



**STAFF REPORT/RESOLUTION**

**TO:** Southwest Washington Regional Transportation Council Board of Directors  
**FROM:** Dean Lookingbill, Transportation Director  
**DATE:** October 29, 2013  
**SUBJECT:** **RCW 81.104 HCT Requirements, Resolution 11-13-23**  
**Clark County Commissioner David Madore**

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**AT A GLANCE - ACTION**

*The RTC Board is being asked to adopt an RCW 81.104 HCT resolution at the request of Clark County Commissioner David Madore. The resolution seeks voter approval of the CRC high capacity transit system plan and financing plan.*

**BACKGROUND**

The RCW 81.104 HCT resolution was requested by Commissioner Madore at the October 1, 2013 RTC Board meeting. RTC Resolution 11-13-23 is attached. In addition the referenced July 1, 2013 Attorney General Opinion titled Voter Approval For High Capacity Transportation System Plan has also been attached.

**POLICY IMPLICATION**

The RCW 81.104 HCT resolution BE IT RESOLVED states: “that it shall be the policy of the RTC Board to fulfill those requirements mandated by law before voting to move the CRC high capacity transit system plan and financing plan forward and before executing agreements to proceed with the project.”

**BUDGET IMPLICATION**

The resolution is policy-based and would have no budget implication to RTC.

**ACTION REQUESTED**

Adoption of Resolution 11-13-23, "RCW 81.104 HCT Requirements"

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2013,  
by the Southwest Washington Regional Transportation Council.

SOUTHWEST WASHINGTON  
REGIONAL TRANSPORTATION COUNCIL

ATTEST:

\_\_\_\_\_  
William J. Ganley  
Chair of the Board

\_\_\_\_\_  
Dean Lookingbill  
Transportation Director

Attachment: July 1, 2013 AG Opinion, Voter Approval Requirement  
For High Capacity Transportation System

**RTC BOARD RESOLUTION – October 1, 2013**

**A RESOLUTION** to comply with RCW 81.104 requirements to seek voter approval of the CRC high capacity transit system plan and financing plan

**WHEREAS**, on July 1, 2013, Washington State Attorney General Bob Ferguson, published an opinion on line at:

[http://www.atg.wa.gov/AGOOpinions/opinion.aspx?id=31304#.Uko\\_XUnD-t8](http://www.atg.wa.gov/AGOOpinions/opinion.aspx?id=31304#.Uko_XUnD-t8)

That clearly states that RCW 81.104 requires voter approval of the CRC high capacity transit system plan and financing plan as written in exhibit A; and

**WHEREAS**, the CRC High Capacity Transit financing plan was placed on the ballot as Proposition One and was rejected by the voters in the 2012 General Election; and

**WHEREAS**, voter approval has not been sought for the CRC high capacity transit system plan; and

**WHEREAS**, the Attorney General's letter clearly clarifies the applicability of RCW 81.104 as it pertains to and governs the CRC Project, RTC and C-Tran; and

**WHEREAS**, willful failure to follow State Law as clearly laid out in RCW 81.104 and further clarified by the Attorney General's written opinion would amount to malfeasance by officials who proceed without fulfilling those requirements; and

**WHEREAS**, the RTC and C-Tran Governing Boards serve as representatives of the people of Clark County as two signatory agencies of the CRC project, are charged with the responsibility of adhering to their own adopted policies; and

**WHEREAS**, those adopted policies clearly state that as a condition of approval that any means of funding the operation and maintenance costs of the High Capacity component of the CRC, shall be first approved by a vote of the people; and

**WHEREAS**, the C-Tran Governing Board and the RTC Board have the responsibility to pause and fulfill these requirements before proceeding further; and

**WHEREAS**, these requirements have not yet been complied with,

**NOW, THEREFORE, BE IT RESOLVED**, that it shall be the policy of the RTC Board to fulfill those requirements mandated by law before voting to move the CRC high capacity transit system plan and financing plan forward and before executing agreements to proceed with the project.



## **TRANSPORTATION—Voter Approval Requirement For High Capacity Transportation System Plan**

**A transit agency seeking to establish high capacity transportation service that does not intend to rely upon local option revenue sources authorized by RCW 81.104.150 through .170 is required to obtain voter approval of its system plan only if the transit agency participates in a *joint* regional policy committee. Voter approval of the system plan is not required if the transit agency participates in a regional policy committee.**

July  
1,  
2013

The Honorable Jim Moeller  
State Representative, District 49  
PO Box 40600  
Olympia, WA 98504-0600

Cite As:  
AGO 2013 No. 1

Dear Representative Moeller:

By letter previously acknowledged, you have requested our opinion on a question I have paraphrased as follows:

**Must a transit agency that elects to establish high capacity transportation service under RCW 81.104 obtain voter approval for its high capacity transportation system plan and financing plan even if the transit agency does not propose to use the dedicated funding sources provided for in RCW 81.104?**

### **BRIEF ANSWER**

Under the statutory language, the answer depends on whether the transit agency seeking to establish high capacity transportation service has formed a regional policy committee or instead participates in a *joint* regional policy committee. RCW 81.104.030 requires only transit agencies that participate in a joint regional policy committee to obtain voter approval of their system plan and financing plan for high capacity transportation service. The legislature directed more populous counties to form joint regional policy committees for the purpose of developing regional high capacity transportation service. Transit agencies that are not required to participate in joint regional policy committees are not required to obtain voter approval for their system plan and financing plan (but they must obtain voter approval if they seek to finance their plans through any of the dedicated funding

sources identified in statute).

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## BACKGROUND

RCW 81.104 governs the development of high capacity transportation systems within the state. “High capacity transportation system” is defined as a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

RCW 81.104.015(2).

The statute authorizes transit agencies<sup>[1]</sup> to create high capacity transit systems and sets out differing procedures for doing so depending on the population of the county in which the agency is based. “In any county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders, except for any county having a population of more than one million or a county that has a population more than four hundred thousand and is adjacent to a county with a population of more than one million,” a transit agency that elects to establish high capacity transportation service is directed to form a “regional policy committee” consisting of representatives reflective of population distribution within the designated service area as well as a representative from the department of transportation. RCW 81.104.030(1). Alternatively, such an agency may use the designated metropolitan planning organization as the regional policy committee. RCW 81.104.030(1).

Transit agencies within certain larger counties are directed to form joint regional policy committees for the purpose of preparing and adopting a regional high capacity transportation program. RCW 81.104.040. Specifically, “[t]ransit agencies in each county with a population of one million or more, and in each county with a population of from two hundred ten thousand to less than one million bordering a county with a population of one million or more . . . must establish through interlocal agreements a joint regional policy committee with proportional representation based upon the population distribution within each agency’s designated service area[.]” RCW 81.104.040. “Transit agencies participating in *joint* regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan.” RCW 81.104.030(1) (emphasis added).

Legislative history informs us that the requirement to form a joint regional policy committee and the accompanying voter approval requirement were primarily intended to apply to

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central Puget Sound counties. Final Bill Report on Substitute H.B. 1825, 51st Leg.,

Reg. Sess. (Wash. 1990). RCW 81.104 was passed in 1990 as part of a comprehensive transportation bill. Laws of 1990, ch. 43. The original 1990 enactment makes the distinction between transit agencies involved in regional policy committees and those involved in joint regional policy committees, and required only agencies involved in joint regional policy committees to obtain voter approval of high capacity transportation plans. Laws of 1990, ch. 43, §§ 24, 25. Compared to current law, the 1990 enactment included a more detailed and timeline-driven process for agencies involved in joint regional policy committees.<sup>[2]</sup> Laws of 1990, ch. 43, § 25. In contrast, the process for agencies participating in regional policy committees is largely unchanged from 1990.

In 1992, the legislature enacted RCW 81.112, which substantially changed the transportation planning process for more populous counties. Laws of 1992, ch. 101. Specifically, the legislature authorized the establishment of regional transit authorities in “[t]wo or more contiguous counties each having a population of four hundred thousand persons or more[.]” Laws of 1992, ch. 101, § 3. A joint regional policy committee ceases to exist upon formation of a regional transit authority. Laws of 1992, ch. 101, § 3(6).

The 1992 enactment was for the purpose of allowing transit agencies in King, Pierce, and Snohomish counties to form a regional transit authority because prior law created a number of impediments to high capacity transportation planning in those counties, including the need for separate voter approval in each participating jurisdiction. Final Bill Report on Engrossed Substitute H.B. 2610, 52d Leg., Reg. Sess. (Wash. 1992). Under the 1992 enactment, regional transit authorities were directed to develop a single ballot proposition to all voters within the region to ratify formation of the authority, approve the system plan and financing plan, and authorize the imposition of taxes to support the plans. Laws of 1992, ch. 101, § 3(7).

In enacting different processes for agencies participating in regional policy committees versus joint regional policy committees, the legislature intended to establish differences between high capacity planning in central Puget Sound and the rest of the state. Final Bill Report on Substitute H.B. 1825, 51st Leg., Reg. Sess. (Wash. 1990). This distinction is reflected in the section captions that the legislature included in the original enactment, which refer to “High capacity transportation policy development outside central Puget Sound” and “High capacity

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transportation policy development in central Puget Sound.”<sup>[3]</sup> Laws of 1990, Reg. Sess., ch. 43, §§ 24, 25.

For a transit agency in a county adjacent to a state or national border that is proposing a bistate or international high capacity transportation system, the agency must obtain voter approval only from those voters residing within Washington’s service areas. RCW 81.104.030(1). However, as noted above, the requirement to obtain voter approval of a system plan and financing plan under RCW 81.104.030 applies only to those agencies participating in *joint* regional policy committees.

Any transit agency participating in regional high capacity transportation system development is authorized, upon voter approval, to levy and collect certain local option dedicated funding sources. RCW 81.104.140(4), (7). The specific funding

sources authorized are an employer tax, a sales and use tax on car rentals, and a general sales and use tax. RCW 81.104.150-.170. Before seeking voter approval for one or more of these funding sources, a transit agency proposing a plan with a rail fixed guideway system component<sup>[4]</sup> or a bus rapid transit component must first engage in the planning process required by RCW 81.104.100(1) and (2). RCW 81.104.140(4). Such agencies must also have their plans reviewed by independent expert review panels. RCW 81.104.140(4) (citing to RCW 81.104.110).

These relevant provisions of RCW 81.104 provide the backdrop against which we analyze your question.

### ANALYSIS

Interpretation of a statute begins with the statute's text. If the plain language of a statute is unambiguous, courts "give effect to that language and that language alone because we presume the legislature says what it means and means what it says." *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). "Plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 229 P.3d 791, 243 P.3d 1283 (2010) (internal quotation marks omitted). Consideration of related provisions includes consideration of other statutes "which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwynn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

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When a statute contains undefined terms, courts will "consider the statute as a whole and provide such meaning to the term as is in harmony with other statutory provisions." *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 564, 29 P.3d 709 (2001). "When similar words are used in different parts of a statute, the meaning is presumed to be the same throughout." *State v. Gonzalez*, 168 Wn.2d 256, 264, 226 P.3d 131 (2010) (internal quotation marks omitted). The corollary rule is that "[w]hen the legislature uses two different terms in the same statute, courts presume the legislature intends the terms to have different meanings." *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007).

Here, the statutes in question use two different terms to describe committees of transit agencies engaged in high capacity transportation planning. First, there are "regional policy committees" that can be formed in counties with a population of one hundred seventy-five thousand or more and with an interstate highway within their borders, as long as the county does not have a population of more than one million or more than four hundred thousand and border a county with more than one million. RCW 81.104.030(1). Second, there are "joint regional policy committees" that are to be formed in counties with a population of one million or more, or in counties of two-hundred ten thousand to less than one million bordering a county of one million or more. RCW 81.104.040.[5]

Only transit agencies participating in joint regional policy committees must submit their high capacity transportation system plan and financing plan to the voters for approval. RCW 81.104.030(1) ("Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan.").

Thus, in order to determine which counties are subject to the voter approval requirement, we must discern the meaning of the term “joint regional policy committee.”

Although the term is technically undefined in statute, the legislature specifically described the circumstances under which joint regional policy committees can be created, how they are formed, and the authorities granted to them. Current RCW 81.104.040 specifically describes the formation and make-up of a joint regional policy committee:

Transit agencies in each county with a population of one million or more, and in each county with a population of from two hundred ten thousand to less than one million bordering a county with a population of one million or more that

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are authorized on January 1, 1991, to provide high capacity transportation planning and operating services must establish through interlocal agreements a joint regional policy committee with proportional representation based upon the population distribution within each agency’s designated service area, as determined by the parties to the agreement.

(1) The membership of the joint regional policy committee shall consist of locally elected officials who serve on the legislative authority of the existing transit systems and a representative from the department of transportation. . . .

(2) The joint regional policy committee shall be responsible for the preparation and adoption of a regional high capacity transportation implementation program, which shall include the system plan, project plans, and a financing plan. This program shall be in conformance with the regional transportation planning organization’s regional transportation plan and consistent with RCW 81.104.080.

(3) The joint regional policy committee shall present an adopted high capacity transportation system plan and financing plan to the boards of directors of the transit agencies within the service area or to the regional transit authority, if such authority has been formed. The authority shall proceed as prescribed in RCW 81.112.030.

RCW 81.104.040.

Thus, a joint regional policy committee is a specific entity that must be formed through interlocal agreements in counties with certain populations. The joint committee must prepare and adopt a regional transportation plan and must present its plan to a regional transit authority, if such an authority has been formed. In contrast, transit agencies in less populous counties that choose to establish high capacity transportation service must form regional policy committees (but not *joint* regional policy committees). RCW 81.104.030(1).

This interpretation is supported by RCW 81.112.030 which authorizes the establishment of regional transit authorities in more populous counties. Once

formed, a regional transit authority is directed to take steps to implement the system plan and financing plan adopted by the joint regional policy committee or, if no plan was adopted, the authority must proceed to adopt its own plan based on the work of the joint committee. RCW 81.112.030(5). Upon formation of the regional transit authority, the joint regional policy committee ceases to exist. RCW 81.112.030(5).

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To our knowledge, Snohomish, King, and Pierce are the only counties that were required to form a joint regional policy committee under RCW 81.104.040.[6] However, the statute anticipates that transit agencies in other counties may also participate in joint regional policy committees including “transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bistrate or international high capacity transportation system[.]” RCW 81.104.030(1). In cross-border scenarios, voter approval of the system plan and financing plan is required only from those voters residing within transportation service areas in Washington. RCW 81.104.030(1).

This provision regarding bistrate and international high capacity transportation systems was added to the statute in 1993 at the request of local officials in Clark County who wanted to clarify the body of voters from whom they must seek approval for a bistrate system. Final Bill Report on H.B. 2001, 53d Leg., Reg. Sess. (Wash. 1993). Thus, the question arises whether all bistrate high capacity transportation systems are subject to voter approval or whether this voter approval requirement is limited only to those transit agencies participating in joint regional policy committees.

Under the plain language of the statute, it appears that the answer is the latter because the sentence immediately preceding the 1993 amendment states: “Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan.” RCW 81.104.030(1). The following sentence then states: “For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bistrate or international high capacity transportation system, *such voter approval* shall be required from only those voters residing within the service area in the state of Washington.” RCW 81.104.030(1) (emphasis added).

Use of the word “such” indicates that the phrase “voter approval” relates back to the type of voter approval mentioned in the prior sentence. *See State v. Birch*, 36 Wn. App. 405, 409, 675 P.2d 246 (1984) (citing *State v. Eberhart*, 106 Wash. 222, 224-25, 179 P. 853 (1919)). In other words, any transit agency *participating in a joint regional policy committee* must seek voter approval of its system plan and financing plan within its own service boundaries, and if an agency participating in a joint regional policy committee is within a county adjacent to state or international borders, they must seek voter approval only within the service areas located in Washington. An alternative interpretation that would require voter approval for all transit agencies in border counties would impermissibly render the language “participating in joint regional policy committees” superfluous. *See, e.g., G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (statutes are to be interpreted so that all words are given effect and no language is

rendered superfluous).

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Because we conclude that the statutes in question are not ambiguous and can be interpreted in accordance with their plain language, there is no need to resort to additional aids in construction, such as legislative history. However, it is worth noting that legislative history also supports our plain language interpretation.

As described in the background section of this opinion, high capacity transportation planning within the more populous central Puget Sound region was intended to follow a different process than high capacity transportation planning in the rest of the state. Specifically, King, Pierce, and Snohomish counties were intended to follow a different process in the development of their regional high capacity transportation system. This distinction between central Puget Sound and the rest of the state persists today. As our plain language analysis demonstrates, transit agencies in counties authorized to form regional policy committees for high capacity transportation purposes are not required to obtain voter approval of their system plan and financing plan. This contrasts with transit agencies required to form *joint* regional policy committees, which must obtain voter approval of their plans.

Although transit agencies participating in (non-joint) regional policy committees are not required to obtain voter approval for their system plan and financing plan, RCW 81.104 does require voter approval for certain financing options. Specifically, voter approval is required for imposition of specified taxes authorized to fund transportation services. RCW 81.104.140(4); *see also* RCW 81.104.150 (employer tax); .160 (sales and use tax on car rentals); .170 (general sales and use tax). Unlike RCW 81.104.030, these separate voter-approval provisions do not distinguish between transportation authorities participating in regional policy committees and those participating in joint regional policy committees. Thus, voter approval is required for imposition of any of the taxes authorized by these provisions regardless of which agency seeks to impose them.

We trust that the foregoing will be useful to you.

ROBERT W.  
FERGUSON  
*Attorney  
General*

LAURA J.  
WATSON  
*Deputy  
Solicitor  
General*

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1. "Transit agency" is defined to include "city-owned transit systems, county

transportation authorities, metropolitan municipal corporations, and public transportation benefit areas.” RCW 81.104.015(5).

2. For example, agencies participating in joint regional policy committees were required to submit their high capacity transportation plan and financing plan to voters for approval within four years of the date that the interlocal agreements were executed. Laws of 1990, ch. 43, § 25(1)(d). If the interlocal agreements were not executed within two years of the effective date of the 1990 Act, or if voters had not approved a plan within each participating jurisdiction within four years of the execution of the interlocal agreements, then the agencies were directed to convene a conference subject to its own detailed process requirements. Laws of 1990, ch. 43, § 25(2), (3).

3. Section headings are generally not considered part of the law. RCW 1.08.017(3). However, section headings can be considered as a source of legislative intent if they were passed as part of the bill itself instead of being subsequently added by the code reviser. *State v. Chhom*, 162 Wn.2d 451, 460 n.3, 173 P.3d 234 (2007).

4. “Rail fixed guideway system” is defined in pertinent part as a “light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the Federal Railroad Administration, or its successor.” RCW 81.104.015(3).

5. One could argue that the distinction between “joint regional policy committees” and “regional policy committees” was inadvertent, and that the legislature intended the voter approval procedures in RCW 81.104.030 to govern high capacity transit systems in smaller counties while the voter approval procedures in RCW 81.104.040 apply in larger counties. Such an argument would fail, however, because a “court should not change the language of a statute unless it is ‘imperatively required to make it a rational statute.’” *State v. Taylor*, 97 Wn.2d 724, 729, 649 P.2d 633 (1982) (quoting *McKay v. Dep’t of Labor & Indus.*, 180 Wash. 191, 194, 39 P.2d 997 (1934)). That is not the case here, where the legislature clearly intended some distinction between larger and smaller counties and may well have intended that smaller counties creating high capacity transit systems need not obtain voter approval unless they use the specific funding mechanisms in RCW 81.104.150-.170.

6. This is not intended to suggest that Sound Transit, which serves these counties, is subject to the voter approval requirements of RCW 81.104.030. Rather, Sound Transit operates as a regional transit authority which is subject to its own voter approval requirements in RCW 81.112.030(8)-(10).