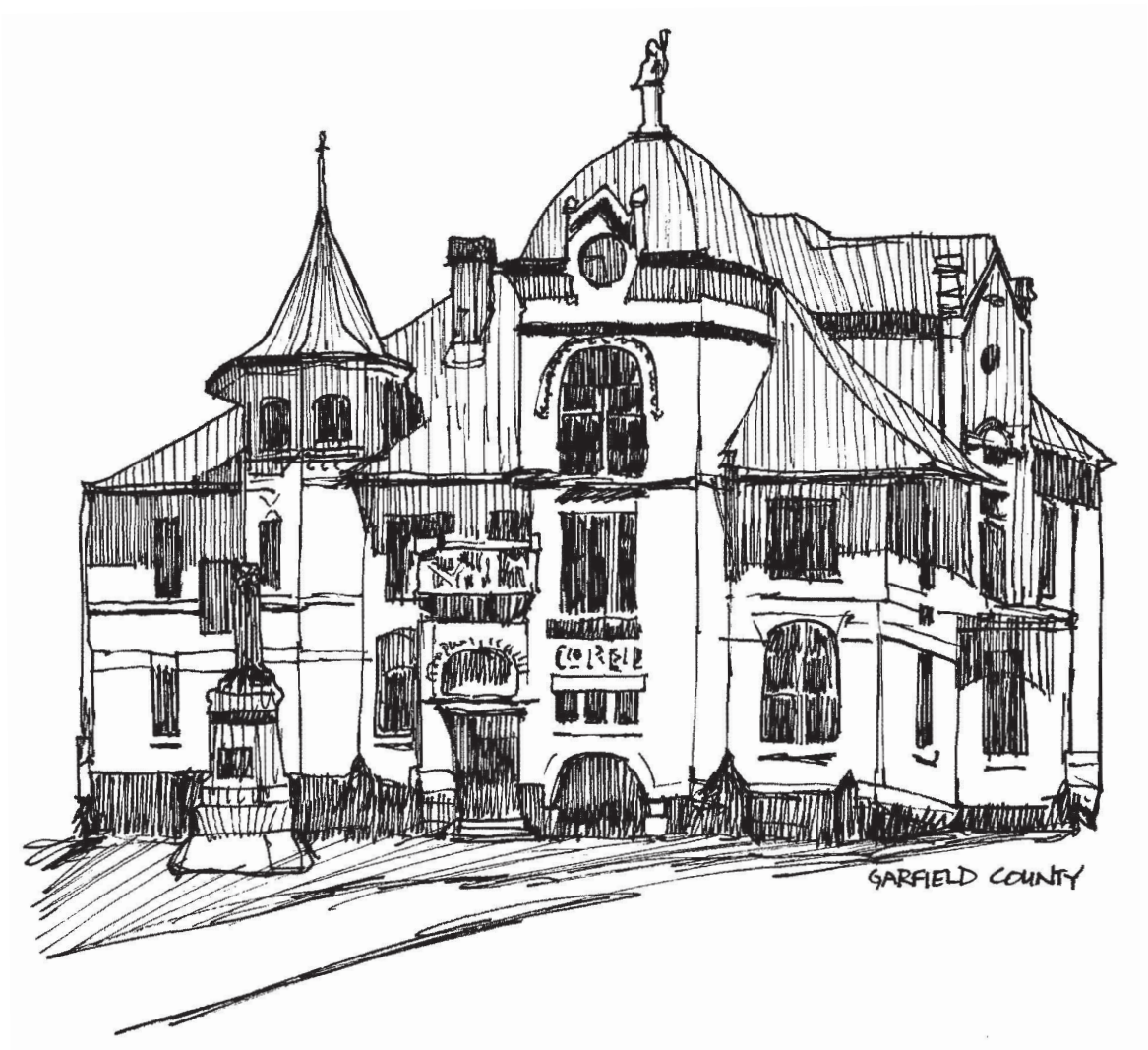


A Revenue Guide

for Washington Counties



Municipal Research and Services Center

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May 2010

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A Revenue Guide

for Washington Counties

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Introduction

This new edition of a *A Revenue Guide for Washington Counties*, first published in 2001, contains up-to-date information on the major revenue sources (and many of the minor ones) available to counties for general government purposes, including the relevant statutory references and important court decisions.

Judy Cox, Public Finance Consultant, was primary author of this report with the assistance of Lynn Karl Nordby, Public Policy and Management Consultant, who drafted the third section. Bob Meinig, Legal Consultant, reviewed and edited the entire text. Holly Stewart, Desktop Publishing Specialist, prepared the document for publication. Special thanks to Nicole Stiver, a former member of the MRSC library staff, for creating the cover drawing of the Garfield County Courthouse.

Richard Yukubousky
Executive Director

Contents

Taxes

- Property Taxes 1**
 - Levy Rate Limits on Property Tax 1
 - Property Tax Levy Increase – A Little History of the “Lid” 3
 - How Does the Tax Lid Work? 5
 - You Don't Lose It If You Don't Use It – “Banking” Levy Capacity 7
 - Property Taxes and Budgets 7
 - If You Don't Have Banked Capacity, Maybe You Can Do a Levy Lid Lift 13
 - Excess Levies for General Government Purposes – One-Year Levy 16
 - Diversion and Shifting of Road Levy Funds 16
 - Other Regular Property Tax Levies for Counties 19
 - Property Tax Levies That Are Part of the Current Expense Fund Levy 22
 - Receipt of Funds 23

- Retail Sales and Use Tax 24**
 - What's the County Rate? 24
 - Other County Sales Taxes Paid by Purchasers 25
 - County Sales Taxes Paid by the State 29
 - So, What Is the Rate in My County? 31
 - What Items Are Taxed? 31
 - Who Has to Pay a Use Tax? 32
 - Sales Tax Streamlining 33
 - Timing of Receipts and Sales Tax Rate Changes 34

- Real Estate Excise Tax 35**
 - How Can the First Quarter Percent – REET 1 – Be Spent? 35
 - Spending the Second Quarter Percent – REET 2 37
 - One-Half Percent Real Estate Excise Tax for
 - General Government Purposes (“REET 3”) 37
 - One Percent Real Estate Excise Tax for Conservation Areas 37
 - One-Half Percent Tax for Low-income Housing 38
 - Accounting for These Funds 38

- Lodging (Hotel-Motel) Tax 39**
 - “State-Shared” and “Special” Tax Rates 39
 - How Can the Revenues Be Used? 40
 - Reporting Requirements 42
 - Lodging Tax Advisory Committee 42

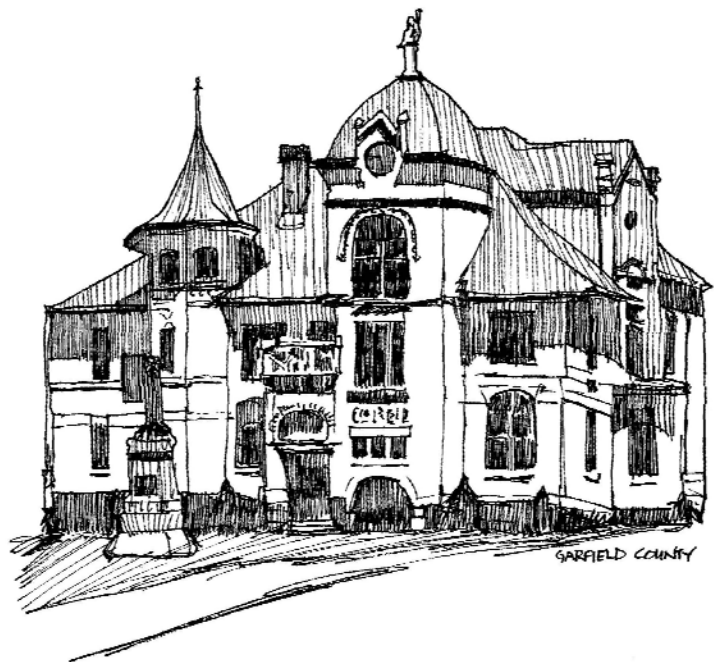
- Gambling Excise Tax 44**
 - How May We Spend the Proceeds? 44

- Timber Excise Tax 45**

Enhanced 911 Telephone Access Line Excise Tax	46
Local Option Commercial Parking Tax	47
Local Option Motor Vehicle Fuel Tax	47
Spending Restrictions	48
Admissions Tax	49
Leasehold Excise Tax	50
Intergovernmental Revenues	
City-County Assistance	53
Certification and Distribution Dates	54
Motor Vehicle Fuel and Special Fuel Tax – “Gas Tax”	54
State Forest Lands Revenue	56
State Forest Transfer Lands	56
State Forest Purchase Lands	56
Secure Rural Schools/Federal Forest Reserve Revenues	57
Federal Payment-In-Lieu of Taxes (PILT)	58
PUD Privilege Tax	59
Criminal Justice Assistance	59
Liquor Receipts – Profits and Taxes	60
Other Intergovernmental Revenues	61
Auditor’s Centennial Document Preservation	61
Capron Refunds	62
Death Investigation (Autopsies) Reimbursement	62
Impaired Driving Safety (DUI) Account	62
Prosecuting Attorneys’ Salaries	63
Vessel Registration Fees	63
Permits, Fees, Charges, Fines, and Forfeitures	
Auditor’s Office Permits & Fees	67
Motor Vehicle License Fees	67
Marriage License Fees	67
Recording Fees	68
Affordable Housing Filing Fee Surcharge	68
Homeless Housing Filing Fee Surcharge	69
Election Candidate Filing Fees	69
Elections Services Reimbursement	70

Treasurer's Fees	70
Real Estate Excise Tax Fees	70
Investment Fees	71
Investment Interest	72
District Court Fines, Forfeitures, and Fees	72
Civil Infractions	72
Costs, Fees, Fines, Forfeitures, and Penalties Assessed by Court	72
Deferred Prosecution Costs	73
Dispute Resolution Surcharge	73
Filing Fees – Civil	73
Filing Fees – Criminal, Filed by Cities	73
Misdemeanor Incarceration	74
Public Safety and Education Assessment	74
Trial Court Improvement Account	74
Warrant Fees	74
Sheriff and Jail Fees	74
Gun Permits	74
City Contract Reimbursement	75
Immigration	75
Jail Services	75
Various Sheriff Fees	75
Corrections and Alternatives Fees	76
Deferred Prosecution	76
Electronic Home Confinement	76
Jail Industries Program	76
Probation	77
Transportation Benefit District Fees	77
Tourism Promotion Area Fees	78
Other Permits & Fees	79
Cable TV Franchise Fee	79
Community Development Permits & Fees	79
Coroner's Fees	79
County Clerk's Fees – Superior Court	79
Impact Fees	80
Juvenile Fees	81
Parks and Recreation Fees	81
Fees in "Special Cases"	81

Taxes



Property Taxes

One longtime legislative analyst from Olympia says that the Washington property tax is the most complicated in the nation. We plan to limit this discussion to what officials and staff in counties really need to know. Even that is pretty complicated.

► Levy Rate Limits on Property Tax

County's Own Limits

The maximum regular property tax levy rate (the statutory rate limit) a county may impose on real and personal property is \$1.80 per thousand dollars assessed valuation (AV) for its current expense or general fund¹ and \$2.25 per thousand dollars AV for its road fund. However, a county can raise its general fund levy rate up to \$2.475 per thousand dollars AV, provided the total of the levy rates for the general fund and road fund do not exceed \$4.05 per thousand dollars AV **and** the increase in the general fund levy does **not** result in a reduction in the levy of any other taxing district through prorationing.² Prorationing is discussed on page 2 below.

\$5.90 Limit

The aggregate regular levy rates of senior taxing districts (counties and cities) and junior taxing districts (fire districts, cemetery districts, library districts, etc.) may not exceed \$5.90 per thousand dollars AV. If this limit is exceeded, the levy of at least one junior taxing district must be prorated. Some property tax levies not subject to this limit include state levies, levies for public utility and port districts, excess property tax levies, special levies for local school districts, levies for acquiring conservation futures, emergency medical service levies, low income housing levies, and some metropolitan park district levies.³ Even if a county's tax rates are not affected directly by this limit, it has an interest in the economic health of the special districts within its boundaries and whether their finances are affected by prorationing.

One-Percent Constitutional Property Tax Limit

In addition to the other levy rate limits, both statutory law and the state constitution limit regular property tax levies (including the state levy) to one percent of the true and fair value of the property. This limit does not apply to port or public utility districts. The limit may be exceeded when 60 percent of the voters approve excess levies under RCW 84.52.052 or for the payment of debt service on general obligation bonds.⁴ Both kinds of levies have voter turnout requirements. If the one percent limit is exceeded, RCW 84.52.010 sets up the order in which levies are reduced by prorationing.

¹Throughout this publication, we will be using the terms "general fund" and "current expense fund" interchangeably.

²RCW 84.52.043(1).

³RCW 84.52.043(2).

⁴Washington State Constitution, Art. 7, Sec. 2; RCW 84.52.052; RCW 84.52.056.

Prorating

The tax rate applied to a given property is the sum of the levy rates imposed by all the taxing districts within which the property lies. The total tax rate for any given property by overlapping taxing districts is controlled by the \$5.90 limit and the one percent constitutional limit. Should either of these limits be exceeded, the levies involved will be reduced according to a statutory formula. This reduction process is known as prorating.

The county current expense levy, the county road fund levy, city general fund levies, and the state school levy are all protected from prorating. Which levies are lowered in prorating, by how much and in what order, depends upon whether the \$5.90 limit or the one percent limit has been exceeded.

If the \$5.90 limit has been exceeded, levies are reduced or eliminated in the following order until the total tax rate is at \$5.90. Note that within each grouping, the levy rates of the districts are reduced on a pro rata basis.⁵

1. Parks & Recreation Districts - RCW 36.68.525 (up to \$0.60)
Parks & Recreation Service Areas - RCW 36.69.145 (up to \$0.60)
Cultural Arts, Stadiums & Convention Districts - RCW 67.38.130 (up to \$0.25)
2. Flood Control Zone Districts - RCW 86.15.160 (up to \$0.50)
3. Hospital Districts - RCW 70.44.060 (up to \$0.25)
Metropolitan Parks Districts - RCW 35.61.210 (up to \$0.25)
All other districts not otherwise mentioned
4. Metropolitan Park Districts formed on January 1, 2002 or after - RCW 35.61.210 (up to \$0.50)
5. Fire Districts - RCW 52.16.140 (up to \$0.25)
Fire Districts - RCW 52.16.160 (up to \$0.25)

(Note: The other 25 cents of each of these levies may be placed outside the \$5.90 limit, but they are subject to the one percent constitutional limit. See item 1 below.)

Regional Fire Protection Service Authorities - RCW 52.26.140(1)(b) (up to \$0.50)
Regional Fire Protection Service Authorities - RCW 52.26.140(1)© (up to \$0.50)
6. Fire Districts - RCW 52.16.130 (remaining \$0.50)
Regional Fire Protection Service Authorities - RCW 52.26.140(1)(a) (up to \$0.50)
Library Districts - RCW 27.12.150 (up to \$0.50)
Hospital Districts - RCW 70.44.060 (up to \$0.50)
Metropolitan Parks Districts formed before January 1, 2002 - RCW 35.61.210 (up to \$0.50)

⁵RCW 84.52.010(2).

(Note that the levies of metropolitan park districts formed after January 1, 2002, are two steps lower on the prorationing ladder than that of Tacoma's, formed before that date.)

If levies are reduced to conform to the \$5.90 limit, and the **total tax levy still exceeds one percent of the true and fair value of any property**, then reductions in other levies, which fall outside the \$5.90 limit, are made in the following order, up to the amounts in parentheses:⁶

1. County Transit Levy - RCW 84.52.140 (up to \$0.075)
2. Fire Districts - RCW 52.16.140 and RCW 84.52.125 (up to \$0.25)
Fire Districts - RCW 52.16.160 and RCW 84.52.125 (up to \$0.25)
3. County Criminal Justice - RCW 84.52.135 (up to \$0.50)
4. Ferry Districts - RCW 36.54.130 (up to \$0.075 in King County; up to \$0.75 in all other counties)
5. Metropolitan Parks Districts with a population of 150,000 or more, which have voted to levy their \$0.25 levies outside the \$5.90 limit - RCW 35.61.210 and RCW 84.52.120 (up to \$0.25)
6. Conservation Futures - RCW 84.34.230 (up to \$0.0625)
Affordable Housing - RCW 84.52.105 (up to \$0.50)
Emergency Medical Services - RCW 84.52.069 (up to \$0.20)
7. Emergency Medical Services - RCW 84.52.069 (up to \$0.30)

► Property Tax Levy Increase – A Little History of the “Lid”

If discussion of any tax law makes most people's eyes glaze over, discussion of the 106 or 101 percent lid and other features of Washington property tax law puts people to sleep. In 1973, the legislature responded to people's concerns that property taxes were rising too fast by passing a law that established the 106 percent lid. What the 106 percent lid rule said was that your tax levy next year could be no more than 106 percent of your highest levy, beginning with the 1985 levy for 1986 taxes.⁷ An alternative way of stating it is to say that your levy could not increase by more

⁶RCW 84.52.010(1).

⁷WAC 458-19-020. RCW 84.55.010, which this WAC references, refers to “the three most recent years,” rather than 1986. However, this WAC also references RCW 84.55.092, which includes the language “for taxes due in prior years, beginning with 1986.” The Department of Revenue believes that the intent of the legislature was to have the dates in RCW 84.55.010 and RCW 84.55.092 be consistent, and they have written the rules on this basis. Practically, this is unlikely to become an issue since the highest levy for most taxing districts will be one of the last three years.

Note that although some people use the terms “tax **levy**” and “tax **revenue**” interchangeably, they are not quite the same. A levy is the amount you ask the assessor to collect. Revenue is the amount that is actually received. If any taxpayers are delinquent, the revenue collected will be less than the levy.

than six percent.⁸

Referendum 47

In November 1997, the voters approved Referendum 47, which put some new constraints on allowable levies for some counties.⁹ The levies for counties with **a population of 10,000 or more** could be no more than the “limit factor” times their highest levy since the 1985 levy for 1986 taxes. The “limit factor” was 106 percent or 100 percent plus the rate of inflation, whichever was less.¹⁰ (Another way of stating the same rule is that the levy could increase by six percent or the rate of inflation, whichever was less.)

“Inflation” was defined as the change in the implicit price deflator (IPD) for personal consumption expenditures for the 12-month period ending in July as published in the September issue of the *Survey of Current Business*, a publication of the Bureau of Economic Analysis of the federal Department of Commerce.¹¹ However, a county was allowed to use a limit factor of 106 percent, even if inflation was less than six percent, if the county legislative body made a finding of “substantial need” in an ordinance or resolution passed by a majority plus one of the council or two out of three commissioners.¹²

Counties with a population of less than 10,000 were not subject to this constraint. They could use a limit factor of 106 percent (increase their levy by six percent) with a simple majority vote as long as this did not put them above their maximum tax rate.¹³

Taxes on new construction, changes in value of state-assessed utility property, and newly annexed property (hereafter referred to as “add-ons”¹⁴) were exempted from the lid/limit factor for counties of any size and may be added to the tax levy that is requested under the lid/limit factor.

Then, Along Came Initiative 747

In November 2001, the voters passed Initiative 747. Every mention of six percent was changed to one percent. All the provisions introduced by Referendum 47 are still there. Counties with a population of less than 10,000 can now increase their levies only by one percent. Counties with a population of 10,000 or more can increase their levies by the lesser of one percent or the

⁸When we talk about a percent increase in a levy, we are referring to an increase in the total dollar amount of the levy, not to an increase in the tax rate. The tax rate may increase as a result of a levy increase, but it may also decrease, despite the levy increase, because of an increase in the assessed value of property in the county. See the examples on pages 5-6.

⁹The legislature passed ch. 3, Laws of 1997, and sent Referendum 47 to the voters. Note that this referendum applies to all taxing jurisdictions, not only to counties.

¹⁰RCW 84.55.005(2)(c) (1997 version).

¹¹RCW 84.55.005(1).

¹²RCW 84.55.0101. Note that the term “substantial need” is not defined in the statutes.

¹³RCW 84.55.005(2)(a) (1997 version).

¹⁴RCW 84.55.010. The definition of “add-ons” was broadened in 2006 and now includes increases in assessed value due to construction of wind turbines in addition to increases in the value of state-assessed utility property, new construction, and improvements to property. Note also that the statute does not mention the value of property that is annexed, but it too is exempt from this provision, as are refund levies. WAC 458-19-035 and WAC 458-19-085(2)(d)(i).

4 A Revenue Guide for Washington Counties

percentage change in the implicit price deflator.¹⁵

For most years since the initiative was passed, the effective limit has been one percent because the percentage change has been more than one percent. The exceptions are 1998, when the change in the implicit price deflator was 0.85 percent, and 2009, when the change was negative at -.848 percent.

Even if the percentage increase in the implicit price deflator is less than one percent, counties can use the substantial need provision to levy the entire additional one percent. However, this provision does not give these counties the same opportunity for increased revenue that it did when the maximum rate was six percent.

► How Does the Tax Lid Work?

The easiest way to see what the lid means in practice is to think of how a property tax levy is determined. The example below will use the 101 percent lid.¹⁶ If your county plans on limiting its levy increase to the growth in the implicit price deflator or some amount other than one percent, substitute that number for one percent in the example. Just remember that the algebraic sum of the percentage changes in assessed valuation and the tax rate on the left-hand side of the equation must add up to the percentage change you have chosen for your levy increase on the right-hand side of the equation.

Your tax levy is a function of the following formula:

Assessed valuation/1,000 times tax rate equals tax levy

(We have to divide the assessed valuation by 1,000 before multiplying it by the tax rate because that rate is not applied to each dollar of assessed valuation, but to each one thousand dollars.)

To see how the 101 percent lid works, let's look at five cases. (In each case, we assume that your current year's levy is the highest since your county's 1986 levy.)

1. Assume that for next year your assessed valuation increases by exactly one percent. That means that at your current rate, your tax levy next year will be one percent higher. That is the maximum increase allowed and the county assessor will keep the rate constant.

¹⁵In June 2006, a King County Superior Court judge found Initiative 747 to be unconstitutional. That initiative, as written, told voters that the amount that taxing jurisdictions could increase their property tax levy without a vote of the people would fall from two percent to one percent, if passed. However, the two percent limit from the passage of Initiative 722 (which reduced the increase in the levy limit from six to two percent) had been declared unconstitutional before Initiative 747 went to the voters. The court ruled that that the voters in November 2001 were misled. This decision was upheld by the Washington State Supreme Court in November 2007. *Washington Citizens Action for Washington v. State of Washington* 162 Wn.2d 142 (2007). The legislature met in a special session and reinstated the one percent limit. Ch. 1, Laws of 2007, sp. sess.

¹⁶These examples were more dramatic when the maximum rate increase was six percent.

$$\begin{array}{rclcl} 1\% \uparrow & & 0\% & & 1\% \uparrow \\ \text{AV}/1,000 & \times & \text{tax rate} & & = \text{tax levy} \end{array}$$

2. Assume that your assessed valuation does not increase at all. To get the allowable one percent increase in the levy, the county assessor will increase the tax rate by one percent if that does not put the rate over the statutory limit.¹⁷ If it does, the assessor will raise the rate to the statutory limit, but the increase will be less than one percent.

$$\begin{array}{rclcl} 0\% & & 1\% \uparrow & & 1\% \uparrow \\ \text{AV}/1,000 & \times & \text{tax rate} & & = \text{tax levy} \end{array}$$

3. Assume your assessed valuation goes up by 0.6 percent. Then the county assessor will increase the rate by 0.4 percent (again, as long as that does not put you over the maximum levy rate) and the combination of the 0.6 percent and 0.4 percent increases will give you a one percent increase in the levy.

$$\begin{array}{rclcl} 0.6\% \uparrow & & 0.4\% \uparrow & & 1\% \uparrow \\ \text{AV}/1,000 & \times & \text{tax rate} & & = \text{tax levy} \end{array}$$

4. Assume that your assessed valuation increases by more than one percent, say, eight percent. Then the county assessor will lower the rate by seven percent so that the combination of the increase and decrease yield a one percent increase in the levy.

$$\begin{array}{rclcl} 8\% \uparrow & & 7\% \downarrow & & 1\% \uparrow \\ \text{AV}/1,000 & \times & \text{tax rate} & & = \text{tax levy} \end{array}$$

5. For the last case, assume that your AV has fallen by two percent. In this case the assessor will increase the tax rate by three percent (assuming that does not put you over the statutory limit) to provide the one percent increase in the levy.

$$\begin{array}{rclcl} -2\% \downarrow & & 3\% \uparrow & & 1\% \uparrow \\ \text{AV}/1,000 & \times & \text{tax rate} & & = \text{tax levy} \end{array}$$

So how does this work with counties that are already at their statutory limit? Since the tax rate cannot be increased, their tax levies will increase only by the amount of the increase in their assessed valuation.

¹⁷For those readers who did not start reading on page 1, the statutory limit for the county general fund is \$1.80 per thousand dollars AV. However, there is a provision that the rate may be increased up to \$2.475 as long as the rates of the general fund and the road fund do not exceed \$4.05 and the increase in the general fund levy does not reduce the levy in any other taxing district through prorationing.

6 A Revenue Guide for Washington Counties

► You Don't Lose It If You Don't Use It – “Banking” Levy Capacity

Prior to 1986, counties had an incentive to raise their tax levies by the maximum amount allowed, even if they did not need the revenue that year. If they did not levy the maximum amount, they would suffer adverse consequences by not having that levy capacity in the future. Now counties can levy less than the maximum (although it is less likely that they will do so now that the maximum increase is one percent rather than six percent) and then make it up in a future year.¹⁸ Here are two examples.

Assume that for this year you had the assessor set a tax rate that resulted in the same levy as last year plus “add-ons.” (You did not take your allowable one percent increase.) When you are doing your budget for next year, however, you realize that you need more revenue from the property tax because your sales tax receipts have fallen off. You can ask the assessor to set a tax rate for next year (assuming that it does not put you over your statutory limit) that raises your levy by one percent and then one percent again – $1.01 \times 1.01 = 1.0201$ – for a compounded increase of over two percent.

Now, a more complicated case where a county actually lowers its tax levy. Assume that during the current year (2010), your county has experienced a revenue windfall and has more money than it needs to fund the 2011 budget. (This situation is pretty unlikely in the 2010 economic climate, but pretend it did happen.) You could put the excess funds in a “rainy day” fund, but the legislative body decides to give the taxpayers a break by lowering the property tax levy for 2011. During 2011 you receive no revenue windfall and you need more property tax revenue for the year 2012 budget. The 1986 act allows you to levy the maximum amount that you **could have** levied in 2011, plus an additional one percent unless that puts you over the maximum statutory tax rate. In 2011 you didn't use your maximum taxing capacity, but you didn't lose it because you can “bank” the extra capacity.

“But doesn't our council or commission need to pass a special ordinance or resolution in order to bank capacity?” Read on through the next section. Banking capacity derives from other procedures you need to follow for the property tax in the budget process.

► Property Taxes and Budgets

Referendum 47, passed in November 1997, introduced some new requirements for the levying of property taxes. Taxing districts must undertake a number of actions regarding property taxes at budget time.

1. **Hold public hearings on revenue sources** for the current expense fund and road fund budgets and any other regular property taxes your county levies (see pages 19-22) and discuss any increases in property tax revenues that are being considered.

¹⁸RCW 84.55.092.

This requirement, part of Referendum 47, is codified in RCW 84.55.120. The statutes do not prescribe any specific notice requirements, so the county should follow its own procedures for giving notice of these hearings.

The hearings are to be held prior to the time the county votes on its property tax levies. These hearings and the vote on the property tax ordinances for each fund may be done at the same meeting. From a public policy standpoint, however, it is preferable that the legislative body leave time to consider the testimony from the hearings before voting on the amount of the levies.

2. **Pass separate ordinances or resolutions** stating the property tax increases in dollar and percentage terms to fulfill the requirements of RCW 84.55.120. That statute states, in part:

No increase in property tax revenue, other than that resulting from the addition of new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, and improvements to property and any increase in the value of state-assessed property may be authorized by a taxing district, other than the state, except by adoption of a **separate** ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage. (Emphasis added.)

We recommend that you use the form provided by the Department of Revenue.¹⁹ You can check page 9 to see what the form looks like.²⁰

If you have more regular property tax levies than the current expense fund and the road fund, you need hearings and ordinances or resolutions for each of them. (For example, some counties have an EMS levy or a conservation futures levy.)²¹

Even if you are not increasing your property taxes, you should pass this ordinance or resolution, saying you are increasing your levy by "\$0" which is a "0 percent" increase, because it is necessary that you do so **to bank the unused capacity**. See the discussion of banked capacity in item 5 below.

3. **Pass a property tax ordinance/resolution/levy certification.** You must adopt a levy ordinance or resolution for each fund that states how much regular property tax you are requesting for the coming year and what your levy or levies will be for any bonds. The deadline is November 30.²²

¹⁹You may write your own resolution or ordinance to comply with this statute. However, it must be "separate" from the property tax levy resolution or ordinance.

²⁰You can download a copy of the form at <http://dor.wa.gov/docs/forms/PropTx/Forms/OrdinanceResolution.doc>. Or, go to the Department of Revenue home page, www.dor.wa.gov, and type in 64 0101 in the Search window in the upper right corner. Note that there is a space between the "4" and the "0."

²¹See the discussion of other regular county property tax levies on pages 19-22.

²²RCW 84.52.070.

In addition, the Department of Revenue prefers that you fill out their levy certification form and send it to your assessor. (It is not required, however.) We have reprinted a copy of this form on page 9.²³ You can download it at <http://dor.wa.gov/docs/forms/PropTx/Forms/LevyCertf.doc>.²⁴ DOR likes taxing districts to use this form because it cuts down on errors. The county assessors can easily see how much property tax each taxing district is asking for, rather than having to plow through a resolution or ordinance trying to find the relevant number(s). So, if you staple this form on the front of your property tax levy resolution or ordinance, you will make DOR and your county assessor happy. **Be sure the amounts match those in your levy resolution or ordinance.**

4. **Do we need to pass a “substantial need” resolution/ordinance?** It all depends on the July implicit price deflator for personal consumption expenditure (IPD) and what your council wants to do. Read on.

On page 4, we discussed Referendum 47 and the amendments made with the passage of Initiative 747. To recap that discussion, for taxing jurisdictions with a **population of 10,000 or more**, a levy can be no more than the “limit factor” times the highest levy since the 1985 levy for 1986 taxes. (To this can be added “add-ons” – taxes on new construction, changes in value of state-assessed utility property, and newly annexed property, etc.²⁵) The “limit factor” is the lesser of 101 percent or 100 percent plus inflation,²⁶ where “inflation” is defined as the change in the implicit price deflator (IPD) for personal consumption expenditures for the 12-month period ending in July as published in the September issue of the *Survey of Current Business*, a publication of the Bureau of Economic Analysis of the federal Department of Commerce.

However, RCW 84.55.010 allows a taxing district with a population of 10,000 or more to use a limit factor of up to 101 percent when the rate of inflation is less than one percent if a finding of substantial need is made by a resolution or ordinance passed by a majority plus one of the council or two out of three commissioners.

How likely is it that the percentage increase in the IPD will be less than one percent? In the 13 years since we started paying attention to the IPD, it has been below one percent only twice

²³Note this form was written on the assumption that the taxing districts adopt their budgets before November 30. Some do not pass their budgets until after the date (November 30) this form is due. So, you might want to write in (or type in) a change to the last sentence. Rather than saying “which was adopted following a public hearing held on _____,” you might say “which will be adopted following a public hearing scheduled to be held on _____.”

²⁴You can also go to the Department of Revenue home page, www.dor.wa.gov, type 64 0100 in the Search window in the upper right corner. Note that there is a space between the “4” and the “0.”

²⁵See footnote 14.

²⁶Cities with a **population of less than 10,000** are not subject to this constraint. They can increase their levy by one percent (assuming this does not put them above their maximum tax rate) with a simple majority vote of their legislative body.

– in 1998, when it was 0.85, and in 2009, when it was -.848.²⁷ And, for the remainder of the discussion in this section, we are assuming it will not be negative again for the lifetime of this publication.²⁸

The bottom line: If “inflation” – the July IPD – is less than one percent, counties with a population of 10,000 or over may only increase their levy by more than the IPD, up to a maximum of one percent, by passing a resolution or ordinance making a finding of “substantial need.” Counties with a population of less than 10,000 may increase their levy by one percent without passing such a resolution or ordinance.

5. **Everyone’s favorite question: how do we bank capacity?** Here are the “rules” and they are not as explicitly stated by the Department of Revenue as we would like.²⁹ We double-checked them with the Property Tax Division that produced the “Resolution/Ordinance Procedures for Increasing Property Tax Revenue” publication we refer to below.

Rule 1: If the taxing jurisdiction has a **population of less than 10,000**, filling out the ordinance/resolution form that we discussed in item 2 above and levying a percentage increase less than one percent will automatically “bank” capacity.

How do we know this? One has to look at the DOR publication called “Resolution/Ordinance Procedures for Increasing Property Tax Revenue” dated 9/05. It can be found at http://dor.wa.gov/docs/Pubs/Prop_Tax/PT_Ordinance.pdf or by typing F0024 in the search box on the DOR web site at www.dor.wa.gov. The last two sentences of the last paragraph on page 3 of this document, under “Example Resolution #1,”³⁰ read as follows:

If instead of 1% the resolution states 0% (or anywhere between 0 and 1%), the district will be allowed to bank the excess levying capacity. Without the resolution, the district cannot bank excess levying capacity.

²⁷MRSC has a table showing the historical IPD amounts at <http://www.mrsc.org/Subjects/Finance/histipdcht.aspx>.

²⁸However, “just in case,” you can find a discussion of making a finding of substantial need and banking capacity when the IPD is negative in “The Change in the Implicit Price Deflator (IPD) from July 2008 to July 2009 Is -.848 Percent.” Municipal Research and Services Center, September and November 2009. <http://www.mrsc.org/artdocmisc/IPD.pdf> Also, on April 22, 2009, the Washington State Department of Revenue issued a *Special Notice* titled “Determining the Factor of Increase in Property Tax Levies.” http://dor.wa.gov/Docs/Pubs/SpecialNotices/2009/SN_09_LimitFactorInPropertyTaxLevies.pdf. It addressed the issue of the limit factor if deflation (“negative inflation”) occurs. For jurisdictions with a population of 10,000 or more, the levy for the coming year would decrease (excluding new construction, etc.) unless the legislative body made a finding of substantial need for a higher levy amount.

²⁹The publication to which we refer was written to help jurisdictions comply with the requirements of RCW 84.55.120. It was not written to explain procedures for banking excess capacity.

³⁰Note that the resolution DOR uses in this example is slightly different than the one DOR is presenting on the form that we have reproduced on page 9, but the content is the same. DOR amended the form on 11/15/07, but did not revise the publication.

What the publication does not make clear as it could is that not only are the jurisdictions “allowed” to bank excess capacity, the passage of the resolution accomplishes the banking without any further action being required of the jurisdiction.

Rule 2: If the taxing district has a **population of 10,000 or more** and if the IPD is less than one percent, then in addition to filling out the form we discussed in item 2 above, the jurisdiction must pass an ordinance or resolution making a finding of “future substantial need” in order to bank capacity.

How do we know this? Look at the same publication, “Resolution/Ordinance Procedures for Increasing Property Tax Revenue” dated 9/05. Go to the discussion in the last bullet on page 1. It says, in part:

In the case that the IPD is less than one percent, to raise the levy to one percent or to bank excess capacity, a second resolution/ordinance must be adopted.

By the term “second” resolution, DOR is referring to the one that makes a finding of “substantial need.” So, if the IPD is less than one percent, the substantial need resolution is necessary to bank capacity.

And from that statement follows Rule 3.

Rule 3: If the taxing district has a **population of 10,000 or more**, as long as the IPD is greater than one percent, filling out the form we discussed in item 2 above and levying a percentage increase less than one percent will automatically bank capacity, just as it does for jurisdictions with a population less than 10,000. A second resolution/ordinance is **not** required to bank excess levy capacity.

- 6. How Do We Use Capacity We Have Banked in the Past?** You have to find out what your maximum allowable levy is from the assessor. Let’s assume that it was \$110,000 for the levy you made in 2009 for 2010 and your county levied only \$100,000 for 2010. When you go to make your levy for 2011, the assessor will raise your maximum allowable levy by one percent to \$111,100 ($\$110,000 \times 1.01$) exclusive of “add-ons,” which include additional revenue from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state-assessed property, annexations that have occurred, and refunds made. If you just increase your current levy by one percent, it will be \$101,000 ($\$100,000 \times 1.01$) plus “add-ons,” so you have \$10,100 of banked capacity ($\$111,100 - 101,000 = \$10,100$).

Let's say you want to increase your levy by \$7,000. When you write your resolution/ordinance to satisfy the requirement for RCW 84.55.120, you put \$7,000 in the blank that gives the dollar amount of the increase (excluding "add-ons") over the actual levy from the previous year – 2010 – and that is a percentage increase of seven percent ($\$7,000/\$100,000$). One thousand dollars of the increase comes from your "one percent." For the other \$6,000, you have used banked capacity.

When you write your levy resolution or ordinance, you put in \$107,000 *plus* the estimated dollar amount of "add-ons" as the *total amount* you are requesting and you put that same number in the blank for regular property tax levy in the levy certification form.

► If You Don't Have Banked Capacity, Maybe You Can Do a Levy Lid Lift

As discussed above, the passage of Initiative 747 in 2001 limited taxing jurisdictions with a population of less than 10,000 to an increase of one percent in their regular property tax levies, plus taxes on new construction and increases in state-assessed utility valuation. Levy increases for municipalities with a population of 10,000 or more are limited to the lesser of one percent or the increase in the July implicit price deflator for personal consumption expenditures as published in the September issue of the *Survey of Current Business*.

One exception to the one percent rule is the levy lid lift. Taxing jurisdictions with a tax rate that is less than their statutory maximum rate may ask the voters to "lift" the levy lid by increasing the tax rate to some amount equal to or less than their statutory maximum rate.³¹ The proposed rate must be stated in the ballot title.³² A simple majority vote is required.

There are two different approaches to, or options for, a levy lid lift, with each having different provisions and advantages.

Option 1: "Original flavor" lid lift (or "single-year" lift or "one-year" lift or "basic" lift) – RCW 84.55.050(1)

In 2003, when the legislation³³ establishing the multi-year lid lift was passed, MRSC nicknamed the "old" version the "original flavor" lid lift. Others used the term "basic" lift. Recently, we have seen the terms "single-year" and "one-year" lift used. We have discovered, however, that some people think this means that the lift ends or goes away after one year. As we discuss below, the lift generally lasts for a number of years, perhaps permanently. A better way to describe it may be to call it the "one-bump" lid lift compared to the multi-year lift, which "bumps up" each year for a period of up to six years. In our discussion, we will continue to refer to it as the "original flavor" lift.

³¹RCW 84.55.050. Note that although this example refers to a levy lid lift for the general fund, a county may do a lift for any regular property tax levy – for the road levy, an EMS levy, a low income housing levy, or any of the other levies discussed on pages 19-22.

³²RCW 84.55.050(1) and (2)(a).

³³Ch. 24, Laws of 2003, 1st spec. sess., amending RCW 84.55.050.

1. **Purpose.** It may be done for any purpose, and the purpose may be included in the ballot title, but it need not be.³⁴ You could say it would be for hiring more deputy sheriffs or for additional money for general government purposes, or you could say nothing at all. In the latter case, by default, it would be for general government purposes. Stating a particular purpose may improve your chances of getting the voters to approve it.
2. **Length of time of lid lift.** It can be for any amount of time, unless the proceeds will be used for debt service on bonds, in which case the maximum time period is nine years.³⁵ Setting a specific time period may make the ballot measure more attractive to the voters. But, making it permanent means you can use the funds for ongoing operating expenditures without having to be concerned that you will have to go back to the voters for another lid lift. To make the lift permanent requires language in the ballot title expressly stating that it is permanent or that future levies will increase as allowed by chapter 84.55 RCW.³⁶

If the lift is not made permanent, the base for future levies will, at the end of the time period specified in the ballot title, revert to what the dollar amount of the levy would have been if no lift had ever been done.³⁷ Note that the assessor will assume that the governing body would have increased its levy by the maximum amount allowed each year if there had been no lid lift.
3. **Subsequent levies.** After the initial “lift” in the first year, the county’s levy in future years is subject to the 101 percent lid in chapter 84.55.RCW. This is the maximum amount it can increase without returning to the voters for another lid lift.
4. **Election date.** The election may take place on any election date listed in RCW 29A.04.321.³⁸

Option 2: Multiple/multi-year lid lift – RCW 84.55.050(2)

1. **Purpose.** It may be done for any limited purpose,³⁹ but the purpose(s) must be stated in the title of the ballot measure.⁴⁰ New funds raised may not supplant existing funds used for that purpose for any lid lift approved by the voters before July 27, 2009. “Existing funds” mean the actual operating expenditures for the calendar year in which the ballot measure is approved

³⁴RCW 84.55.050(4)(c).

³⁵RCW 84.55.050(4)(b) and (c).

³⁶RCW 84.55.050(4)(a).

³⁷RCW 84.55.050(5).

³⁸There are a number of considerations in choosing the election date. Your election date will determine (assuming the ballot measure is passed) when you will get your first tax receipts. Taxes levied in November are first due on April 30 of the following year. Therefore, to receive taxes next year from a levy you are discussing during the current year, your election can be no later than November. If a council or commission first begins thinking of a levy lid lift in September or October, during budget discussions for the coming year, it will be too late to get any measure on the November ballot. Your county auditor must receive your ordinance or resolution 45 days before a special election and 84 days before the primary or general election. (RCW 29A.04.321.) It pays to plan ahead.

Also, counties should ask around to find out what other elections will be coming up during the year. You may not want to go head-to-head with a school levy election or a voted bond issue.

³⁹“General government purposes” is not a “limited purpose” because the entire general fund is spent for general government purposes.

⁴⁰RCW 84.55.050(2)(a).

by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.⁴¹

The supplanting restrictions have been repealed for lid lifts approved by the voters starting July 27, 2009. They will be reimposed, however, for lid lifts passed in King County beginning January 1, 2012.⁴²

2. **Length of time of lid lift.** The lid may be “bumped up” each year for up to six years.⁴³ At the end of the specified period, the levy in the final period may be designated as the base amount for the calculation of all future levy increases (made permanent) if expressly stated in the ballot title. The levy in future years will then be subject to the 101 percent lid in chapter 84.55 RCW.⁴⁴ If the lift is not made permanent, at the end of the time period specified in the ballot title, the base for future levies will revert to what the dollar amount of the levy would have been if no lift had ever been done. Note that the assessor will assume that the governing body would have increased its levy by the maximum amount allowed each year if there had been no lid lift.⁴⁵
3. **Subsequent levies.** The lift for the first year must state the new tax rate for that year.⁴⁶ For the ensuing years, the lift may be a dollar amount, a percentage increase amount tied to an index such as the CPI,⁴⁷ or a percentage amount set by some other method. The amounts do not need to be the same for each year. However the ballot title may only have 75 words, so one does not have much space to get too fancy or creative.

(Note that one cannot specify that the lift be to a specific tax rate for each year. A tax rate **must** be specified for the first year, like “increase the rate to \$1.80.” For ensuing years, however, the ballot measure **cannot** say something like “and raise the rate to \$1.80 in each of the next five years.”) If the amount of the increase for a particular year would require a tax rate that is above the maximum tax rate, the assessor will levy only the maximum amount allowed by law.

4. **Election date.** The election date must be the August primary or the November general election.⁴⁸

So, which is the better option?

As usual, of course, it depends. The requirement that a purpose must be stated in the ballot title for a multi-year lid lift makes it appear to be less flexible than the “original flavor” or single-year

⁴¹RCW 84.55.050(2)(b)(i).

⁴²RCW 84.55.050(2)(b)(ii) and (iii), as amended by ch. 554, Laws of 2009.

⁴³RCW 84.55.050(2)(a).

⁴⁴RCW 84.55.050(4)(a).

⁴⁵RCW 84.55.050(5).

⁴⁶RCW 84.55.050(2)(a).

⁴⁷See *Budget Suggestions for 2009*, MRSC Information Bulletin No. 531 (August 2008), at 44, for a discussion concerning using the correct index.

⁴⁸RCW 84.55.050(2)(a).

version. This may be true more in theory than practice, however, because we know of no counties and only one city that has successfully passed a ballot measure where they did not specify the use of the funds.

The requirement that there be no supplanting in expenditures in a multi-year lift in King County beginning January 1, 2012 is more restrictive. It certainly is attractive to have the opportunity to do a levy lid lift for a popular program, such as public safety, and then use part of the money that would have been spent on that program for, say, a new computer system. One presumes, however, that citizens believe there will be no supplanting even when the statutes do not prohibit it, and that they will require some accounting from government officials.

► Excess Levies for General Government Purposes – One-Year Levy

Even counties that are currently levying their statutory maximum rate can ask the voters, at any special election date, to raise their rate for one year.⁴⁹ Many practitioners refer to this levy as an O and M (operations and maintenance) levy. There are two different scenarios for voter approval. If at least 60 percent of the voters vote “yes” with a voter turnout of more than 40 percent of the number of people voting in the last general election, the measure is passed. However, if the voter turnout is 40 percent or less of the number voting in the last general election, all is not lost. In that case, as long as the number of “yes” votes is equal to at least 60 percent times 40 percent of the number of people voting in the last general election, the measure will pass. If, for example, 1,000 people voted in the last general election, as long as at least 240 ($1,000 \times .4 = 400$; $400 \times .6 = 240$) people vote “yes” on the O and M levy, it will pass even if the number voting is less than 400 (40 percent of those voting in the last general election).⁵⁰

As with the levy lid lift, the purpose for which the money will be used does not need to be specified. However, it is not fiscally prudent to build an annual budget that assumes that the voters will renew the levy authority each year. A good use of these funds would be for a one-time expenditure.

► Diversion and Shifting of Road Levy Funds

*Diverting Road Funds*⁵¹

Although RCW 36.82.020 requires all road levy funds to be spent for “proper county road purposes,” RCW 36.82.040, which establishes the road fund levy, provides an exception. It states,

⁴⁹RCW 84.52.052.

⁵⁰RCW 84.52.052 and art. 7, §2(a) of the state constitution. Note that an easy way to express this alternative for voter approval is to say that when voter turnout is less than 40 percent of the voter turnout at the last general election, the “yes” votes must be at least 24 percent ($240/1000$) of the voter turnout at the last general election in order for the measure to pass.

⁵¹The Washington State County Road Administration Board (CRAB) has an informative PowerPoint presentation on road fund diversion. “Overview of Road Fund Diversion,” October 2003. <http://www.mrsc.org/govdocs/W3CRABDiversions.pdf>

in part:

All funds accruing from such levy shall be credited to and deposited in the county road fund except that revenue **diverted** under RCW 36.33.220 shall be placed in a separate and identifiable account within the county current expense fund (Emphasis added.)

RCW 36.33.220 allows the county legislative authority to spend these diverted revenues⁵² for any service provided to the unincorporated area:

The legislative authority of any county may budget, in accordance with the provisions of chapter 36.40 RCW, and expend any portion of the county road property tax revenues **for any service** to be provided in the unincorporated area of the county notwithstanding any other provision of law, including chapter 36.82 RCW and RCW 84.52.050 and 84.52.043. (Emphasis added.)

However, if funds diverted under RCW 36.33.220 are not used for traffic law enforcement,⁵³ the county will be ineligible for rural arterial trust account (RATA) funding unless one of two exemptions applies: 1) the population of the county is less than 8,000; or 2) the county expended revenues collected for road purposes on other governmental services only after the voters authorized a levy lid lift for the road fund under RCW 84.55.050 for such purposes.⁵⁴

Counties that make a budgetary transfer of funds from the road fund to the general fund, as opposed to a diversion under RCW 36.33.220, must meet the same spending criteria to be eligible for rural arterial trust account funding.⁵⁵ Unless their population is less than 8,000, actual

⁵²See the *BARS Manual*, Vol. 1, Pt. 3, Ch. 12, Interpretation 3, for information on how to account for diverted road taxes.

⁵³In its "Overview of Road Fund Diversion" PowerPoint presentation <http://www.mrsc.org/govdocs/W3CRABDivisions.pdf>, the County Road Administration Board provides a list of allowable "traffic law enforcement" items:

1. Investigation and enforcement of laws on oversize or overweight vehicles on county roads;
2. Investigation and enforcement of other traffic laws and regulations, especially enforcement of speed limits in work zones; and
3. Investigation of all accident scenes and subsequent preparation and testimony in court.

⁵⁴RCW 36.79.140 states, in part:

Only those counties that during the preceding twelve months have spent all revenues collected for road purposes only for such purposes, including removal of barriers to fish passage and accompanying streambed and stream bank repair as specified in RCW 36.82.070, and including traffic law enforcement, as are allowed to the state by Article II, section 40 of the state Constitution are eligible to receive funds from the rural arterial trust account, except that: (1) Counties with a population of less than eight thousand are exempt from this eligibility restriction; (2) counties expending revenues collected for road purposes only on other governmental services after authorization from the voters of that county under RCW 84.55.050 are also exempt from this eligibility restriction;..

See also WAC 136-150-030.

⁵⁵WAC 136-150-022. This chapter is titled "Eligibility for rural arterial trust account funds."

expenditures on traffic law enforcement must be at least as great as the amount of funds transferred to the general fund for traffic law enforcement.⁵⁶

Road Levy Shift

If certain requirements are met, levy authority may be shifted from the road fund to the general fund. Counties find the shift to be a helpful budget tool because the general fund levy has so many more uses than the road levy. Recalling the discussion of tax rates on page 1, a county can raise its general fund levy rate from \$1.80 up to \$2.475 per thousand dollars AV, provided the total of the levy rates for the general fund and road fund does not exceed \$4.05 per thousand dollars AV **and** the increase in the general fund levy does **not** result in a reduction in the levy of any other taxing district. Although the total dollars levied for the general fund and road fund combined do not change with a levy shift, the dollars are collected from different taxpayer groups. All the dollars for the road fund levy come from taxpayers in the unincorporated area. The general fund levy is paid by all county residents – both in incorporated and unincorporated areas.

Say that a county wants to shift \$250,000 of levy authority from the road fund to the general fund. It first calculates its maximum allowable levy and levy rate for each fund without a shift. Then, it calculates the rates with the shift. For the general fund to be able to levy \$250,000 more from the same assessed valuation, the tax rate must be increase. So, the first check is whether the new rate is \$2.475 or less. If not, either the shift must be abandoned or the amount of the shift to the general fund must be lowered until the required tax rate falls to \$2.475. The road fund tax rate will fall because \$250,000 less must be raised.

The second check is whether the new combined rate is \$4.05 or less. If not, the shift must be abandoned or the amount of the shift must be decreased.

The third check is whether the shift may be done without reducing another taxing district's levy. On page 1, we discussed the \$5.90 limit. Assume, for example, that a county finds itself in the situation shown in Column A after shifting \$250,000:

	Column A	Column B
	(Before Buy Down)	(After Buy Down)
General/Current Expense Fund	\$1.90	\$1.90
City	3.10	3.06
Hospital	.48	.48
Library	<u>.46</u>	<u>.46</u>
Total	\$5.94	\$5.90

⁵⁶WAC 136-150-030.

Because the total is more than \$5.90, the library and hospital district levies would have to be reduced, and this is not allowed. The county can: 1) decide not to do the shift; 2) do the shift for a smaller amount that would only require its rate to be increased to \$1.86; or 3) do a “buy down” of the city levy of four cents as shown in Column B. RCW 39.67.010 and RCW 39.67.020 allow such a “buy-down.”⁵⁷ In this case, the county would pay the city an amount equal to \$0.04 times its assessed valuation divided by 1000 to lower its levy to \$3.06 from \$3.10. If the city’s assessed valuation is \$102,000,000, this would cost the county \$4,080 ($\$0.04 \times \$102,000,000/1000$). If the county assessed valuation is \$930,800,000, lowering its general fund tax rate by four cents would cost $\$0.04 \times \$930,800,000/1000 = \$37,232$. The county comes out \$33,152 ahead ($\$37,232 - 4,080$) by doing the buy-down.⁵⁸

► Other Regular Property Tax Levies for Counties

In addition to the general fund/current expense fund and road fund taxes, counties have authority to levy a number of other regular property taxes. As regular property taxes, they are subject to the \$5.90 aggregate limit in RCW 84.52.043 and the constitutional provision that the aggregate of all regular property tax levies (except levies by ports and public utility districts) may not exceed one percent of assessed value (\$10 per thousand dollars assessed valuation).⁵⁹ In addition, the amount the levies may increase every year is subject to the 101 percent lid.

After the initial levy is approved by the voters, counties with a population under 10,000 may increase the amount of the levy by a maximum of one percent a year plus an additional amount (“add-ons”) from new construction, improvements to property, newly constructed wind turbines,

⁵⁷RCW 39.67.010 states:

Any agreement or contract between two taxing districts other than the state which is otherwise authorized by law may be made contingent upon a particular property tax levy rate of an identified taxing district other than the state where such rate affects the regular property tax rate of one of the parties to the contract and therefore affects the party's resources with which to perform under the contract. The governing body of every taxing district that could have its tax levy adversely affected by such a contract shall be notified about the contract.

And RCW 39.67.020 reads:

Any taxing district other than the state may transfer funds to another taxing district other than the state where the regular property tax levy rate of the second district may affect the regular property tax levy rate of the first district and where such transfer is part of an agreement whereby proration or reduction of property taxes is lessened or avoided. The governing body of every taxing district that could have its tax levy adversely affected by such an agreement shall be notified about the agreement.

⁵⁸This example comes from *Property Tax Levies: Operations Manual*, Department of Revenue (Olympia Washington: August 2009). http://dor.wa.gov/Docs/Pubs/Prop_Tax/LevyManual.doc

This publication includes an excellent discussion of road levy shifts on pages 6-8 through 6-11. It provides a numerical example of all the calculations necessary to determine whether the various requirements for a road levy shift are met.

⁵⁹See RCW 84.04.140 for a definition of regular property taxes.

increases in the value of state-assessed property, annexations, and refunds. Counties with a population of 10,000 and over are limited each year to a levy increase that is no greater than the lesser of the change in the implicit price deflator for personal consumption expenditures as published in the September edition of the *Survey of Current Business*, a publication of the Bureau of Economic Analysis, or one percent, plus add-ons, unless the legislative body makes a finding of “substantial need” with a majority plus one vote of the county council or two out of three commissioners.⁶⁰

Emergency Medical Services

All counties are allowed to ask the voters for authority to levy an additional property tax of up to 50 cents per thousand dollars of assessed valuation to support emergency medical services (EMS). The levy presented to the voters can be imposed for six years, ten years, or permanently.⁶¹

If a county imposes a permanent levy, it must account separately for the expenditure of the revenues.⁶² In addition, a permanent levy is subject to a referendum **at any time**.⁶³ This provision means the “permanent” levy may not be permanent.

There are two different scenarios for voter approval of this levy. If at least 60 percent of the voters vote “yes,” with a voter turnout of more than 40 percent of the number of people voting in the last general election, the measure is passed. However, if the voter turnout is 40 percent or less of the number voting in the last general election, all is not lost. In that case, as long as the number of “yes” votes is equal to at least 60 percent times 40 percent of the number of people voting in the last general election, the measure will pass. If, for example, 1,000 people voted in the last general election, as long there is a majority “yes” vote of at least 240 ($1,000 \times .4 = 400$; $400 \times .6 = 240$), it will pass even if the number of people voting is less than 400 (40 percent of those voting in the last general election).⁶⁴

Affordable Housing Levy⁶⁵

Counties and cities may impose additional regular property tax levies up to \$0.50 per thousand dollars assessed valuation each year for up to ten years to finance affordable housing for very low-income households when specifically authorized to do so by a majority of voters of the taxing

⁶⁰Pages 4-5 contain an expanded discussion of levy limits under RCW 84.55.010 and Referendum 47.

⁶¹RCW 84.52.069(2).

⁶²RCW 84.52.069(3).

⁶³RCW 84.52.069(4). The standard referendum procedure (see footnote 84 for the sales tax) requires that a petition must be filed within seven days of the passage of the ordinance or resolution. Within ten days, the officer with whom the petition is filed must confer with the petitioner concerning the form and style of the petition and provide a ballot title. The petitioner has 30 days to gather valid signatures from at least 15 percent of the registered voters as of the last general election. If enough valid signatures are gathered, the referendum must be placed on the ballot at the next general election, if one is to be held within 180 days of the filing of the petition, or at a special election called for that purpose.

⁶⁴RCW 84.52.069(2). Note that an easy way to express this alternative for voter approval is to say that when voter turnout is less than 40 percent of the voter turnout at the last general election, the “yes” votes must be at least 24 percent ($240/1000$) of the voter turnout at the last general election in for the measure to pass.

⁶⁵RCW 84.52.105.

district. If both the city and county impose a levy, the levy of the last jurisdiction to receive voter approval is reduced so that the combined rate does not exceed \$0.50 per thousand dollars AV in any taxing district.

This tax may not be imposed until the legislative authority declares the existence of an emergency with respect to the availability of housing that is affordable to very low-income households, and the legislative authority adopts an affordable housing finance plan in conformity with state and federal laws regarding affordable housing. Very low-income is defined as being at or below 50 percent of the median income for the taxing district.

Open Space and Conservation Futures Levy

A county legislative authority may impose a countywide property tax levy of up to \$0.0625 per thousand dollars assessed valuation in the county for the purpose of purchasing open space and future development rights.⁶⁶ An amount equal to not more than 15 percent of the tax revenue collected in the preceding calendar year may be used for operations and maintenance of the acquired property, as long as the expenditure does not supplant existing funding.⁶⁷

In counties with a population over 100,000, the legislative authority must develop a process to help ensure distribution of the tax levied, over time, throughout the county.⁶⁸

Flood Control Zone District⁶⁹

A levy not to exceed 50 cents per thousand dollars assessed valuation may be levied by the supervisors of a flood control zone district to undertake flood control or storm water projects that benefit specific areas of the county.

Criminal Justice Levy⁷⁰

A county with a population of 90,000 or less may put a proposition before the voters at a general or special election to levy a property tax of up to \$0.50 per thousand dollars of assessed valuation to be used for criminal justice purposes. The levy may be for up to six years.

This levy has the same voting requirements as the emergency medical services levy.

County Transit Levy⁷¹

A county with a population of 1.5 million or more (King County) may levy up to \$0.075 per thousand dollars assessed valuation for expanding transit capacity along SR 520 and other transit expenditures.

⁶⁶RCW 84.34.230.

⁶⁷RCW 84.34.240(1).

⁶⁸RCW 84.34.240(2).

⁶⁹RCW 86.15.160.

⁷⁰RCW 84.52.135.

⁷¹RCW 84.52.140.

County Ferry Levy⁷²

The legislative authority of a ferry district (the county commissioners or council) may levy a tax of up to \$0.75 per thousand dollars assessed valuation to provide passenger-only ferry services. In a county with a population of 1.5 million (King County), the levy rate may not exceed \$0.075 per thousand dollars assessed valuation.

► Property Tax Levies That Are Part of the Current Expense Fund Levy

Veterans' Assistance Fund Levy⁷³

A county legislative authority must impose a property tax at a rate not less than \$0.01125 and not greater than \$0.27 per thousand dollars assessed valuation (AV) in the county for the purposes of creating a veterans' assistance fund. If the fund balance exceeds an amount represented by the minimum required levy at the rate of \$0.01125 cents per thousand dollars AV on the second Tuesday of September, the county legislative authority may reduce the levy for the following year below the minimum. The amount of the current expense fund levy allocated to this purpose may be reduced in the same proportion as the regular property tax levy of the county is reduced by the statutory levy rate limits.

Mental Health and Developmental Disabilities Services Levy⁷⁴

A county legislative authority must budget and levy annually a tax equal to the amount which would be raised by a levy of \$0.025 per thousand dollars assessed valuation to provide community services for persons with developmental disabilities and mental health problems. The funds may be transferred to the Department of Social and Health Services to obtain federal matching funds. The amount of the current expense fund levy allocated to this purpose may be reduced in the same proportion that the regular property tax levy is reduced by the statutory levy rate limits.

County Lands Assessment Fund Levy⁷⁵

A county legislative authority may impose a countywide levy for special assessments of drainage improvement districts, diking improvements, and road improvement on county-owned property not to exceed \$0.125 per thousand dollars assessed valuation.

County Hospital Maintenance Levy⁷⁶

A county legislative authority may impose a countywide levy for county hospital maintenance not to exceed \$0.50 per thousand dollars assessed valuation.

⁷²RCW 36.54.130.

⁷³RCW 73.08.080.

⁷⁴RCW 71.20.110.

⁷⁵RCW 36.33.130 and .140.

⁷⁶RCW 36.62.090.

River Improvement Fund Levy⁷⁷

A county legislative authority may also impose a countywide property tax for flood control river improvements not to exceed \$0.25 per thousand dollars assessed valuation.

► Receipt of Funds

Property taxes are due on April 30 and October 31.⁷⁸ This means that counties receive the bulk of their property tax revenue in May and June and in November and December.

⁷⁷RCW 86.12.010.

⁷⁸RCW 84.56.020.

Retail Sales and Use Tax⁷⁹

► What's the County Rate?

“Basic” 0.5 Percent Sales and Use Tax (“First Half Cent”)⁸⁰

A county (and city) legislative authority may impose, by resolution or ordinance, a sales and use tax at the rate of 0.5 percent on any taxable event within the county.⁸¹ The resulting revenues are not restricted and may be used for general county purposes. If both a county and a city within the county impose this tax, then the city rate can be no higher than 0.425 percent. And, the county must give a credit against its tax for any tax imposed by the city.⁸²

This means that goods purchased within a city are not taxed by both the city and the county; they are only taxed once. However, the city receives only 85 percent of the revenue ($0.425/0.500 = .85$). The remaining 15 percent from sales made in a city goes to the county. Another way to think about it is that the county tax rate is 0.5 percent in the unincorporated areas and 0.075 percent ($0.500-0.425 = 0.075$) in the incorporated areas.

“Optional” 0.5 Percent Sales and Use Tax (“Second Half Cent”)⁸³

A county (and city) may impose an additional sales tax, in 0.1 percent increments, up to a rate of 0.5 percent. This optional sales tax may be imposed by a majority vote of the legislative authority, but it is subject to a referendum.⁸⁴ The resulting revenues are not restricted by statute.

If a city and a county both impose the optional sales tax at the same rate, then the county receives 15 percent of the revenue from sales in the city. If a city imposes the tax at a lower rate than the county (for example, assume that the city rate is 0.3 percent and the county rate is 0.5 percent), then the county will receive 15 percent of the revenue from the 0.3 percent city tax, but **all** the revenue generated in the city from the remaining 0.2 percent of the county tax. Conversely, if the city rate is higher than the county rate, then the county receives 15 percent of only a portion of the city revenue. If the city rate, for example, is 0.5 percent and the county rate is only 0.3 percent, the

⁷⁹In this section, “sales tax” refers to “sales and use tax” unless otherwise noted.

⁸⁰RCW 82.14.030(1). The Department of Revenue calls this tax the “basic” 0.5 percent in its reports. It is also commonly called the “first half cent” to differentiate it from the “second half cent.”

⁸¹The Department of Revenue charges a one percent administrative fee, so the county nets 0.495 percent. RCW 82.14.050. We will ignore the administrative fee in our discussion.

⁸²RCW 82.14.040.

⁸³RCW 82.14.030(2).

⁸⁴RCW 82.14.036. This referendum procedure must specify that a petition may be filed within seven days of the passage of the ordinance with the filing officer (e.g., the clerk). Within 10 days, the filing officer must confer with the petitioner as to the form and style of the petition and write a ballot title. Then the petitioner has 30 days to gather the signatures of at least 15 percent of the registered voters. If sufficient valid signatures are submitted, the referendum is voted on at a general or special election, which must take place no more than 120 days after the signed petition has been filed.

county will get 15 percent of the revenue earned in the city from a rate of 0.3 percent, and the city will keep all the revenue earned from the remaining 0.2 percent of the optional tax.⁸⁵

As of our date of publication, 36 counties were levying the full second half-cent tax and Asotin County was levying a portion of the second half cent. Klickitat and Skamania were the only counties not levying the optional tax.

► Other County Sales Taxes Paid by Purchasers

Optional 0.1 Percent Criminal Justice Sales and Use Tax⁸⁶

County commissioners or councils may vote, by resolution or ordinance, to levy a county-wide 0.1 percent sales tax for criminal justice purposes. The tax is subject to the same referendum provisions as the second half percent sales tax.⁸⁷ Ten percent of the funds collected are distributed to the county, with the remainder allocated to the cities and the county on the basis of population.

For example, if the criminal justice revenues were \$500,000, then the county would get 10 percent (\$50,000) off the top. And, if the total county population was 100,000 and the unincorporated population was 40,000, since it has 40 percent (40,000/100,000) of the total population, it would get another \$180,000 (40 percent of the remaining \$450,000 left to be allocated) for a total of \$230,000. A requirement that these funds not supplant existing funding was repealed by the legislature in 2010.⁸⁸

The legislature has defined “criminal justice purposes” in this statute to be:

activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates.

Thirty-two counties were imposing this tax at the time of publication of this document.

Optional 0.1 Percent Juvenile Detention Facility Sales and Use Tax⁸⁹

A county legislative authority with a population of less than one million may submit a proposition to the voters for a sales and use tax of 0.1 percent for the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and

⁸⁵AGO 2006 No. 18 has a more comprehensive explanation of how the county and city rates interrelate under different scenarios.

⁸⁶RCW 82.14.340.

⁸⁷See footnote 84 for the referendum procedure.

⁸⁸Ch. 127, Laws of 2010. This legislative action was primarily a “housekeeping” measure. Since the base year for measuring supplanting was 1989, it is unlikely that any county or city was currently using these funds to supplant other expenditures.

⁸⁹RCW 82.14.350.

improvement of juvenile detention facilities and jails. This tax is in addition to the other sales and use taxes allowable by statute. Counties are authorized to enter into joint ventures to co-locate a facility.

Fourteen counties were imposing this tax at the time of publication of this document.

Optional 0.1 Percent Sales Tax for E-911 Systems and Facilities⁹⁰

A county may ask the voters to approve a ballot measure to levy a 0.1 percent tax for the costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of emergency communication systems and facilities. Counties may develop joint ventures to collocate the systems.

Fourteen counties were imposing this tax at the time of publication of this document

Optional 0.3 Percent “Public Safety” Sales Tax Under RCW 82.14.450

A county legislative body may submit a ballot proposal to a countywide vote for a sales tax increase of up to 0.3 percent. Sales of motor vehicles or leases of motor vehicles for up to the first 36 months are exempt from the tax. The proposal must be approved by a majority of the voters at a primary or general election.

The text of the ballot measure must state the purposes for which the funds will be used. At least one-third of the money must be spent for “criminal justice purposes, fire protection purposes, or both” with no restrictions on type of use for the remaining two-thirds.⁹¹ “Criminal justice purposes” is defined as:

activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates.

Sixty percent of the funds are distributed to the county, with the cities in the county getting the remaining 40 percent on a per capita basis. The cities must spend the portions they receive in accordance with the uses stated in the ballot measure.

Legislation passed in 2010⁹² amended this statute. It removed language that prohibited supplanting of existing funding. It also extended, in some circumstances, the authority of cities to levy this tax at a rate not to exceed 0.1 percent, effective January 1, 2011.

The total rate of this tax may not exceed 0.3 percent. Therefore, if a county is levying this tax at a rate of 0.3 percent, then no city in that county may levy this tax. However, if a county is levying

⁹⁰RCW 82.14.420.

⁹¹RCW 82.14.450(4), as amended by ch. 551, Laws of 2009.

⁹²Ch. 127, Laws of 2010, §1.

this tax at a rate of less than 0.3 percent, a city in that county may submit a ballot measure to the voters at the primary or general election to impose this tax at a rate not exceeding 0.1 percent, to be effective no sooner than January 1, 2011.⁹³ The ballot measure must state the uses: at least one-third of the revenue must be used for criminal justice purposes, fire protection purposes or both. Sales of motor vehicles or leases of motor vehicles for up to the first 36 months are exempt from the tax, just as they are from a county tax.

If a county adopts a resolution or ordinance to levy this tax after a city in the county has done so, then the county must give a credit against the county tax for sales within the city to the extent that the sum the city and county tax rates would exceed 0.3 percent. For example, if a city is levying the tax at a rate of 0.1 percent and the county passes a 0.3 percent tax, then the total tax paid in the city will be 0.3 percent, with 0.1 percent being the city tax and 0.2 percent being the county tax, since there is a credit against the county for the city tax. If the city is levying a 0.1 percent tax and the county levies a 0.2 percent tax, then the total in the city is 0.3 percent, while it is only 0.2 percent in the unincorporated area of the county.

Fifteen percent of the proceeds of any tax levied by the city must be given to the county.⁹⁴

Kittitas, Spokane, Walla Walla, Whatcom, and Yakima counties are currently levying this tax.

Optional 0.1 Percent Sales Tax for Mental Health⁹⁵

A county legislative authority may levy a tax of 0.1 percent for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services. "Programs and services" includes, but is not limited to, treatment services, case management, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service.

Until the 2009 legislative session, all the funds had to be spent on new or expanded programs, with no supplanting allowed. (Spending on services and programs previously supported by lapsed federal funding is not considered supplanting.) However, 2009 legislation⁹⁶ allows a county (or city) to use these funds to supplant existing funds for five years according to the following schedule: Up to 50 percent may be used to supplant existing funding in calendar year 2010; up to 40 percent may be used to supplant existing funding in calendar year 2011; up to 30 percent may be used to supplant existing funding in calendar year 2012; up to 20 percent may be used

⁹³The rules that apply when a county levies the public safety sales and use tax before a city in the county levies it apply when a county and city in the county adopt resolutions/ordinances to submit, on the same date, ballot propositions to the voters to levy the tax. RCW 82.14.450(2)(b), as amended by ch. 127, Laws of 2010, §1.

⁹⁴RCW 82.14.450(7). Note that the "sharing with the county" provision works differently for this tax than for the "optional" sales and use tax levied under RCW 82.14.030(2) as discussed on page 24-25. In the case of the "optional" sales and use tax, the county receives a share only if its tax rate is equal or greater than the city tax. In the current case, however, if the city levies a 0.1 percent public safety tax and the county levies no tax, the county still receives 15 percent of the city revenues.

⁹⁵RCW 82.14.460. the base for supplanting might be different for other taxes depending on the language in the statute."

⁹⁶Ch. 551, Laws of 2009. Some language allowing some cities to levy this tax was added in 2010. Ch. 127, Laws of 2010.

to supplant existing funding in calendar year 2013; and up to 10 percent may be used to supplant existing funding in calendar year 2014. The base year for measuring supplanting for this tax is the calendar year before the new tax took effect.⁹⁷

If a county with a population of over 800,000 has not levied this tax by January 1, 2011, any city with a population of over 30,000 may levy this tax. If the county subsequently levies the tax, it must provide a credit for the city tax against the county tax.⁹⁸

Fourteen counties were levying this tax at the time of publication of this document.

Optional 0.2 Percent Sales Tax for Transportation Benefit Districts

Counties, along with cities, may form transportation benefit districts under ch. 36.73 RCW to acquire, construct, improve, provide, and fund transportation improvements. One funding option is a voter-approved 0.2 percent sales tax. The sales tax may be levied for an initial 10 years and renewed for another 10 years with a vote. If used to pay debt service on a bond, a sales tax may be levied for more than 10 years.⁹⁹ See pages 76-77 for more information on transportation benefit districts.

The funds must be spent on transportation improvements as set forth in the district's plan. "Transportation improvement" is defined as:

a project contained in the transportation plan of the state, a regional transportation planning organization, city, county, or eligible jurisdiction as identified in RCW 36.73.020(2). A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.¹⁰⁰

Transit Sales and Use Tax¹⁰¹

Cities, counties, and public transportation benefit areas (PTBAs) may levy up to 0.9 percent sales and use tax for public transportation purposes. This authority was increased from 0.6 percent to 0.9 percent by the 2000 legislature in response to the difficulties in which transit districts found themselves after one of their main funding sources, the motor vehicle excise tax, was repealed.

⁹⁷Jan Jutte, Director of Legal Affairs, Washington State Auditor's Office. "RE: Base year to measure supplanting under RCW 82.14.460." Email to Judith Cox, Public Finance Consultant, MRSC, April 1, 2010. The base for supplanting for other taxes may be different depending on the language in the statute.

⁹⁸Ch. 127, Laws of 2010. In practice, this provision applies only to Pierce County and the cities in it.

⁹⁹RCW 82.14.0455 and RCW 36.73.040(3)(a).

¹⁰⁰RCW 36.73.015(3).

¹⁰¹RCW 82.14.045.

High Capacity Transportation¹⁰²

Any county (or city with a transit system, metropolitan municipal corporation, public transportation benefit area, high capacity transportation corridor area, or regional transit authority) may ask the voters to levy up to a 1.0 percent sales and use tax specifically for high capacity transportation systems. The tax must be approved by a majority vote. However, a county levying the 0.1 percent criminal justice sales and use tax under RCW 82.14.340 may only levy 0.9 percent for this tax. This tax is in addition to the other sales and use taxes allowable by statute. The Regional Transit Authority (known as Sound Transit), covering parts of Snohomish, King, and Pierce counties, currently levies this tax at a rate of 0.9 percent.

Public Facilities District Tax¹⁰³

A sales and use tax not to exceed 0.2 percent may be imposed by the governing board of a public facilities district established under chapter 36.100 RCW or chapter 35.57 RCW, with approval of a majority vote of the voters within the district. The proceeds may be used for financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities. Spokane County is the only entity imposing this tax.

► County Sales Taxes Paid by the State

Rural Counties Public Facilities Tax

The county legislative authority of a rural county¹⁰⁴ may levy up to an additional 0.09 percent sales tax to finance public facilities¹⁰⁵ dedicated to economic development purposes and finance personnel in economic development offices. Note that “economic development purposes” specifically refers to “the creation and retention of businesses and jobs.”¹⁰⁶ This tax is credited against the state's 6.5 percent sales tax and therefore does not increase the tax to the consumer.

The public facilities authorized under this tax must be listed in an adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or

¹⁰²RCW 81.104.170.

¹⁰³RCW 82.14.048.

¹⁰⁴“Rural county” is defined as “a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.” RCW 82.14.370(5).

¹⁰⁵RCW 82.14.370(3)(c)(i). “Public facilities” are defined as “bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.”

¹⁰⁶RCW 82.14.370(3)(c)(ii). “Economic development purposes” are defined as “those purposes which facilitate the creation or retention of businesses and jobs in a county.”

“Economic development office” is defined as “an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.” RCW 82.14.370(3)(c)(iii).

the comprehensive plan of a city or town within the county for those counties planning under the Growth Management Act (GMA). Counties not planning under the GMA and not having an adopted overall economic development plan must use the proceeds for public facilities listed in the capital facilities plan of the county or of any city or town within the county.

Counties must consult with cities, towns, port districts, and the associate development organization serving the county to ensure the funds are spent in accordance with the requirements stated above. Counties must make a report to the state auditor within 150 days of the end of the calendar year, listing the new projects begun during the year, showing that the expenditures meet the statutory requirements, and also showing any continued expenditures on projects begun in prior years.

A county may collect this tax for no more than 25 years after it is first imposed. However, those counties levying the tax at a rate of 0.09 percent before August 1, 2009, may continue to levy it for 25 years from the date that the 0.09 rate was first imposed.¹⁰⁷

Public Facility District Tax for Regional Centers¹⁰⁸

A public facilities district may impose a sales and use tax not to exceed 0.033 percent, depending on the date of creation of the district, the date on which it commences construction of a new regional center or improvement or rehabilitation of an existing new regional center, and the population of the district. The criteria for districts that may impose this tax are set out in RCW 82.14.390(1).

The tax is credited against the state sales and use tax and therefore is no additional burden to the consumer. The tax rate may increase up to 0.037 percent if, within three fiscal years of July 1, 2008, the Department of Revenue determines that, as a result of RCW 82.14.490 and 2007 amendments to RCW 82.14.020¹⁰⁹, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008 have been reduced by a net loss of at least 0.50 percent from the fiscal year before July 1, 2008.¹¹⁰

The tax expires when the bonds for the regional center and related parking are retired but not more than 25 years after the tax is first collected. The tax proceeds must be expended for purposes found in RCW 35.57.020 and must be matched by other public and/or private sources in an amount equal to thirty-three percent of the amount collected.

Other Sales and Use Taxes

Other sales tax authority exists for unique situations. King County may levy a sales tax for both Safeco Field and the new football stadium, which is credited against the state tax.¹¹¹ King County

¹⁰⁷RCW 82.14.370(4).

¹⁰⁸RCW 82.14.390.

¹⁰⁹This statute and the 2007 amendments have to do with the change in "sourcing" sales tax revenue to the jurisdiction at the point of delivery from the point of sale. See the discussion of sales tax streamlining on pages 33.

¹¹⁰RCW 82.14.390(2).

¹¹¹RCW 82.14.0485 and RCW 82.14.0494.

levies a 0.5 percent sales tax on food and beverages sold in bars and restaurants, with the proceeds dedicated to financing Safeco Field.¹¹² Pierce County levies a 0.1 percent sales tax to be used for zoo, aquarium, and wildlife preservation and display facilities.¹¹³

► So, What Is the Rate in My County?

Since the state rate is 6.5 percent and because every county levies at least the basic 0.5 percent tax, the minimum tax rate in a county is 7.0 percent. In the 36 counties levying the optional 0.5 percent tax, the rate will be at least 7.5 percent in the unincorporated area. If a county levies, for example, the 0.1 percent criminal justice sales tax or the 0.1 percent juvenile detention facility tax and/or any of the other taxes listed on pages 25-29 that are paid by purchasers the rate will be higher than 7.5 percent. Similarly, if a transit authority or transportation benefit district or public facilities district levies one of the sales taxes discussed on pages 29-30, the total rate will be higher than 7.5 percent.

Total sales tax rates in different counties may not be the same. However, the maximum rate that any county may levy for its general or current expense fund is one percent – the 0.5 percent “basic” tax plus the 0.5 percent “optional” tax. Any other sales taxes levied and paid must be allocated for the specific purposes noted in the statutes that authorize them.

► What Items Are Taxed?

The taxable base includes most retail sales of personal property to state residents. Of the various items that are exempted from the tax,¹¹⁴ the most visible to consumers are prescription drugs¹¹⁵ and food products consumed off the premises.¹¹⁶ Groceries (except foods prepared by the store) are not taxed, but food and drinks at a restaurant are. There have been two occasions when all food was taxed. Food was in the tax base from 1971, when the cities received their initial taxing authority, until July 1, 1978, when a voter-approved initiative to exempt food went into effect. Responding to the recession in the early 1980s, the legislature temporarily reimposed the tax on food from May 1982 through June 1983. In its search for revenue to balance the budget, the 2010 legislature removed the sales tax exemption for candy, gum, and bottled water, effective June 1, 2010.¹¹⁷

Beginning with the 1995 legislative session, the legislature passed bills creating new sales tax exemptions. Machinery and equipment used by a manufacturer or a processor directly in a manufacturing or research and development operation were made exempt from the sales tax as

¹¹²RCW 82.14.360.

¹¹³RCW 82.14.400.

¹¹⁴The exemptions are listed in RCW 82.08.0251 through RCW 82.08.036 and RCW 82.08.803 through RCW 82.08.981.

¹¹⁵RCW 82.08.0281.

¹¹⁶RCW 82.08.0293.

¹¹⁷Ch. 23, Laws of 2010, 1st sp. sess, §901, amending RCW 82.08.0293. The exemption for bottled water will be restored on July 2, 2013.

were the labor and services used to install, maintain, repair, and replace the equipment.¹¹⁸ Legislation in 1997 provided a rebate of the state portion of the sales tax for large warehouses and grain elevators, but the counties' share of the tax was not affected.¹¹⁹ Legislation in 2006 and 2007 provided exemptions for replacement parts for some farm machinery and equipment and farm fuel use and labor and services for their installation and repair.¹²⁰

Sales tax exemptions that may be of particular interest to counties are those for copies made in response to a public records request¹²¹ and labor and services on street projects.¹²²

Note that services to persons and businesses – things like haircuts, doctors' bills, consultants' fees, etc. – are not “personal property,” and most are not subject to the sales tax. However, during the 1993 legislative session, the sales tax was extended to some services. They include, after several amendments: hotel and motel coin-operated laundries; landscape services; health club services; tanning services; tattoo parlor services; massage, steam or Turkish bath services; dating and escort services; and some ticket broker services.¹²³

► Who Has to Pay a Use Tax?

If purchases are made out-of-state by a Washington resident and the sales tax paid is less than the rate being levied in the resident's city or county, state law requires that a use tax be calculated and paid to make up the difference.¹²⁴ For example, if you buy clothes in Idaho, where the sales tax rate is six percent, and the tax rate in the unincorporated part of the county where you live is 7.8 percent, you owe a use tax of 1.8 percent on the purchase price. If you buy furniture in Oregon, where there is no sales tax, and the rate in the city in which you live is 8.2 percent, you owe a use tax at the rate of 8.2 percent on the purchase price. If you make a retail purchase from a mail order catalog and are not charged sales tax, you owe a use tax at the rate of the sales tax in your home jurisdiction. Any retail purchase on the Internet that does not include a charge for sales tax requires the payment of a use tax.¹²⁵

So, how many people are paying the use tax? Practically no one does, unless the purchase is of a car or truck where a use tax must be paid before they can be licensed. Otherwise, there is no enforcement mechanism. County finance people should be aware, however, that there is an

¹¹⁸RCW 82.08.02565.

¹¹⁹RCW 82.08.820.

¹²⁰RCW 82.08.855

¹²¹RCW 82.08.02525.

¹²²RCW 82.04.050(8). See also WAC 458-20-171.

¹²³Ch. 25, Laws of 1993, 1st sp. sess., amended RCW 82.04.050 to define these services as a retail sale. See RCW 82.04.050(3)(e) through (g). RCW 82.04.050(2)(a) was amended to remove a tax exemption for coin-operated laundries.

¹²⁴See WAC 458-20-178(12).

¹²⁵Mail order catalog and Internet sellers that have physical locations in the state do charge state residents a sales tax on their remote sales. If you make a purchase on the Internet from Eddie Bauer or REI, for example, you will be levied a sales tax. A purchase from LL Bean or buy.com will not be taxed. Some remote sellers that were not collecting sales tax started to do so voluntarily when Washington became fully compliant with the Streamlined Sales and Use Tax Agreement on July 1, 2008.

enforcement mechanism for purchases by their jurisdictions. The Department of Revenue does audits to ensure compliance with the use tax statutes.

► Sales Tax Streamlining

In 1992, the U.S. Supreme Court ruled in *Quill Corp. v. North Dakota* that Congress could pass legislation allowing states and local governments to tax mail order sales.¹²⁶ However, Congress chose not to do so. Although this same decision allows Congress to pass legislation to permit state and local governments to tax remote sales, whether made by mail order or on the Internet, Congress does not appear ready to do so anytime in the near future. One issue raised by businesses is that such taxation would be too complicated and expensive for smaller retailers. States exempt different items from the sales tax and there are many different tax rates. In addition, there is the issue of where the tax will be collected and by whom. Who gets the tax if someone in Seattle buys a gift on the Internet from a remote seller in Minnesota who then sends the gift to a friend in Arizona?

To meet this criticism, 44 states and the District of Columbia have joined together in the Streamlined Sales and Use Tax Agreement (SSUTA) to make their sales tax systems more uniform. The 23 states that currently are fully in compliance with the agreement receive sales tax revenues from the approximately 1,200 retailers that are voluntarily collecting the tax. In exchange, the retailers will be protected from potential past tax liability and receive monetary allowances for the costs of collecting the sales taxes using certified software or vendors.

Legislation passed in 2003 put our state in compliance with most aspects of the SSUTA. However, during the next few years, legislation that required that the sales be credited to the point of delivery (a requirement of SSUTA) ran into obstacles. In our state, they were credited at the point of the origin of the sale. Making this change would result in some taxing districts being net gainers and some being net losers, and it was a source of great contention, especially among cities. Representatives of the losing and gaining cities and counties finally worked out a mitigation agreement that fully compensates losing taxing districts with transfers from the state. These transfers will be offset by any new revenues that the losing cities and counties receive from the remote sellers that have volunteered to collect and remit sales taxes to those states in full compliance with the SSUTA.¹²⁷ Washington State finally passed legislation in 2007¹²⁸ that meets the point-of-delivery requirement. It went into effect on July 1, 2008.

More recent legislation, passed in 2009, imposed the sales tax on “digital products” such as digital goods, digital automated services, and remote access software so that the tax treatment is the same no matter how the customer receives them. This legislation was necessary to be in full conformity with SSUTA and to prevent revenue losses from erosion of the sales tax base.¹²⁹

¹²⁶*Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

¹²⁷See “Mitigation Plan,” Washington State Department of Revenue, December 2006.
<http://www.awcnet.org/documents/mitigationconcept.pdf>

¹²⁸RCW 82.32.730.

¹²⁹“SHB 2075 – Digital Goods Legislation Description,” Washington State Department of Revenue, March 2009.

► Timing of Receipts and Sales Tax Rate Changes

Most retailers remit their sales taxes to the Department of Revenue by the 25th of each month for sales made during the prior month.¹³⁰ The department distributes that money to local governments on the last day of the following month after subtracting a small service charge.¹³¹ This means that there is a minimum of a two-month lag between the time the taxes are collected by the retailer and they are received by the county. For example, tax on a purchase made on April 30 is sent to the Department of Revenue on or before May 25 and then is distributed to the county on June 30. The lag is more than two months for taxes collected earlier in April. Interest that is earned on these funds while they are in the hands of the state is paid to the local jurisdictions.¹³²

If a jurisdiction is going to change a sales tax rate or levy a new sales tax, it must pass an ordinance and provide notice of the change to the Department of Revenue at least 75 days before the effective date of the change, and the effective date must be the first day of a quarter, *i.e.*, January 1, April 1, July 1, and October 1.¹³³

¹³⁰See RCW 82.32.045(1) and WAC 458-20-22801. The Department of Revenue can make administrative decisions to put smaller taxpayers on an annual or quarterly payment schedule.

¹³¹RCW 82.14.050 -.060.

¹³²RCW 82.14.050.

¹³³RCW 82.14.055. A copy of the ordinance should be sent to Local Tax Manager, Department of Revenue, PO Box 47476, Olympia WA 98504-7476.

Real Estate Excise Tax

The real estate excise tax is levied on all sales of real estate, measured by the full selling price, including the amount of any liens, mortgages, and other debts given to secure the purchase.¹³⁴ The state levies this tax at the rate of 1.28 percent.¹³⁵ A locally-imposed tax is also authorized.¹³⁶ However, the rate at which it can be levied and the uses to which it may be put differs by county population and whether the county is planning under the Growth Management Act (GMA). All counties may levy a quarter percent tax (referred to as “the first quarter percent of the real estate excise tax” or “REET 1”).¹³⁷

Counties that are fully planning under GMA are given the authority to levy a second quarter percent tax (“REET 2”) by RCW 82.46.035(2). Note that this statute specifies that if the county is **required** to fully plan under GMA, REET 2 may be levied by a vote of the legislative body. If, however, the county **chooses** to fully plan under GMA, REET 2 must be approved by a majority of the voters.

The statutes also provide authority for three other real estate excise taxes: for general government purposes (“REET 3”)¹³⁸; for conservation areas;¹³⁹ and for low-income housing.¹⁴⁰

► How Can the First Quarter Percent – REET 1 – Be Spent?

Counties That Are Not Fully Planning Under GMA and Those That Are Fully Planning But Have a Population Under 5,000

Both groups of entities have the same restrictions on their spending of REET 1 revenues. They must spend these funds for “for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.”¹⁴¹ RCW 35.43.040 lists local improvements that can be funded through a local improvement district (LID), which include streets, parks, sewers, water mains, swimming pools, and gymnasiums.¹⁴²

¹³⁴RCW 82.46.010(5) and RCW 82.45.030. As with most taxes, there are some exemptions. Of interest to counties is the provision that sales **by** counties are exempt from the tax, but sales **to** counties are not. Ch. 25, Laws of 1993, 1st sp. sess. and RCW 82.45.010(m).

¹³⁵RCW 82.45.060.

¹³⁶See Chapter 82.46 RCW.

¹³⁷RCW 82.46.010(2).

¹³⁸This is an additional one-half percent tax that is available under RCW 82.46.010(3) to counties that are not levying the optional half-cent sales tax under RCW 82.14.030(2).

¹³⁹RCW 82.46.070.

¹⁴⁰RCW 82.46.075.

¹⁴¹RCW 82.46.010(2).

¹⁴²Note that in ch. 272, Laws of 1994, the legislature clarified its original intent that “local capital improvements” was intended to include the acquisition of real and personal property associated with such local capital improvements. This means that land acquisition for parks is a permitted expenditure.

Capital projects not listed in the LID statute (for example, a courthouse) are also permitted uses **as long as** they are included in the county's capital improvement plan. Expenditures that are not allowed are such things as the purchase of vehicles or computers. Accountants may consider these to be "capital" for accounting purposes, but they are not "capital purposes" or "local capital improvements." A 1984 letter from the Attorney General to a county prosecutor defines "local capital improvements" as "various kinds of things which may be done to a tract or parcel of tangible real property as an improvement thereto."¹⁴³ An Attorney General's Memorandum dated July 16, 1991 confirmed this definition.¹⁴⁴

Note that these funds may not be used for developing a capital facilities element or a capital improvement plan, but they can be used for design costs, engineering costs, surveys, etc. for specific projects in a capital facilities element or capital improvements plan. They also cannot be used for maintenance. If the project would be considered a "public work" for bidding purposes, then REET funds may be used as long as it is a permitted use as discussed above.

Counties with a Population of 5,000 or More That Fully Are Planning Under GMA

These jurisdictions must spend the first quarter percent of their real estate excise tax receipts solely on capital projects that are listed in the capital facilities plan element of their comprehensive plan.

"Capital projects" are defined as:

those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative and judicial facilities...."¹⁴⁵

Because some legislators were concerned that jurisdictions might simply substitute REET 1 (and REET 2) revenues for other funds in financing these capital projects, the law was amended to require that the "legislative authority shall identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and shall indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects."¹⁴⁶

Note that REET 1 may be used by counties in either category to make loan and debt service payments on projects that are a permitted use of these funds.

¹⁴³Informal opinion dated March 6, 1984, from Philip H. Austin, Senior Deputy Attorney General, to Alan A. Hancock, Deputy Prosecuting Attorney for Island County.

¹⁴⁴Memorandum opinion dated July 16, 1991, from Maureen Hart, Senior Assistant Attorney General, Legal/Fiscal Division, to Steven Marcotte, Assistant Chief Examiner, State Auditor's Office.

¹⁴⁵RCW 82.46.010(6).

¹⁴⁶RCW 82.46.010(1) and RCW 82.46.035(1).

► Spending the Second Quarter Percent – REET 2

This part of the real estate excise tax may only be levied by counties that are required to or choose to fully plan under the Growth Management Act. All counties that levy this tax face the same provisions, whether their population is greater or less than 5,000.

For this quarter percent of the real estate excise tax, “capital project” means:

those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks.¹⁴⁷

Note that acquisition of land for parks is not a permitted use of REET 2 receipts, although it is a permitted use for street, water, and sewer projects. As with REET 1, the projects must be listed in the capital facilities plan element of a county’s comprehensive plan.

REET 2 may be used to make loan and debt service payments on projects that are a permitted use of these funds.

► One-Half Percent Real Estate Excise Tax for General Government Purposes (“REET 3”)

Counties that are not levying the optional second half-cent sales tax under RCW 82.14.030(2) have the option of levying an additional one-half percent real estate excise tax.¹⁴⁸ Levying this tax for the first time or changing the rate in the future is subject to referendum.¹⁴⁹ These receipts are **not** required to be spent on capital projects. They are a general fund revenue for county operating expenditures. To date, no county has levied this tax.

► One Percent Real Estate Excise Tax for Conservation Areas

A county legislative authority may levy an additional real estate excise tax on each sale of real property in the county at a rate not to exceed one percent of the selling price for a specified period

¹⁴⁷RCW 82.46.035(5).

¹⁴⁸RCW 82.46.010(3).

¹⁴⁹RCW 82.46.021. The referendum procedure is the same as for the second half cent of the sales tax. See footnote 84. Note also that if a county is repealing the second half cent of the sales tax in order to levy this tax, it provide notice to that effect to DOR at least 75 days before the effective date of the change, which must be the first day of a quarter. RCW 82.14.055.

if approved by a majority of the voters.¹⁵⁰ The county legislative authority may pass a resolution putting such a measure on the ballot or a petition signed by at least ten percent of the number of voters at the last general election may propose such an action.¹⁵¹

The revenue from this tax is restricted to the acquisition and maintenance of conservation areas.¹⁵² Conservation areas are defined in RCW 36.32.570 as:

land and water that has environmental, agricultural, aesthetic, cultural, scientific, historic, scenic, or low-intensity recreational value for existing and future generations, and includes, but is not limited to, open spaces, wetlands, marshes, aquifer recharge areas, shoreline areas, natural areas, and other lands and waters that are important to preserve flora and fauna.

The tax proceeds must be spent in conformance with a plan developed after consultation with elected city officials in the county and with the input of citizens at a public hearing.¹⁵³ The property buyer, rather than the seller, pays this tax and purchases of conservation areas of the county are exempt from the tax.¹⁵⁴ Only San Juan County has levied this tax to date.

► One-Half Percent Tax for Low-income Housing

RCW 82.46.075 gives a county that has levied a one percent real estate excise tax for conservation areas under RCW 82.46.070 by January 1, 2003 the authority to levy a one-half percent tax for the acquisition, construction, and operation of affordable housing for people with very low, low, and moderate incomes, and those with special needs. Only San Juan County qualifies to levy this tax, and it has not done so to date.

► Accounting for These Funds

The statutes provide that REET 1 and REET 2 revenues must be accounted for separately in a capital projects fund or funds, because they have different dedicated purposes.¹⁵⁵ No specific provisions are made for the other real estate excise taxes, but, since their purposes are restricted also, accounting practice requires that they be kept separate from other revenues.

¹⁵⁰RCW 82.46.070(1).

¹⁵¹RCW 82.46.070(2).

¹⁵²RCW 82.46.070(1).

¹⁵³RCW 82.46.070(3).

¹⁵⁴RCW 82.46.070(1).

¹⁵⁵RCW 82.46.030(2) and RCW 82.46.035(4).

Lodging (Hotel-Motel) Tax

Cities and counties may tax the amount charged by hotels, motels, rooming houses, private campgrounds, RV parks, and similar facilities for periods of occupancy of less than one month. The tax is collected as a sales and use tax by the business and is paid by the customer at the time of transaction.

► “State-Shared”¹⁵⁶ and “Special” Tax Rates

Any county may impose a basic two percent tax on the furnishing of lodging.¹⁵⁷ This tax is taken as a credit against the 6.5 percent state sales tax, so that the total tax that a patron pays in retail sales tax and the lodging tax combined is equal to the retail sales tax in the jurisdiction.

In most cases, when a city and a county both impose this tax, there is a credit for the amount of the city tax against the county tax so that two taxes are not levied on the same taxable event.¹⁵⁸ An exception occurs when a county has pledged lodging tax receipts for the payment of debt service on bonds for a “public stadium, convention center, performing arts center, or visual arts facilities” before July 26, 1975.¹⁵⁹ In that instance, the county may continue to levy the tax countywide until the bonds are retired. However, if a city pledged, before June 26, 1975, lodging tax receipts to pay debt service for the construction of one of these same facilities, the city may continue collecting the tax until its debt is retired.¹⁶⁰

As a result, both King County (football stadium) and the City of Bellevue (convention center) levy a two percent tax that is credited against the state 6.5 percent sales tax and the state nets only 2.5 percent. Similarly, Yakima County and the City of Yakima both pledged lodging tax revenues for a convention center before June 26, 1975 and the state nets only 2.5 percent on the sales tax on lodging. RCW 67.28.180(2)(b) allows this “double-dipping” to continue until 2021 to pay for debt service on bonds for county facilities for agricultural promotion.

In addition, most counties may levy an additional tax of up to two percent, for a total rate of four percent, as long as the total tax under chapter 36.100 RCW (the public facilities district tax), chapter 82.08 RCW (the state sales tax), chapter 82.14 RCW (the city, county, and transit district sales tax), chapter 67.28 RCW (the lodging tax chapter), and chapter 67.40 RCW (the convention and trade center tax) does not exceed 12 percent.¹⁶¹ This “special” tax is **not** credited against the state sales tax. Therefore, if a county levies this additional tax, the total tax on the lodging bill will increase by two percent. As with the “state-shared” tax, the county must give a credit for the amount of any city tax.

¹⁵⁶The terms “basic” and “first two percent” are often used instead of “state-shared.”

¹⁵⁷RCW 67.28.180.

¹⁵⁸RCW 67.28.180(2)(a) and RCW 67.28.181(3).

¹⁵⁹RCW 67.28.180(2)(b).

¹⁶⁰RCW 67.28.180(c)(iii).

¹⁶¹RCW 67.28.181(1).

There are some exceptions. Pierce and Gray's Harbor counties (and the cities in them) that levied a "special" tax of more than four percent before July 27, 1997 had this higher rate grandfathered in when this chapter underwent a major revision during the 1997 legislative session.¹⁶²

Thirty-six counties reported levying at least the state-shared two percent of this tax as of year-end 2009. Twenty-six counties are levying the "special" lodging tax.

► How Can the Revenues Be Used?

These revenues may be used solely for paying for tourism promotion and for the acquisition and/or operation of tourism-related facilities.¹⁶³ "Tourism promotion" is defined as:

Activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of or the operation of special events and festivals designed to attract tourists.¹⁶⁴

Legislation enacted in 2007 expanded this definition so that hotel-motel tax revenues can now be used not only on marketing special events and festivals but also on their operation. However, as it now stands, this more permissive language expires on June 30, 2013.¹⁶⁵

Contracts for tourism-related services should spell out the services to be provided in exchange for county funding and what reports will be required. Also, any organization doing promotion on behalf of the county may only spend hotel-motel tax funds on items that the county itself could fund. This prohibits, for example, any expenditures on promotional hosting.

The limitation on using hotel-motel tax revenues for acquiring and/or operating tourism-related facilities is guided by the following definition, as amended in 2007:

"Tourism-related facility" means: real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of

¹⁶²RCW 67.28.181(2)(a).

¹⁶³RCW 67.28.1815. "Tourism" is defined as "economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs." RCW 67.28.080(5). There is no stipulation that the tourism promotion be of a type that attracts overnight visitors. Of course, to the extent it does not, hotel-motel tax receipts will be lower.

¹⁶⁴RCW 67.28.080(6).

¹⁶⁵RCW 67.28.080(9) and RCW 67.28.1816(2).

1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.¹⁶⁶

Prior to the 2007 legislation, hotel-motel tax funds could be used, as interpreted by the attorney general's office, only for facilities in which a municipality had an ownership interest.¹⁶⁷ Now they can also be used to fund facilities owned by certain nonprofit organizations, as stated above. As with the amendment to the definition of tourism promotion, the amendment to this definition to add facilities owned by certain nonprofit organizations expires on June 30, 2013.¹⁶⁸

What kinds of facilities does this include? It depends. The guiding principle here is that the facilities should be used by tourists – not primarily by local residents. Each situation is unique. We realize this is not much guidance, but that is all we can give you in this publication.

In May 2004, State Auditor Brian Sonntag sent a memo out to cities titled “Hotel/Motel Tax Audits,” in which he emphasized that the decision on how to spend these monies should be locally controlled.¹⁶⁹ He said, in part:

Based on extensive research, we have concluded the Legislature intended the use of this revenue to be locally controlled. One indicator of this is the establishment of the lodging tax advisory committee in RCW 67.28.1817 if a city has 5,000 or more residents.

Therefore, we are changing our approach to auditing hotel/motel tax use. We will look at the process your entity has in place for deciding on the use of this money. If your municipality has 5,000 or more in population, we will see if you have a committee in place, if the membership is appropriate and whether it is operating in compliance with state law. If your entity is less than 5,000 in population, we will look to see if you have a committee even though it is not required or what other process your entity uses to distribute these funds.

We also will look at the analysis prepared by either the committee or the council/commission that demonstrates that the money is being used in compliance with state law. If we are satisfied that a working process is in place and the analysis has been done, we will scan your expenditures to make sure that they are appropriate.

He reemphasized “local control” in an August 2006 memo titled “Lodging Tax.” It is up to the entity to demonstrate that the ways it is spending these funds is appropriate.

¹⁶⁶RCW 67.28.080(7).

¹⁶⁷AGO 2006 No. 4.

¹⁶⁸RCW 67.28.080(9).

¹⁶⁹Note that **these** paragraphs of this 2004 memorandum are still pertinent even though the hotel-motel tax statutes were extensively amended in 2007.

► Reporting Requirements

Counties using hotel-motel tax revenues for the marketing and operations of special events and festivals and to support the operations of and capital expenditures on tourism-related facilities owned by nonprofit organizations are required to submit an annual economic impact report to the Department of Community, Trade, and Economic Development (CTED), now the Department of Commerce.¹⁷⁰ RCW 67.28.1816(2) identifies what this economic impact report, at a minimum, must include. In addition to listing the festivals, special events, and tourism facilities that received funds and the amounts received, counties must estimate the number of tourists, persons traveling over 50 miles, and lodging stays generated by each special event, festival, and tourism-related facility. CTED developed a lodging tax worksheet and an official report form that are available at the Washington State Tourism Industry Site, www.experiencewa.com/industry/.

► Lodging Tax Advisory Committee¹⁷¹

If a county with a population over 5,000 wishes to impose a new hotel-motel tax, raise the rate of an existing tax, repeal an exemption from the hotel-motel tax, or change the use of the tax proceeds, it must form a lodging tax advisory committee.

- This committee must have at least five members, appointed by the county legislative body.
- The committee membership must include at least two representatives of businesses that are required to collect the hotel-motel tax, at least two people who are involved in activities that are authorized to be funded by this tax, and one elected county official who serves as chairperson of the committee.¹⁷² The statute also provides that a person who is eligible under the first category is not eligible for appointment under the second category, and vice versa.
- Organizations representing hotels and motels and organizations involved in activities that can be funded by this tax may recommend people for membership.
- The number of committee members from organizations representing the hotels and motels and the number from organizations involved in activities that can be funded must be equal.
- A county's committee may include a non-voting elected city or town official.
- The county legislative body must review the membership of the committee annually.

¹⁷⁰RCW 67.28.1816. This requirement expires June 30, 2013. In 2009 the legislature changed CTED's name to the Department of Commerce.

¹⁷¹RCW 67.28.1817.

¹⁷²The State Auditor's Office has opined that adding other voting members, such as citizen representatives, is not permissible under RCW 67.28.1817. Letter dated July 24, 2007 from Brian Sonntag, State Auditor, to Jan Simon Aridj, Washington State Hotel & Lodging Association, available from MRSC.

So, What Does the Committee Do?

Any proposal to impose a new hotel-motel tax, raise the rate of an existing tax, repeal an exemption from the hotel-motel tax, or change the use of the tax proceeds must be submitted to the lodging tax advisory committee for review and comment.

- This submission must occur at least 45 days before final action will be taken on the county's proposal. Even if the committee finishes its work before the 45 days are up, the county still must wait 45 days.
- The committee's comments must include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and of the extent to which it will affect the long-run stability of the fund to which the hotel-motel taxes are credited.
- If the advisory committee does not submit comments before the time that final action is to be taken on the proposal, the county may go ahead and take final action on the proposal.

Gambling Excise Tax

Cities and counties are authorized to collect taxes on gambling activities within specified limits. The state does not impose gambling excise taxes. The county tax applies only to activities that occur in the unincorporated areas. The state makes a distinction in what gambling activities can be taxed and in tax rates based on whether the gambling activities are conducted by charitable and nonprofit organizations or whether they are conducted for profit. Currently, the maximum tax rates are as follows:¹⁷³

- Amusement games: two percent of gross receipts less prizes (net receipts);
- Amusement games by charitable or nonprofit organizations that have no paid operating or management personnel: no tax on first \$5,000 of net receipts (including that from any bingo games), then two percent of net receipts;
- Bingo and raffles: five percent of net receipts;
- Raffles by charitable or nonprofit organizations: no tax on first \$10,000 of net receipts, then five percent of net receipts;
- Bingo by charitable or nonprofit organizations that have no paid operating or management personnel: no tax on first \$5,000 of net receipts (including that from any amusement games), then five percent of net receipts;
- Punch boards and pull-tabs by charitable or nonprofit organizations, 10 percent of net receipts;
- Punch boards and pull-tabs by commercial stimulant operators, five percent of gross receipts or 10 percent of net receipts; and
- Social card games: 20 percent of gross receipts.

► How May We Spend the Proceeds?

RCW 9.46.113, as amended by 2010 legislation,¹⁷⁴ states that cities and counties that levy gambling taxes “must use the revenue from such tax primarily for the purpose of public safety.”

¹⁷³RCW 9.46.110.

¹⁷⁴Ch. 127, Laws of 2010, §6. This legislation broadened the use of this revenue. Previously, this statute stated that the revenue from this tax was to be used “primarily for the purpose of enforcement of the provisions of this chapter [Ch. 9.46 RCW].”

Timber Excise Tax

Counties may impose a tax on the harvest of timber on privately-owned land equal to the stumpage value multiplied by four percent.¹⁷⁵ This tax may be used as a credit by the harvester against the state excise tax of five percent.¹⁷⁶ Since all counties levy this tax, the effective state tax rate on private land harvests is one percent.

On publicly-owned land, a county tax rate of four percent is being phased in over ten years. It too is credited against the five percent state tax. Beginning in 2014, when the phase-in is complete, the county rate will be four percent and the effective state rate will be one percent. For 2010, the county rate is 2.7 percent and the state rate is 2.3 percent ($5.0 - 2.7 = 2.3$).¹⁷⁷

The Department of Revenue collects the revenue and the state treasurer distributes it to the counties quarterly in February, May, August, and November for deposit in a county timber tax account.¹⁷⁸

The revenues are distributed in three ways. First, revenues go to taxing districts with voted bonds under RCW 84.52.056 or capital project excess levies for schools under RCW 84.52.053 in an amount equal to the timber-assessed value of the district multiplied by the tax rate levied for payment of the bonds or capital projects. One-half this amount is distributed in the first quarter of the year and one-half in the third quarter.¹⁷⁹

From the moneys remaining after the first distribution, the county treasurer distributes revenues to all school districts based on local school maintenance and operating levy rates. The amount distributed is equal to one-half of the timber assessed value of the district or 80 percent of the timber roll in calendar year 1983, whichever is greater, multiplied by the tax rate levied by the district for purposes other than debt service payments and capital projects supported by the first distribution above. One-half this amount is distributed in the first quarter of the year and one-half in the third quarter.¹⁸⁰

After the two distributions above, any remaining revenues are to be distributed to all local taxing districts in an amount equal to the timber assessed value of the district multiplied by the tax rate, if any, levied as a regular levy of the district or as a special levy that is not included in the first two distributions.¹⁸¹ If the revenues are insufficient to fully fund this third distribution, the funds will be prorated based on a formula described in the statute. If there are revenues remaining after the

¹⁷⁵RCW 84.33.051.

¹⁷⁶RCW 84.33.041 (2) and RCW 84.33.046.

¹⁷⁷RCW 84.33.051 (f).

¹⁷⁸RCW 84.33.081 (1).

¹⁷⁹RCW 84.33.081 (2).

¹⁸⁰RCW 84.33.081 (3).

¹⁸¹RCW 84.33.081 (4).

third distribution, an amount up to 20 percent of what was distributed in the three distributions is placed in reserve for the following year. If there is still revenue remaining, those funds are distributed in the same proportions as with the third distributions to all local taxing districts.¹⁸²

Enhanced 911 Telephone Access Line Excise Tax

Both the state and counties have authority to levy a tax for enhanced 911 service. A county legislative authority may impose a countywide enhanced 911 excise tax on the use of switched access or wireline (what non-techies know as “regular” phones) telephones and wireless lines in an amount not to exceed 50 cents per month.¹⁸³ The state levy is 20 cents per month.¹⁸⁴ These revenues are restricted to expenditures related to emergency 911 services.¹⁸⁵

The local levies are collected by the wireline and wireless companies from the customers and, after deduction of collection costs, the receipts are remitted to the county treasurer by the last day of the month following the date in which the tax liability accrued. The county must establish by ordinance procedures for administration and collection of the tax.¹⁸⁶

State funds are deposited in the enhanced-911 account and may be used to reimburse counties for eligible E-911 expenses. To receive assistance, a county must be levying the maximum tax authorized.¹⁸⁷

According to the information reported to the state auditor on the Local Government Financial Reporting System for 2008, 31 counties were levying the tax on switched access telephones and 26 on wireless phones.

Beginning January 1, 2011, the maximum allowable tax rates for counties and cities will increase.¹⁸⁸ Counties may levy a tax on switched access and wireless phones at a rate not to exceed 70 cents per month. The new state maximum rate is 25 cents per month. In addition, both the county and the state may impose their taxes on interconnected voice over internet protocol (VOIP) service lines.¹⁸⁹

Counties have a new reporting requirement. Annually, they must provide information to the state enhanced 911 coordinator on the proportion of the tax they have spent on modernization of their

¹⁸²RCW 84.33.081(5) and (6).

¹⁸³RCW 82.14B.030(1) and (2).

¹⁸⁴RCW 82.14B.030(3) and (4).

¹⁸⁵RCW 82.14B.050.

¹⁸⁶RCW 82.14B.060.

¹⁸⁷RCW 38.52.540.

¹⁸⁸Ch. 19, Laws of 2010, 1st. sp. sess. Counties must notify the Department of Revenue at least 75 days before the effective date of any rate change. Section 8, amending RCW 82.14B.060.

¹⁸⁹RCW 82.14B.030, as amended by Ch. 19, Laws of 2010, 1st sp. sess., §3. The state must levy the tax on switched access and VOIP lines at the maximum rate of 25 cents per line for calendar year 2011. By August 31, 2011 and August 31 of each succeeding year, the state enhanced 911 coordinator must recommend to the Washington Utilities and Transportation Commission (WUTC) the rates for the coming year, which the WUTC must set by October 31.

existing E-911 system and on E-911 operations costs.¹⁹⁰ They will also no longer be collecting these taxes. The companies will be remitting all taxes collected to the Department of Revenue. Counties will contract with the state for the administration and collection of the tax and the state will charge an administrative fee of not more than two percent. The funds will be remitted to the counties monthly by the state treasurer.¹⁹¹

Local Option Commercial Parking Tax

This tax may be levied by a city within its boundaries and by a county in the unincorporated areas.¹⁹² There is no limit on the tax rate and many ways of assessing the tax are allowed. If the county chooses to levy it on parking businesses, it can tax gross proceeds or charge a fixed fee per stall.¹⁹³ If the tax is assessed on the driver of a car, the tax rate can be a flat fee or a percentage amount.¹⁹⁴ Rates can vary by any reasonable factor, including location of the facility, time of entry and exit, duration of parking, and type or use of vehicle.¹⁹⁵ The parking business operator is responsible for collecting the tax and remitting it to the county, which must administer it. This tax is potentially subject to a voter referendum.¹⁹⁶ At the present time, we know of no counties that are levying this tax, although six cities are.

Local Option Motor Vehicle Fuel Tax

The county legislative authority may put a local option gas tax to a vote of the people. It can be levied countywide at a rate equal to 10 percent of the state rate.¹⁹⁷ Since the state rate is 37.5 cents per gallon, 10 percent currently would be 3.75 cents per gallon. The tax may be implemented only on the first day of January, April, July, or October.¹⁹⁸

The tax is to be collected by the state treasurer and distributed on a monthly basis to the county and its cities. The county must sign a contract with the Department of Revenue for the administration and collection of the tax. A fee of up to one percent of the proceeds is charged.¹⁹⁹

For purposes of this distribution, the population in the unincorporated areas is multiplied by 1.5 and added to the population in the incorporated areas. This new total is used as the denominator in the revenue sharing formula.²⁰⁰ For example, if the population in the unincorporated areas of

¹⁹⁰RCW 82.14B.030, as amended by Ch. 19, Laws of 2010, 1st sp. sess., §3(4).

¹⁹¹Ch. 19, Laws of 2010, 1st sp. sess., §4.

¹⁹²RCW 82.80.030(1).

¹⁹³RCW 82.80.030(4).

¹⁹⁴RCW 82.80.030(2)(a) and (d).

¹⁹⁵RCW 82.80.030(2)(e).

¹⁹⁶RCW 82.80.090. The referendum procedure is identical to that described for the sales tax in footnote 84.

¹⁹⁷RCW 82.80.010(2).

¹⁹⁸RCW 82.80.010(2).

¹⁹⁹RCW 82.80.010(6).

²⁰⁰RCW 82.80.080.

a county is 40,000 and that in the incorporated areas is 90,000, the following calculations would be made:

$$\begin{aligned}40,000 \times 1.5 &= 60,000 \\60,000 + 90,000 &= 150,000 \\60,000/150,000 &= 0.40\end{aligned}$$

This county would get 40 percent of the revenue being distributed. Similar calculations are made for each city, using its population in the numerator. The only counties that have attempted to levy this tax are Spokane County and Snohomish County. The ballot measures failed and, at this time, no county is levying this tax.

The restrictions on spending this tax, as well as the local option commercial parking tax, are discussed in the section below.

► Spending Restrictions

Under RCW 82.80.070(1), local option transportation taxes (commercial parking taxes and fuel taxes) must be used for “transportation purposes,” which are defined as:

including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high capacity transit improvements and programs; and planning, design, and acquisition of right-of-way and sites for such transportation purposes.

However, this section of the statute goes on to say:

The proceeds collected from excise taxes on the sale, distribution, or use of **motor vehicle fuel and special fuel** under RCW 82.80.010 shall be used **exclusively** for “highway purposes” as that term is construed in Article II, section 40 of the state Constitution. (Emphasis added.)

“Highway purposes” is defined in Article II, section 40 in the state constitution, in part, as:

- (a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets;
- (b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street...

And these “highway purposes” are narrower than the “transportation purposes” identified in the beginning of the statute. Until this inconsistency is eliminated by the legislature or is clarified by an attorney general opinion or court decision, a conservative use of these fuel tax funds would be the narrower use.

All local option transportation funds are to be spent in a manner consistent with the local government’s transportation and land use plans. The legislation also includes some provisions for transportation planning that apply to jurisdictions with a population over 8,000 and that establish criteria that are to be used in expending the money.²⁰¹ The revenues may also be used to pay debt service on general obligation or revenue bonds if the county issued them to raise funds for transportation purposes.

Admissions Tax

Counties may impose by ordinance a tax of not more than five percent of the admission charge to any place, excluding any activity of any elementary or secondary school or any public facility of a public facility district for which an admission charge is imposed under RCW 35.57.100 or 36.100.210.²⁰² If a city also imposes an admissions tax, the county may not levy a tax within city boundaries.²⁰³

The term “admission charge” is defined to include:

a charge for season tickets or subscriptions, a cover charge, or a charge made for use of seats and tables, reserved or otherwise, and other similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge. It shall also include any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.²⁰⁴

In *Ski Acres v. Kittitas County*, 118 Wn.2d 852 (1992), the state supreme court invalidated application of the tax to the ski area because it does not charge a fee for entry onto its land.²⁰⁵

²⁰¹RCW 82.80.070(3).

²⁰²RCW 36.38.010(1).

²⁰³RCW 36.38.010(3).

²⁰⁴RCW 36.38.010(2).

²⁰⁵In *Ski Acres v. Kittitas County*, the court ruled that the county could not levy its admissions tax on ski lift tickets and/or rental equipment under RCW 36.38.010(2), which states, in part, that the term “admission charge” includes:

a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of the privilege for which a general admission is charged, the combined charges shall be considered as the admission

There are no statutory restrictions on the use of this revenue source, except for King County, which must use the proceeds from any taxes levied on events in a stadium for stadium bond payments and capital costs. RCW 36.38.020 authorizes a number of optional provisions for the admissions tax ordinance, and RCW 36.38.030 contains specific requirements as to the form of the ordinance and the procedures for adopting it.

The admissions tax must be collected, administered, and audited by the county. Some counties exempt certain events promoted and produced by nonprofits from the tax.²⁰⁶ This is not a requirement, however. According to the Local Government Finance Reporting System, in 2008 (the most recent year for which this data is available), Franklin, Grant, King, and Kitsap counties were levying this tax.

Leasehold Excise Tax

Most leases of publicly-owned real and personal property in the state are subject to a leasehold excise tax in lieu of a property tax.²⁰⁷ The 1976 legislature established a 12 percent tax²⁰⁸ to be levied either on the contract rent (when the lease is established by competitive bidding) or, in other instances, by the imputed economic rent as determined by the Department of Revenue.²⁰⁹ The 1982 legislature added a seven percent surcharge making the total rate 12.84 percent.²¹⁰

Cities and counties may collectively levy up to six percent of this 12.84 percent.²¹¹ The maximum county rate is six percent and the maximum city rate is four percent. The county must give a credit for any city tax. Therefore, if a city is levying its maximum four percent, the county may collect only two percent in the city. If a city chooses not to levy its maximum, the county can capture the city's remaining taxing authority. These taxes are collected by the county and remitted to the Department of Revenue.

After deducting an administrative fee,²¹² the department distributes the taxes to local governments on a bimonthly basis.²¹³ The county treasurer distributes the county's leasehold excise tax revenue to taxing districts in the county, other than cities, in the same allocation percentages as property taxes within the county.²¹⁴

charge.

The court agreed with the plaintiff that, because one could enter the ski area without a charge, the county could not charge an admissions tax on the ski lift price (or equipment rental). This same argument could apply to facilities such as bowling alleys and skating rinks.

²⁰⁶See Grant County Code §3.60.030(a), and Kitsap County Code §4.36.030(b).

²⁰⁷See RCW 82.29A.130 for a list of leasehold interests exempt from the tax.

²⁰⁸RCW 82.29A.030(1).

²⁰⁹RCW 82.29A.020(2)(b).

²¹⁰RCW 82.29A.030(2).

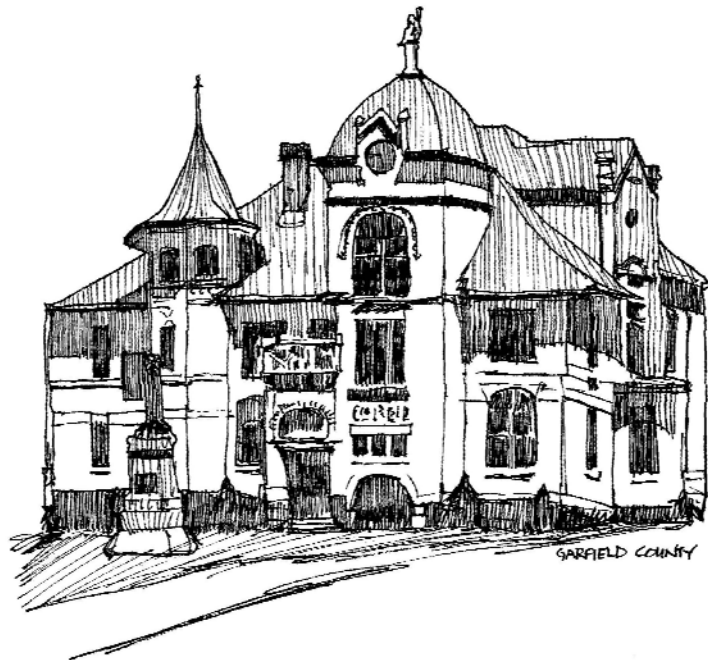
²¹¹RCW 82.29A.040.

²¹²RCW 82.29A.080.

²¹³RCW 82.29A.090.

²¹⁴RCW 82.29A.100.

Intergovernmental Revenues



City-County Assistance

After it repealed the motor vehicle excise tax (MVET) in 2000 in response to Initiative 695,²¹⁵ the legislature provided “backfill” funds for six years to a number of cities and counties, most of which had lost sales tax equalization funding. In 2005, a permanent funding source was found. Ch. 450, Laws of 2005 provided that 1.6 percent of the state real estate excise tax levied under chapter 82.45 RCW be deposited in the newly-created city-county assistance account.²¹⁶ These funds are diverted from the Public Works Trust Fund, whose share of the state real estate excise tax fell from 7.7 percent to 6.1 percent.

Counties with an unincorporated population of more than 100,000 qualify to receive the amount necessary to increase the sum of the revenues they receive under RCW 82.14.030(1) (the first half-cent of the sales and use tax)²¹⁷ and streamlined sales tax mitigation funds to the greater of: (1) \$250,000 (to be increased each year by the increase in the July implicit price deflator for personal consumption expenditures);²¹⁸ or (2) an amount equal to 65 percent of the statewide per capita average collected from the first half-cent of the sales and use tax in the unincorporated areas of all counties in the previous fiscal year.²¹⁹

Counties with an unincorporated population of 100,000 or less qualify to receive the amount necessary to increase the sum of the revenues they receive under RCW 82.14.030(1) (the first half-cent of the sales and use tax) and streamlined sales tax mitigation funds to the greater of: (1) \$250,000 (to be increased each year by the increase in the July implicit price deflator for personal consumption expenditures); or (2) an amount equal to 70 percent of the statewide per capita average collected from the first half-cent of the sales and use tax in the unincorporated areas of all counties in the previous fiscal year.²²⁰

In counties with an unincorporated population of 15,000 or less, the county will be certified for the greater of: (1) the amount under the terms in the paragraph above for counties with a population under 100,000; or (2) the amount the county received in “backfill” for FY 2005 under section 716, ch. 276, Laws of 2004 (amended state budget).

If there are not enough revenues to fund the distributions above, then they will each be reduced proportionately. If there are more revenues than necessary to fund the above distributions, they will be distributed proportionately on the basis of the unincorporated population among those counties that have qualified for city-county assistance funding and impose the full second half cent of the sales and use tax under RCW 82.14.030(2). Since the first distribution in 2006, there have been more than enough revenues available to fund the amount for which counties were certified,

²¹⁵Ch. 2, Laws of 2000, 1st spec. sess. Initiative 695 was approved by the voters but was declared unconstitutional by the state supreme court. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183 (2000).

²¹⁶RCW 43.08.290(1).

²¹⁷In the discussion of this legislation, “first half-cent” will be used to mean the sales and use tax collected under RCW 82.14.030(1).

²¹⁸RCW 43.08.290(5).

²¹⁹RCW 43.08.290(3)(a)(ii).

²²⁰RCW 43.08.290(3)(a)(i).

and those counties imposing the second half percent of the sales tax have received a “bonus.” This bonus was quite substantial in 2006 and 2007. In 2006, for example, the available funds totaled \$7.95 million as real estate excise tax receipts soared with the housing boom. Counties were certified for \$5.20 million, so there was \$2.75 million extra to share.

The available funds fell dramatically in 2008, but counties continued to receive a bonus payment, although it was quite small. Cities, however, received only 65 percent of the amount for which they were certified in 2008. Therefore, in 2009, the legislature appropriated an additional \$2.5 million for both cities and counties to be distributed on July 1, 2009 and again on July 1, 2010.²²¹

The real estate excise taxes received in 2009 were not that much higher than those in 2008, but the counties again received a sizeable bonus because of the legislative appropriation. Similar results are expected for 2010.

► Certification and Distribution Dates

The Department of Revenue (DOR) must certify the final amounts, based on the factors described above, to be distributed in the coming year, by October 1. Preliminary estimates must be available by September 1.²²²

Funds are distributed quarterly on January 1, April 1, July 1, and October 1.²²³ In order for the funds to be distributed on those dates, the transfers must be made in the previous month. The cash payments, therefore, come in December of the year in which the certification is made, then in March, June, and September of the coming year. This means that, for budgeting purposes, counties are dealing with two different certification years.

When they pass their budgets in November or December for the coming year, counties know the amounts for which they are certified for the coming year,²²⁴ but the first payment will arrive in December of the current year and is part of the current year’s budget receipts. The amounts they budget will be their estimates of how much they will receive during the first three quarters of the coming year based on their October 1 certifications plus their “guesstimate” of what they will receive in December of next year, which will depend on their certification on October 1 next year.

Motor Vehicle Fuel and Special Fuel Tax – “Gas Tax”

The motor vehicle fuel tax is an excise tax levied on each gallon of motor vehicle fuel sold in the state. Also, a “special” fuel tax is levied on fuels not taxed under the motor vehicle fuel tax,

²²¹Ch. 567, Laws of 2009, § 805.

²²²RCW 43.08.290(6)(c) and (d) as amended by ch. 127, Laws of 2009. Before the statutes were amended, the certification was done no later than March 1 for distribution in the same year.

²²³RCW 43.08.290(6)(c).

²²⁴The most recent certification amounts and updated estimates from the Department of Revenue may be found at <http://dor.wa.gov/content/doingbusiness/6050distributions.aspx>.

primarily diesel fuel. Revenue from these taxes is deposited in the state motor vehicle fund and is then distributed to cities, towns, counties, and the state for transportation purposes. This shared tax is one of the primary sources of road fund revenue for counties.²²⁵

The state currently levies a tax of 37.5 cents per gallon on motor vehicle fuel under RCW 82.36.025(1) through (6) and on special fuel (diesel) under RCW 82.38.030(1) through (6).²²⁶ Counties receive 19.2287 percent²²⁷ of the 23 cents per gallon tax levied under RCW 82.36.025(1) and RCW 82.38.030(1). Counties also are given a 8.3333 percent share of the three cent taxes levied under RCW 82.36.025(3) and (4) and RCW 82.38.030(3) and (4).²²⁸

After deducting 1.5 percent for the Department of Transportation and the County Road Administration Board (CRAB), all amounts repaid to counties composed entirely of islands (Capron refunds²²⁹), and the 0.33 percent for funding the counties' share of the costs of highway jurisdiction studies and other studies,²³⁰ the funds are distributed to counties monthly based on the following allocation factors:²³¹

- 10 percent is distributed in equal amounts to each county.
- 30 percent is distributed according to a county's "equivalent" population, which equals 100 percent of the population in the unincorporated area plus 25 percent of the population in the incorporated areas.
- 30 percent is distributed based on a county's annual road costs. Road costs equal four percent of the total county road replacement cost plus the total estimated annual maintenance cost. These costs include bridges and ferries. Costs are based on a statewide cost-per-mile for each roadway type. County roads are roads recorded in the county road log with CRAB as of July 1 of each odd-numbered year.
- 30 percent is distributed based on county need. Need is defined as road costs minus: (1) one-half the sum of the county road fund property taxes levied for the last two years; (2) one-half of the county road funds received from the federal forest reserve fund for the last two years; (3) one-half of the timber excise tax received in the last two years; and (4) one-half of the motor vehicle license fees and motor vehicle fuel taxes refunded to island counties for the last two years.

²²⁵RCW 36.82.050 requires that these funds be deposited in the county road fund.

²²⁶We will use the term "gas tax" to refer to both the tax on gasoline under RCW 82.36.025 and the tax on special fuel (primarily diesel) under RCW 82.38.030.

²²⁷RCW 46.68.090(2)(h).

²²⁸RCW 46.68.090(4)(b) and (5)(b). In 2005, the legislature passed ESSB 6103, which added three cents to the gas tax in both 2005 and 2006, two cents in 2007, and 1.5 cents in 2008. The legislation withstood an initiative challenge in November 2005.

In addition, counties benefit from distributions of 1.9565 percent to the county arterial preservation account and 2.5363 percent to the rural arterial trust account. RCW 46.68.090(i) and (j).

²²⁹See page 62.

²³⁰RCW 46.68.120.

²³¹RCW 46.68.122 and RCW 46.68.124.

Counties must spend their gas tax receipts in the same manner as other revenues (primarily property taxes) in the road fund – “for proper county road purposes.”²³² In addition, counties are required to spend 0.42 percent of their gas tax receipts on paths and trails, unless that amount in any year is \$3,000 or less. These funds may be accumulated in a reserve fund for up to 10 years before spending.²³³

State Forest Lands Revenue

Revenues from this source are generated primarily from the sale of timber on lands managed by the Department of Natural Resources (DNR). Other sources include lease income and the sale of other valuable materials, such as gravel. DNR manages land on behalf of eleven trusts. Revenue from lands held in each trust is dedicated to particular purposes specified by the trust. A portion of the revenue generated by Trust 1 (state forest transfer lands) and Trust 2 (state forest purchase lands)²³⁴ is dedicated to the support of local government, as are revenues from state forest leases.

► State Forest Transfer Lands

State forest transfer lands represent land that reverted to a county, usually because of delinquent property taxes. The county subsequently deeded the land to the state for the state to manage.²³⁵ Twenty-five percent of the revenue goes to the Forest Development Account for costs of administration, reforestation, and protection.²³⁶ The remaining 75 percent is disbursed to the county treasurer in the county containing the transfer land for distribution to county funds in the same manner as general taxes are distributed.²³⁷

► State Forest Purchase Lands

State forest purchase lands were given to the state or were bought by the state at low cost.²³⁸ Half the income goes to the Forest Development Account and half is prorated between the county and the state general fund for the support of schools based on their tax levy rates. The county, in turn, allocates and distributes the revenue to various county funds and taxing districts in the same manner as general taxes are paid and distributed during the year of payment.²³⁹

²³²RCW 36.82.020.

²³³RCW 47.30.030 and .050.

²³⁴These lands were formerly known as forest board transfer lands and forest board purchase lands, respectively.

²³⁵RCW 79.22.040.

²³⁶*Annual Report 2008*, Washington State Department of Natural Resources, p. 47, and RCW 79.64.110(1)(a).

²³⁷RCW 79.64.110(1)(b). In a county with a population of less than 16,000, the county funds must first be used to reduce indebtedness in the current expense fund.

²³⁸*Annual Report 2008*, Washington State Department of Natural Resources, p. 46.

²³⁹RCW 79.64.110(2)(b).

DNR decides what timber to sell and when to sell it on the basis of its long run management plan. The price is determined by the economic conditions in the market. After the timber is auctioned off, the harvester has discretion about when to harvest the timber. Because DNR does not get paid until the timber is actually harvested, DNR (and counties) find revenue forecasting difficult.

To assist counties, DNR provides them with a projection of the revenue each county will receive over the next four quarters. This projection is based on direct interviews with the relevant harvesters to ascertain their harvest plans for the coming year. The quarterly report also supplies forecasts for each contract in the county. Using this information, it is possible to attribute the projected revenue to specific code districts and trusts and thus to calculate the share which the county may expect.

The state treasurer distributes the revenue to the counties four times per month, with no more than 10 days between each distribution.²⁴⁰

Secure Rural Schools/Federal Forest Reserve Revenues

Twenty-six Washington timber counties are receiving revenues under the Secure Rural Schools and Community Self-Determination Act of 2000,²⁴¹ which was reauthorized as part of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343). They have elected to receive a portion of the state's "transition payments."²⁴² The payments began in fiscal year 2008 and continue through 2010. In fiscal year 2011, these counties will receive funds according to the same formula as other states.²⁴³

Payments are allocated by counties into three categories: Title I, II, and III funds. Title I funds are split between roads and schools according to state statute. In Washington, Title I funds are divided equally between roads and schools.²⁴⁴ Title II funds are spent on projects recommended by resource advisory committees (RAC) that "improve the maintenance of existing infrastructure, implementing stewardship objectives that enhance forest ecosystems, and restoring and improving land health and water quality." At least 50 percent of Title II funds must be devoted to "projects that are primarily dedicated to road maintenance, decommissioning, or obliteration; or restoration of streams and watersheds." The projects are carried out by the Forest Service.²⁴⁵ Title III funds may be spent only to carry out activities under the Firewise Communities program, to reimburse for emergency services such as search and rescue or firefighting paid for by the county and performed on federal land, and to develop community wildfire protection plans.²⁴⁶ Counties

²⁴⁰RCW 79.64.110(1)(d), (2)(b).

²⁴¹P.L. 106-393.

²⁴²These "transition payments," an option for only eight states, are more generous than those received in other states. <http://www.fs.fed.us/srs/>. This web site is the home page for the 2008 reauthorization of the Secure Rural Schools legislation and contains many links to inform about the act.

²⁴³See http://www.fs.fed.us/srs/docs/2009/ASR10-3_FY2009.pdf for a listing of 2009 payments by county.

²⁴⁴RCW 28A.520.010-.020.

²⁴⁵See "Secure Rural Schools Program, 2008-2011, Title II – Special Projects on Federal Land." U.S. Forest Service. <http://www.fs.fed.us/srs/docs/2008-title-II.pdf>.

²⁴⁶"FAQs for Title III-County Funds," U.S. Forest Service. <http://www.fs.fed.us/srs/Title-III-FAQs.shtml>.

are given deadlines by which they must allocate their funds among the various titles. There are also rules that guide and prescribe a county's allocations.²⁴⁷

Between now and 2011, when payments are scheduled to end, there will be much lobbying from timber counties for a continuation of these payments because they are very important in the budgets of many counties. The "good news" is that many states other than the Western timber-producing states have benefitted from this 2008 version of the law and will lobby for its renewal. The "bad news" is that Oregon, California, Washington, Idaho, and Montana are having to share the funds. Under the prior law, 80 percent of the funding went to these five states. Their share dropped to 62 percent in the first year of the law and will decrease through 2011.²⁴⁸

These funds are distributed at the end of the federal government fiscal year, usually in December.

Federal Payment-In-Lieu of Taxes (PILT)²⁴⁹

"Payments In Lieu of Taxes" (PILT) are payments from the federal government to local governments to compensate them for loss of property taxes from tax-exempt federal lands within their boundaries. These payments are made for lands administered by the Bureau of Land Management (BLM), the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service, and for federal water projects and some military installations.

The PILT payment a county receives is the greater of the following two alternatives:²⁵⁰

1. The **lesser** of a) the county's eligible acres times \$0.33 per acre (in FY 2009), or b) the county's payment ceiling, which is determined by its population.
2. The **lesser** of a) the county's eligible acres times \$2.37 per acre (in fiscal year 2009) reduced by the amount the county has received during the previous fiscal year from certain other federal revenue sharing programs (such as the Secure Rural Schools timber program) or b) the county's payment ceiling, reduced by those same revenue sharing payments.

²⁴⁷Counties receiving \$100,000 or less may choose to receive all of these monies as Title I funds. Counties that receive more than \$100,000 must allocate 15 to 20 percent of the money for Title II and/or Title III projects or the money is returned to the U.S. Treasury. The remaining 85-80 percent must be allocated to Title I programs. If the county's revenue is more than \$350,000, only seven percent of the funding may go for Title III projects. The remaining 8-13 percent must go to Title II projects or back to the U.S. Treasury. "Secure Rural Schools Program, 2008-2011," U.S. Forest Service. <http://www.fs.fed.us/srs/docs/2008-srs-overview.pdf>.

²⁴⁸"Timber law becomes vast entitlement," by Matthew Daly and Shannon Dininny, *The Seattle Times*, December 7, 2009.

²⁴⁹P.L. 97-258; 31 USC § 6902.

²⁵⁰"Payments in Lieu of Taxes (PILT) FAQ," U.S. Department of the Interior, <http://www.doi.gov/pilt/faq.html>. "Federal Land Management Agencies: Background on Land and Resources Management," by Carol Hardy *et. al.*, *CRS Report for Congress*, February 27, 2001.

Congress sets the annual PILT program funding appropriation. This amount may be less than the total amounts for which counties are certified, requiring a proportional reduction in the allocations. For 2008-2012, however, the Emergency Economic Stabilization Act of 2008 (Public Law 110-343) authorized counties to receive their full PILT entitlement.²⁵¹ Counties may use the payments for any governmental purpose.

PUD Privilege Tax

Since 1941, public utility districts (PUDs) have been subject to an excise tax in lieu of property taxes. This tax is levied for the privilege of operating facilities for generating and distributing electric energy.

The excise tax basic rate for PUDs is two percent of the gross revenue derived from the sale or distribution of power, plus 0.02 percent per kilowatt hour of the wholesale value of self-generated energy for resale or distribution to consumers by a district.²⁵² In addition, all the tax rates are subject to a seven percent surcharge under RCW 82.02.030.

All the surcharge revenue goes to the state general fund.²⁵³ Four percent of the privilege tax levy collected is deposited into the state general fund.²⁵⁴ Of the remaining funds, 37.6 percent is distributed by the state to the state general fund for the benefit of the public schools. The remainder of the funds collected from the two percent tax is disbursed to counties in proportion to the gross revenue from sales within each county. The remaining receipts from the 0.02 percent tax goes to the counties based on the location of the dams that generated the power and the reservoirs they create.²⁵⁵ The county treasurer then distributes the revenue to the respective taxing districts, except schools, in the manner deemed “most equitable” – usually in proportion to their property tax levies. Not less than 0.75 percent of the utility’s revenues collected from the sale of electricity within cities must be distributed to those cities.²⁵⁶

The state treasurer distributes these revenues once a year no later than June 1.²⁵⁷

Criminal Justice Assistance²⁵⁸

In 1990, the legislature passed a bill providing funds for criminal justice purposes for local

²⁵¹*Id.*

²⁵²RCW 54.28.020. Rather than 0.02 percent, the statute actually reads “five percent of the first four mills.” (0.05 x 0.004 = 0.0002 or 0.02 percent.)

²⁵³RCW 54.28.040(3).

²⁵⁴*Id.*

²⁵⁵RCW 54.28.050.

²⁵⁶RCW 54.28.090.

²⁵⁷RCW 54.28.040(1).

²⁵⁸RCW 82.14.310.

government.²⁵⁹ This legislation, scheduled to sunset on January 1, 1994, was reenacted, with some amendments, by the 1994 legislature.²⁶⁰ Referendum 49, passed by the voters in November 1998, included provisions that increased funding for local government criminal justice expenditures by 22 percent.²⁶¹ However, funding was decreased by 55 percent when the motor vehicle excise tax, the main funding source, was repealed in 2000.²⁶²

Beginning in fiscal year 2000, counties received \$23.2 million (less an amount of up to five percent that is available for appropriation for the state crime laboratory) from the state general fund. Each year thereafter, the amount is to be increased by the state's fiscal growth factor, as defined by RCW 43.135.025(7), which governs the increase in the expenditure limit under Initiative 601. The "fiscal growth factor" is the average growth in state personal income for the prior 10 fiscal years. By 2009, the amount the counties received had grown to \$31.4 million.

The monies are distributed according to a county's funding factor. The funding factor is a function of the population divided by one thousand and multiplied by two-tenths; the crime rate of the county, multiplied by three-tenths; and the annual number of criminal cases filed in the county's superior court, for each one thousand population, multiplied by five-tenths. These state-shared revenues are to be used exclusively for criminal justice purposes, defined in part in RCW 82.14.310(3) as:

those activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020.

The language of the statute also states that the funds distributed "shall not be used to replace or supplant existing funding." Since the year that establishes the base for any measure of supplanting is calendar year 1989, it is unlikely that any county needs to be concerned about supplanting now.

These funds are distributed on the last days of January, April, July, and October.

Liquor Receipts – Profits and Taxes

Since cities and counties are responsible for the policing of liquor establishments located within their limits, but are precluded from taxing them because of the state liquor monopoly,²⁶³ state law

²⁵⁹Local Criminal Justice Fiscal Assistance," Ch. 1, Laws of 1990, 2nd sp. sess.

²⁶⁰Ch. 21, Laws of 1993, 1st sp. sess.

²⁶¹Ch. 321, Laws of 1998. The deposits into the municipal criminal justice assistance account under subsections 5(j) and (k), and sections 12 and 13, taken all together, resulted in increased funding.

²⁶²Ch. 2, Laws of 2000, 1st sp. sess.

²⁶³"Locally Shared Liquor Profits and Taxes," (source unknown) July 27, 1962, mimeographed copy in MRSC files.

provides that a share of the state-collected profits and taxes be returned to cities to help defray policing costs.

Liquor board profits consist of the difference between revenue generated by the Washington State Liquor Control Board and the board's expenditures, specific revenues collected for a dedicated purpose, and administrative fees attributable to specific licensees that serve hard alcohol. Revenues are generated from sales at state liquor stores, taxes collected on wine and beer manufacture and distribution, licensee fees, alcohol related permit fees, penalties, and forfeitures.

Liquor profits are divided among the state, counties, and cities. Fifty percent goes to the state general fund, 10 percent goes to counties, and 40 percent goes to cities. The county and city amounts are distributed on a per capita basis on the last days of March, June, September, and December. An additional small amount is distributed to border cities and towns and Point Roberts.²⁶⁴

Counties also receive seven percent of the liquor excise tax receipts.²⁶⁵ These funds are distributed on a per capita basis on the last days of January, April, July, and October.

To be eligible to receive liquor taxes and profits, a county must devote at least two percent of its distribution to support an approved alcoholism or drug addiction program.²⁶⁶

Other Intergovernmental Revenues

► Auditor's Centennial Document Preservation

A \$5 surcharge is imposed on the recording of all documents with the county auditor, the first dollar of which is to be used to promote historical preservation or historical programs, including the preservation of historic documents. An additional \$2 surcharge is charged for each document presented for recording by the Employment Security Department.²⁶⁷

Of the remaining revenue from these two surcharges, 50 percent goes to the state treasurer who is to distribute the funds every July to county treasurers based on the formula in RCW 36.22.190.²⁶⁸ The county treasurer is to put the funds received in the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of historical documents of all county offices and departments and may not be added to the county current expense fund. The

²⁶⁴RCW 66.08.190(1)(a) and RCW 66.08.195.

²⁶⁵RCW 82.08.160 specifies that 35 percent of the total tax collected under RCW 82.08.150 must be deposited in the "liquor excise tax fund." Per RCW 82.08.160, 20 percent of the monies in the liquor excise tax fund is distributed to cities. $.35 \times .2 = .07$.

²⁶⁶RCW 70.96A.087. See the *BARS Manual*, Vol. 1, Pt. 3, Ch. 12, Interpretation 4, for information on how to do the accounting for these contributions.

²⁶⁷RCW 36.22.170.

²⁶⁸Under this formula, one-half of the funds available are to be equally distributed among the 39 counties, and the balance distributed to counties based on their proportion of the state population.

remaining 50 percent is to be retained by the county and deposited in the auditor's operation and maintenance fund, also for ongoing preservation of county historical documents.²⁶⁹

These funds are distributed in July.

► Capron Refunds²⁷⁰

Counties composed entirely of islands (and the cities in them) receive a share of monies each month called Capron refunds. The gas tax collected under RCW 82.36.025(1) and RCW 82.38.030(1) and motor vehicle license fees collected under RCW 46.16.0621 and .070 in a county with neither a state highway nor a fixed connection with the mainland are returned to the county and shared with cities and towns in that county (in practice, one county – San Juan – and its only town – Friday Harbor) on the basis of their relative assessed valuations.²⁷¹ In an island county with a state highway or a fixed connection with land, one-half of the gas tax and motor vehicle license fees designated above are returned and shared in same manner. Oak Harbor, Coupeville, and Langley receive a portion of Island County's funds.

The refunds are to compensate these cities and counties for their lack of state highways (and state highway investment).

► Death Investigation (Autopsies) Reimbursement²⁷²

The state partially reimburses counties for the costs of death investigations by providing up to 40 percent of the costs of contracting with a pathologist for autopsies, and up to 25 percent of the salary of pathologists who are county coroners or medical examiners or employees of the same.

These funds are paid out in February and August.

► Impaired Driving Safety (DUI) Account

Sixty-three percent of certain fees paid to reissue driver's licenses that have been revoked or suspended are deposited in the Impaired Driving Account.²⁷³ Expenditures from this account are

²⁶⁹RCW 36.22.170. The statute does not define "preservation of historical documents." However, in an informal letter opinion from Jeffrey Even, Assistant Attorney General, to Arthur Curtis, Clark County Prosecuting Attorney, February 9, 2004, Mr. Even points out that the purpose of the Centennial Document Preservation Act of 1989 (ch. 204, Laws of 1989) was to preserve historical documents that were deteriorating due to age and environmental degradation.

²⁷⁰RCW 46.68.080. The 1930s legislation establishing these refunds was sponsored by Victor J. Capron of San Juan County. The two relevant counties are Island and San Juan.

²⁷¹Ch. 337, Laws of 2006, amended RCW 46.68.080 to exclude certain gas tax revenues from the monies that are shared.

²⁷²RCW 68.50.104.

²⁷³RCW 46.68.041 (2).

to fund projects to reduce impaired driving and to provide funding to local governments for costs associated with enforcing laws relating to driving and boating while under the influence of alcohol or drugs.²⁷⁴

The funds are distributed on the last days of January, April, July, and October, using the same funding factor used for county criminal justice assistance funding in RCW 82.14.310.²⁷⁵ The determinants for funding are population, county crime rate, and cases filed in the county.

► Prosecuting Attorneys' Salaries²⁷⁶

Article 11, section 5 of the state constitution requires the state to pay one-half the salary of each elected county prosecuting attorney. In 2008, the legislature chose to tie the salary of a prosecuting attorney to that of a superior court judge. Prior to this time, the salary of each prosecuting attorney was set by the county legislative authority and varied widely among counties.

Now, each month, the state contributes an amount equal to one-half the salary of a superior court judge to the salary of each elected county prosecuting attorney. The county must contribute an amount equal to or greater than the amount it contributed in 2008.

► Vessel Registration Fees²⁷⁷

This \$10.50 annual vessel registration fee is collected along with the watercraft excise tax. Any amount collected beyond the specified \$1.1 million dedicated to the state general fund is allocated to counties with an approved local boating safety program. Distributions are based on the number of vessel registrations by county of moorage. All revenue must be dedicated to a boating safety program and law enforcement functions, and may not supplant other revenues. A county is responsible for allocating revenues to other jurisdictions in the county with boating safety programs.

The funds are distributed annually, usually in January.

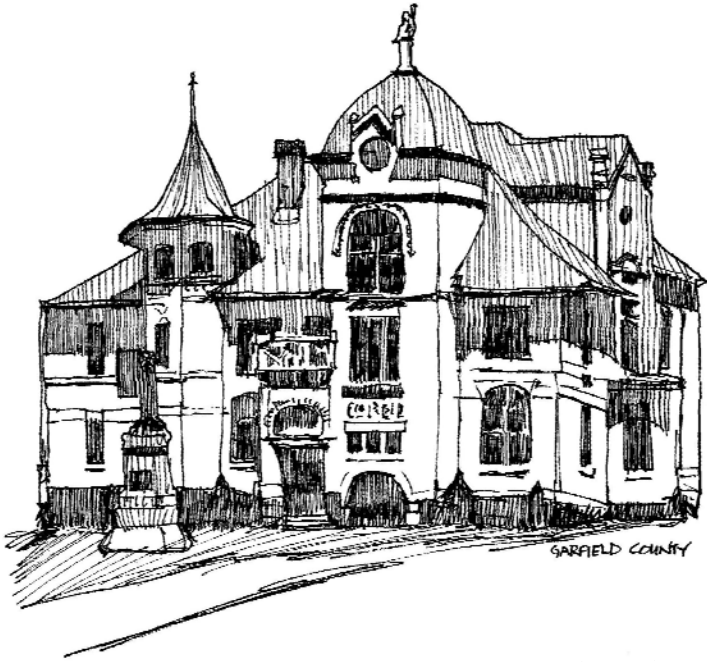
²⁷⁴RCW 46.68.260.

²⁷⁵Ch. 564, Laws of 2009, §802.

²⁷⁶RCW 36.17.020(11).

²⁷⁷RCW 88.02.050.

Permits, Fees, Charges, Fines, and Forfeitures



Auditor's Office Permits & Fees

State law requires that county auditors collect certain fees for their services. Counties keep some of these fees and others are disbursed to the state. Some of the fees sent to the state are returned to the counties, while some pay for state programs. The following are the main revenue-producing fees for a county auditor. Some fees, such as for certified copies and lien searches, have not been included because the revenue they produce is not significant. For a more detailed list of fees, see RCW 36.18.010.

► Motor Vehicle License Fees

Counties collect a flat fee for each motor vehicle licensing transaction (including registrations and certificates of ownership), as required by the state. The filing fees are set by statute for all motor vehicles (autos, trucks, motor homes, motorcycles, recreational vehicles, etc.), plus boats and trailers.²⁷⁸ As a result of 2000 legislation passed in response to Initiative 695, motor vehicle licenses (for autos, SUVs, motorcycles, and motor homes) are issued for a flat \$30 fee.²⁷⁹ These funds go to the state treasurer for distribution.

County auditors are authorized to charge a filing fee of \$3.75 for each license application. Seventy-five cents of that amount is transmitted to the state treasurer for agent and subagent support and license plate technology support. Applicants for certificates of ownership pay an additional \$4 to the auditor. These fees are used to offset the cost of acting as an agent of the state. Counties that do not cover the expenses of vehicle licensing and vessel registration and title activities may submit to the Department of Licensing a request for cost-coverage moneys.²⁸⁰

► Marriage License Fees

A marriage license fee covers the cost of taking necessary affidavits, filing returns, and indexing. A license is required by the state and must be obtained at least three days in advance of matrimony. County auditors may charge a fee of up to \$46 for a marriage license, not including the fees that apply to all documents recorded by the auditor. Of the total \$46, there are mandatory fees of \$8, for the county current expense fund, \$5 for the state for child abuse prevention, and \$10 for the state general fund. That total also includes optional fees of up to \$8 to fund family court and up to \$15 to fund family services.²⁸¹

²⁷⁸RCW 46.01.140, 46.16.0621 through 46.16.071.

²⁷⁹RCW 46.16.0621.

²⁸⁰RCW 46.01.140.

²⁸¹RCW 36.18.010, RCW 26.04.160, RCW 26.12.220, RCW 36.22.170.

► Recording Fees

Fees are charged for various services such as recording instruments, administering oaths and affidavits, making certified and non-certified copies, recording plats, conducting record searches, and processing tax liens. Fee amounts are set by statute, and the proceeds go to the county's general fund.²⁸²

A \$5 surcharge is imposed on the recording of all documents with the county auditor, the first dollar of which is to be used to promote historical preservation or historical programs, including the preservation of historic documents. An additional \$2 surcharge is charged for each document presented for recording by the Employment Security Department.²⁸³

Of the remaining revenue from these two surcharges, 50 percent goes to the state treasurer who is to distribute the funds every July to county treasurers based on the formula in RCW 36.22.190.²⁸⁴ The county treasurer is to put the funds received in the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of historical documents of all county offices and departments and may not be added to the county current expense fund. The remaining 50 percent is to be retained by the county and deposited in the auditor's operation and maintenance fund, also for ongoing preservation of county historical documents.²⁸⁵

► Affordable Housing Filing Fee Surcharge²⁸⁶

A surcharge of \$10 is to be collected for each document recorded and that is to be used for affordable housing programs. Counties may retain five percent for collection, administration, and distribution of the funds. Forty percent of the remainder goes to the state treasurer for specified state affordable housing programs. The remaining funds are to be deposited in a fund to be used by the county and its cities and towns for specified, eligible housing activities to serve very low income households with incomes at or below 50 percent of the area median income.

²⁸²RCW 36.18.010.

²⁸³RCW 36.22.170. This is the same information included on page 61 in the discussion of "Auditor's Centennial Document Preservation" in the "Intergovernmental Revenues" section.

²⁸⁴Under this formula, one-half of the funds available are to be equally distributed among the 39 counties, and the balance distributed to counties based on their proportion of the state population.

²⁸⁵RCW 36.22.170. The statute does not define "preservation of historical documents." However, in an informal letter opinion from Jeffrey Even, Assistant Attorney General, to Arthur Curtis, Clark County Prosecuting Attorney, February 9, 2004, Mr. Even points out that the purpose of the Centennial Document Preservation Act of 1989 (ch. 204, Laws of 1989) was to preserve historical documents that were deteriorating due to age and environmental degradation.

²⁸⁶RCW 36.22.178.

► Homeless Housing Filing Fee Surcharge²⁸⁷

A surcharge of \$10 (\$30 during the 2009-11 and 2011-13 biennia) is to be collected²⁸⁸ and distributed as follows:

- Two percent is to be retained by the auditor for collection of the fee;
- 60 percent of the remainder is to be deposited in a fund to be used by the cities and the county for the purposes described in Chapter 484, Laws of 2005 (housing and assisting the homeless), to reduce homelessness in each county by 50 percent by 2015;
 - Six percent of this amount may be used by the county for administrative costs of its housing plan and the remainder for implementation.
 - Counties must remit to any city operating its own homeless housing program a percentage of the surcharge equal to the city's local portion of the real estate excise tax (without any deduction for administration) for use by the city for its local homeless housing program.
- The remaining 40 percent is remitted to the state for deposit in the Home Security Fund Account.

► Election Candidate Filing Fees²⁸⁹

People who file for candidacy for most elective offices must pay a filing fee. The fee is determined by the position being filed for and, in some cases, by the annual salary that the position carries. A fee of \$10 is levied for any position with an annual salary of \$1000 or less. A fee is levied equal to one percent of the annual salary for any office with a fixed annual salary of more than \$1000 per year. There is no fee charged for filing a candidacy for precinct committee officer or for positions where there is no compensation or the compensation is on a per diem or per meeting rate. If a candidate lacks sufficient assets or income to pay the filing fee, the candidate may submit a nominating petition with the same number of signatures of registered voters as the number of dollars for the filing fee.

²⁸⁷RCW 36.22.179.

²⁸⁸Certain documents are exempt from this filing surcharge: (1) assignments or substitutions of previously recorded deeds of trust; and (2) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law. RCW 36.22.179(2).

²⁸⁹RCW 29A.24.091.

► Elections Services Reimbursement²⁹⁰

The county is not responsible for costs involved in the holding of any city, town, or district election. A city, town, or other taxing district that has a measure or elected position on the ballot is responsible for a proportionate share of the cost when the election is held in conjunction with another election or for the entire cost when the election is not held in conjunction with another election.²⁹¹ Similarly, the state is responsible for a prorated share of election costs when state offices or measures are voted on in primary or general elections in odd-numbered years.²⁹² Cities and towns must also pay the expenses of voter registration in their jurisdictions.²⁹³

In recovering election expenses, including administrative costs, the county auditor must certify the cost to the county treasurer with a copy to the clerk or auditor of the city, town, or district concerned. Upon receipt of certification, the county treasurer is to transfer from any available and appropriate city, town, or district funds to the county current expense fund or to the county election reserve fund if one is established. The county treasurer must promptly notify each city, town, or district whenever such a transfer has been completed. However, in those districts with a treasurer, other than the county treasurer, the district must promptly issue a warrant for payment of election costs.

Treasurer's Fees

► Real Estate Excise Tax Fees

The county treasurer collects a \$5 fee on all real estate transactions where the transaction does not require payment of the real estate excise tax and where the total tax payment is less than \$5. The fee is to be deposited in the county current expense fund to defray tax collection costs.²⁹⁴

Through June 30, 2010, the county treasurer is to collect an additional \$5 fee on all real estate transactions, regardless of whether the transaction requires payment of the tax. The county treasurer remits this fee to the state treasurer at the same time as he or she remits real estate excise tax funds to the state. The state treasurer must place the money from this fee in the real estate excise tax electronic technology account. Three-quarters of these funds are then distributed equally to each county and the balance distributed among the counties in direct proportion to their population relative to the state's population.²⁹⁵

Distributions to the county treasurer from this additional \$5 fee are to be placed in a special real estate excise tax electronic technology fund to be used exclusively for the development,

²⁹⁰For information on how counties are to account for election costs and the methodology to be used to allocate costs, see the *BARS Manual*, Vol. 1, Pt. 3, Ch. 12, Interpretation 8.

²⁹¹RCW 29A.04.410.

²⁹²RCW 29A.04.420.

²⁹³RCW 29A.08.150.

²⁹⁴RCW 82.45.180(1)(a).

²⁹⁵RCW 82.45.180(3)(b).

implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be used to make the system compatible with the automated real estate excise tax system developed by the Department of Revenue and compatible with the processes used by the county assessor and county auditor. Any funds that are not spent by the earlier of July 1, 2015 or the time that the county treasurer is utilizing such an electronic processing and reporting system revert to the special real estate and property tax administration assistance account.²⁹⁶

From July 1, 2010, through December 31, 2013, the additional \$5 fee will continue to be collected and remitted to the state treasurer who is to place money from this fee in the annual property revaluation grant account created in RCW 84.41.170.²⁹⁷

Beginning January 1, 2014, the additional \$5 fee is to be collected and deposited as follows: one-half in a special real estate and property tax administration assistance account held by the county treasurer and the balance remitted to the state treasurer at the same time the county treasurer remits other excise tax funds to the state. The state treasurer must place money from this fee in the state's real estate and property tax administration assistance account. One-half of these funds are then distributed equally to each county and the balance distributed among the counties in direct proportion to their population relative to the state's population.

When received by the county treasurer, the funds must be placed in the real estate and property tax administration assistance account to be used for:

1. Maintenance and operation of an annual revaluation system for property tax valuation; and
2. Maintenance and operation of an electronic processing and reporting system for real estate excise tax affidavits.

► Investment Fees

The county treasurer receives a fee of five percent of interest earnings with an annual limit of \$50 on each investment transaction for other jurisdictions.²⁹⁸ The treasurer is also authorized to collect an amount up to \$4 per parcel for handling special assessments, fees, rates, or charges.²⁹⁹ The treasurer is required to collect a specified fee for preparing and certifying documents.³⁰⁰

If the county treasurer accepts credit cards, debit cards, and other electronic communications payments, the treasurer is required to charge a fee to cover the cost of processing the transaction,

²⁹⁶RCW 82.45.180(3)(c).

²⁹⁷RCW.82.45.180(4).

²⁹⁸RCW 36.29.020.

²⁹⁹RCW 36.29.180.

³⁰⁰RCW 36.18.045.

in an amount determined by the treasurer, unless the county legislative authority finds that it is in the best interests of the county to not charge transaction processing costs for all payment transactions made for a specific category of nontax payments received by the treasurer.³⁰¹

► Investment Interest

The county treasurers across the state invest excess cash in various financial instruments that are “eligible” investments for public funds.³⁰² For a complete list, see the web site of the Office of the State Treasurer at http://www.tre.wa.gov/documents/inv_elig.pdf. Note that, with the exception of funds that are subject to the arbitrage provisions of section 148 of the Internal Revenue Code, mutual funds are not permitted investments, even if the individual holdings of the mutual fund are all eligible investments.³⁰³

District Court Fines, Forfeitures, and Fees

District court clerks collect filing fees for cases filed in the courts and the costs, fines, forfeitures, and penalties assessed by the courts in individual cases. Cities that do not use their own courts must enter into interlocal agreements with their counties to reimburse the counties for the costs of prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies. The county or the city may invoke binding arbitration to resolve the issue of compensation in the event agreement cannot be reached through negotiation.³⁰⁴

► Civil Infractions

The courts collect fines, fees, and penalties for traffic infractions, parking infractions, and other infractions.³⁰⁵ Cities must pay filing fees for traffic infractions filed in district court, per interlocal agreement.³⁰⁶

► Costs, Fees, Fines, Forfeitures, and Penalties Assessed by Court

The disposition of these is controlled by RCW 3.62.020 and, for cases filed by cities, by RCW 3.62.040. Of the fees, costs, fines, forfeitures, and penalties collected by the district court

³⁰¹RCW 36.29.190.

³⁰²RCW 39.59.020.

³⁰³RCW 39.59.030.

³⁰⁴RCW 39.34.180.

³⁰⁵RCW 3.62.020, RCW 7.80.120, RCW 46.63.110.

³⁰⁶RCW 3.62.070.

for county cases, except parking infractions, 32 percent is remitted to the state treasurer. The remainder and money collected for parking infractions goes to the county current expense fund. Interest on penalties, fines, bail forfeitures, fees, and costs are distributed as follows:

- 25 percent to the state general fund;
- 25 percent to the state judicial information system account;
- 25 percent to the county current expense fund; and
- 25 percent to the county current expense fund to fund local courts.

► Deferred Prosecution Costs

The court may require payment of the costs of a deferred prosecution program, not to exceed \$150.³⁰⁷ (See Deferred Prosecution under Corrections and Alternatives Fees)

► Dispute Resolution Surcharge

A county legislative authority may impose a surcharge of up to \$10.00 on each civil filing in district court and a \$15.00 surcharge for small claims court filings to fund dispute resolution centers.³⁰⁸

► Filing Fees – Civil

State law specifies both mandatory and optional filing and other fees for various services³⁰⁹ and civil actions filed in district court. Seven dollars (\$7.00) of every fee collected for commencement of a civil action in district court goes to the county law library.³¹⁰ Until July 1, 2011, clerks must also collect a surcharge of \$20 for district court filings listed in RCW 3.62.060(1).³¹¹ All the revenue from this surcharge is to be sent to the state Judicial Stabilization Trust Account.

► Filing Fees – Criminal, Filed by Cities

Cities pay filing and other fees per interlocal agreement.³¹²

³⁰⁷RCW 10.01.160.

³⁰⁸RCW 7.75.035.

³⁰⁹RCW 3.62.060.

³¹⁰RCW 27.24.070.

³¹¹RCW 3.62.060(13).

³¹²RCW 3.62.070; RCW 39.34.180.

► Misdemeanor Incarceration

The courts may impose a cost on a defendant convicted of a misdemeanor or gross misdemeanor not to exceed \$100 per day of incarceration, as long as the courts find that the defendant has the ability to pay the costs.³¹³

► Public Safety and Education Assessment

A public safety and education assessment of 70 percent is imposed on all fines, forfeitures, and penalties assessed, other than parking infractions. There is an additional public safety and education assessment equal to 50 percent of this 70 percent public safety and education assessment. Both assessments are remitted to the state treasurer to be deposited in the state general fund for purposes of contributing to district court judges' salaries (and eligible elected municipal judges' salaries) and of supporting indigent criminal and civil representation activities as outlined in RCW 43.08.250.³¹⁴

► Trial Court Improvement Account

A county with a district court established under Title 3 RCW must establish a county trial court improvement account. One hundred percent of the state's contribution received by the county for the payment of district court judges' salaries is to be deposited into the account. The county legislative body must appropriate funds from the account to fund improvements in superior or district court staffing, programs, facilities, or services.³¹⁵

► Warrant Fees

The court may impose costs upon a defendant for preparing and serving a warrant for failure to appear. The cost may not exceed \$100.³¹⁶

Sheriff and Jail Fees

The county sheriff provides various law enforcement services for county citizens. Individuals or jurisdictions receiving services from the sheriff that are not required by state statute are charged a fee. State law also allows a fee to be charged for some of the required services.

³¹³RCW 10.01.160(2), (3).

³¹⁴RCW 3.62.090

³¹⁵RCW 3.58.060

³¹⁶RCW 10.01.160(2).

► Gun Permits³¹⁷

Permits are required for carrying a concealed pistol for the purpose of protection or while engaged in business, sport, or traveling. Permit fees are set by statute. The original application is \$36 plus charges imposed by the FBI. Of the \$36, \$15 goes to the state general fund, \$14 goes to the issuing agency for enforcing firearms laws, \$4 goes to the agency taking the fingerprints, and \$3 goes to the firearms range account in the state general fund.

Permit renewal is \$32, of which \$15 goes to the state general fund, \$14 goes to the issuing agency, and \$3 goes to the firearms range account. There is a \$10 late renewal fee of which \$3 goes to the state wildlife account and \$7 to the issuing agency. A \$10 fee is charged to replace a lost or damaged permit, all of which goes to the issuing agency.

► City Contract Reimbursement

Many cities and towns contract with their county sheriff for law enforcement services. The amount of reimbursement for those services is determined by interlocal agreement.³¹⁸

► Immigration

Many county jails lease bed space to the U.S. Immigration and Naturalization Service to house accused and convicted defendants for violations of immigration law. The lease rate is negotiated with US Immigration and Customs Enforcement on a per bed rate.

► Jail Services

Cities are responsible for the costs of incarcerating in county jails persons arrested by city police for misdemeanor and gross misdemeanor offenses committed within their jurisdiction. The costs are determined by interlocal agreement.³¹⁹

► Various Sheriff Fees

The sheriff's office collects fees for conducting specific official services. Those services include serving summons to appear, serving various writs and warrants, making copies, conducting sales, posting notices, fingerprinting, criminal history checks, and others. The fees for these services are

³¹⁷RCW 9.41.070.

³¹⁸RCW 39.34.080

³¹⁹RCW 39.34.180.

set by statute, although the county legislative authority may set higher fees to cover the costs of administration and operation. State law sets the various fees; however, determining the revenue from these fees is not predictable as it is determined by the activity of the county's citizens.³²⁰

Corrections and Alternatives Fees

The corrections function has several programs that generate revenues. Some are required by statute, while others are optional. All of these sources serve to offset the growing costs of incarceration by having the convicted defendant pay for all or part of the costs.

► Deferred Prosecution³²¹

Deferred prosecution monitors compliance with the conditions imposed by a deferred prosecution order, which allows an offender diagnosed with alcohol addiction to undergo a two-year treatment program. Upon successful completion of the program, the charge is dismissed. Although the program is used primarily for DUI cases, it may also be applied to other specified offenses and for offenders with drug addiction and mental health problems. Costs not to exceed \$150 may be imposed on a defendant upon entry into the deferred prosecution program for the purpose of administering the program.³²²

► Electronic Home Confinement³²³

Electronic home confinement provides a custodial alternative that requires electronic monitoring of an offender serving a sentence of partial confinement at his or her residence. These programs allow for a more judicious use of jail space. If able to, the offender pays for the cost of the equipment and the administration of the program.

► Jail Industries Program³²⁴

A county may establish a jail industries program using jail inmates at worksites within jails or outside jails as may be directed by the county legislative body. Inmates participating in the program may earn wages from which deductions may be made to offset the costs of implementing and maintaining the program and the costs of incarceration.

³²⁰RCW 36.18.040.

³²¹RCW 10.01.160; ch. 10.05 RCW.

³²²RCW 10.01.160(2).

³²³RCW 9.95.210(2)(d).

³²⁴Ch. 36.110 RCW.

► Probation³²⁵

The probation program monitors compliance with the court-ordered conditions of probation and enforces court orders. The county negotiates a rate with the Department of Corrections for funds to offset the costs of probation. The county may also impose a fee of up to \$100 per month on offenders in the probation program, based on their ability to pay, that is to be used for payment of the cost of supervising the probationer.

Transportation Benefit District Fees

Counties, as well as cities, may form transportation benefit districts to acquire, construct, improve, provide, and fund transportation improvements in the district that are consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels.³²⁶ The area may include other cities and counties, as well as port and transit districts, through interlocal agreements.³²⁷

A transportation benefit district has a number of revenue options for financing the transportation improvements for which the district was formed. One option is a \$20 per vehicle license fee that does not require voter approval.³²⁸ This fee can be assessed in a district that includes a county either in a county-wide district that includes all the incorporated and unincorporated areas or in a district that includes all of the unincorporated area of the county. To assess this fee in a county-wide district (all the incorporated and unincorporated areas), agreement on the distribution of the revenues must be reached with at least 60 percent of the cities representing at least 75 percent of the population within all the cities in the county. If such an agreement cannot be reached, the legislation appears to authorize a county to establish a transportation benefit district encompassing only the unincorporated areas of the county and to impose this nonvoted fee only in those unincorporated areas.³²⁹

A district that has coterminous boundaries with a county may also impose transportation impact fees on commercial or industrial buildings without voter approval.³³⁰ A credit must be provided for any transportation impact fee on commercial or industrial buildings that the county has already imposed. Voter-approved revenue options include a license fee of up to \$100 per vehicle³³¹ and a 0.2 percent sales tax.³³²

The funds must be spent on transportation improvements as set forth in the district's plan. "Transportation improvement" is defined as:

³²⁵RCW 9.95.204, 9.95.214.

³²⁶RCW 36.73.020(1).

³²⁷RCW 36.73.020(2).

³²⁸RCW 82.80.140(2).

³²⁹RCW 36.73.065(5).

³³⁰RCW 36.73.065(4)(a)(ii) and RCW 36.73.120.

³³¹RCW 36.73.065(4)(a)(i) and RCW 82.80.140(1).

³³²RCW 36.73.040(3)(a) and RCW 82.14.0455.

a project contained in the transportation plan of the state, a regional transportation planning organization, city, county, or eligible jurisdiction as identified in RCW 36.73.020(2). A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.³³³

Tourism Promotion Area Fees³³⁴

The legislative authority of a county with a population of more than 40,000 and of any city within a county of that size may form a “tourism promotion area” under chapter 35.101 RCW. However, in a county with a population one million or more (at present, only King County), the legislative authority for purposes of establishing a tourism promotion area must be comprised of two or more jurisdictions acting under an interlocal agreement.

A county can form a tourism promotion area only in an unincorporated area, and a city can do so only within its boundaries, unless a county and city sign an interlocal agreement to do otherwise. Within a tourism promotion area, the city or county legislative body may impose a charge of up to \$2 per night, which applies at lodging businesses with 40 or more units. Up to six different classifications are allowed, with different charges for each one.

Formation of a tourism promotion area is initiated by a petition to the legislative body of the city or county, as the case may be, which petition must contain the signatures of people who operate lodging businesses in the area that would be paying at least 60 percent of the charges in the area. The legislative body must hold a public hearing on establishment of the proposed tourism promotion area.

The lodging businesses collect the charges and remit them to the Department of Revenue, which deposits the revenues into the Local Tourism Promotion Account. The state treasurer distributes money in the account monthly to the legislative authority on whose behalf the money was collected.

The revenue must be used for “tourism promotion,” which is defined as “activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists and operating tourism destination marketing organizations.” However, the legislative body, which may appoint an advisory board to recommend uses of the revenue, has the sole discretion as to how the funds are used to promote tourism. The legislative authority may contract with tourism destination marketing organizations or other similar organizations to administer the operation of the area.

³³³RCW 36.73.015(3).

³³⁴Ch. 35.101 RCW. as amended by ch. 442, Laws of 2009.

Other Permits & Fees

► Cable TV Franchise Fee³³⁵

Cable TV franchise fees are governed by federal rather than state law. The Cable Communications Policy Act of 1984 establishes the authority of counties and other local governments to levy franchise fees on cable TV operators. A cable TV franchise fee may not exceed five percent of gross revenues. Franchise fee amounts are typically limited to offsetting the actual costs of administering the franchise. Local ordinance or resolution and/or the franchise agreement determine the administration of this revenue source.

► Community Development Permits & Fees

State law and county land use, building, and environmental codes and ordinances require counties to perform certain reviews, process applications, and conduct inspections.³³⁶ A county may charge reasonable fees to cover the costs of performing these functions.

The general guiding principle for these fees and charges is that they may be set at a level that recovers all the direct and indirect costs associated with the activity, including administrative overhead.³³⁷ However, if fees more than recover costs, they then become more like taxes, and counties need specific statutory authority to levy taxes.

► Coroner's Fees³³⁸

The county coroner collects fees for some of the services he or she performs. Where a district court judge performs the duties of coroner, pursuant to RCW 36.24.160, the judge is entitled to the same fees. In a county of 250,000 or more where a medical examiner performs the duties of the coroner, the medical examiner is, presumably, also entitled to the same fees.

► County Clerk's Fees – Superior Court³³⁹

The clerk's fees for superior courts are established by statute.³⁴⁰ The revenues generated from the

³³⁵Cable Communications Policy Act of 1984, §622(a), (b) (47 U.S.C. §542(a), (b)).

³³⁶RCW 82.02.020; RCW 19.27.100-110.

³³⁷However, in *Home Builders v. City of Bainbridge Island*, 137 Wn. App. 338, 349 (2007), the state court of appeals rejected the inclusion of costs the city attributed to its building and planning department in determining the fees to be charged developers. The court stated: "We reject the City's and the trial court's expansion of RCW 82.02.020's exception beyond the costs of processing applications, inspecting and reviewing plans, or preparing SEPA statements to include a portion of all costs allowed by accounting and cost allocation guidelines for government agencies."

³³⁸RCW 36.18.030.

³³⁹RCW 36.18.020, 36.18.025, 27.24.070, 36.18.012, 36.18.014; see also AGO1994 No. 15.

³⁴⁰RCW 36.18.020.

fees will reflect the workload of the superior court. Forty-six percent of the fees collected are remitted to the state treasurer for deposit into the state general fund.³⁴¹ Seventeen dollars of every new probate or civil filing fee goes to support the county law library.³⁴² The library board of trustees, with approval of the county legislative authority, may increase that \$17 amount up to \$20 upon a showing of need.³⁴³ The 46 percent is calculated before the \$17 is disbursed to the library. Some fees are not subject to the 46 percent remittance to the state.

Temporary surcharges that will expire on July 1, 2011 are as follows: \$30 for listed superior court filings (\$20 for appeals from court of limited jurisdiction);³⁴⁴ \$20 for listed district court filings;³⁴⁵ and \$10 for small claims filings.³⁴⁶ All the revenue from these surcharges is to be sent to the state Judicial Stabilization Trust Account.

► Impact Fees

Development impact fees are charges placed on new development in unincorporated areas to help pay for various public facilities that serve new development and for other impacts associated with such development. Impact fees are authorized for those counties planning under the Growth Management Act, as part of “voluntary agreements” under RCW 82.02.020, and as mitigation for development impacts under the State Environmental Policy Act (SEPA), chapter 43.21C RCW.

Counties that plan under the Growth Management Act may impose impact fees on residential and commercial development activity to help pay for certain public facility improvements, including parks, open space, recreation facilities, and road improvements, that are identified in the county’s capital facilities plan.³⁴⁷ The improvements financed by impact fees must be reasonably related to the new development and must reasonably benefit the new development.³⁴⁸ The fees must be spent or encumbered within six years of collection, with the exception of school impact fees, which must be spent or encumbered within ten years of collection. Impact fees may be held longer for “extraordinary and compelling” reasons identified in written findings.³⁴⁹

Impact fees collected under the authority of RCW 82.02.020 must be used within five years of collection.

³⁴¹RCW 36.18.025. The Public Safety and Education Account was abolished by ch. 479, Laws of 2009.

³⁴²RCW 27.24.070.

³⁴³*Id.*

³⁴⁴RCW 36.18.020(4).

³⁴⁵RCW 3.62.060(10).

³⁴⁶RCW 12.40.020.

³⁴⁷RCW 82.02.050-.090. For more information on impact fees, see MRSC’s web page on impact fees at <http://www.mrsc.org/Subjects/Planning/impactpg.aspx>.

³⁴⁸RCW 82.02.050(3).

³⁴⁹RCW 82.02.070(3).

► Juvenile Fees³⁵⁰

The juvenile services function has three types of fees: (1) reimbursement of attorney fees by parents, based on their ability to pay; (2) reimbursement of detention costs by parents or guardians (based on ability to pay) and other counties (at rate not to exceed costs); and (3) fees providing part of the funds to operate the Victim Assistance Program administered by the prosecuting attorney's office, at a rate of \$100 if the crime(s) include(s) a felony or gross misdemeanor, or \$75 for one or more misdemeanors.

► Parks and Recreation Fees

Counties charge fees for various regional park services, such as for admission, parking, or boat launching, and for recreation programs.³⁵¹ These funds are often dedicated to parks operation. Counties that establish park and recreation boards must establish a park and recreation fund into which park and recreation revenues must be placed.³⁵²

► Fees in “Special Cases”

RCW 36.18.050 provides that county officers who perform services for which no fees are provided in chapter 36.18 RCW (“Fees of County Officers”) are to be allowed fees “similar and equal to” those fees allowed the officer “for services of the same kind for which allowance is made” in that chapter.

³⁵⁰RCW 13.40.145, 13.16.085, 7.68.035.

³⁵¹RCW 36.68.090.

³⁵²RCW 36.68.070.