



EMERGENCY MEDICAL SERVICES—TAX LEVIES—Authorizing The Uninterrupted Continuation Of An Emergency Medical Services Levy

Where local voters have previously approved an emergency medical services levy for either a six-year or ten-year period, the approval of at least 60 percent of the voters is necessary to extend the levy for an additional period at a higher tax rate.

September 27, 2013

The Honorable Kevin Van De Wege
State Representative, District 24
PO Box 40600
Olympia, WA 98504-0600

Cite As:
AGO 2013 No. 4

Dear Representative Van De Wege:

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

Under RCW 84.52.069, can a taxing district seeking to continue a previously established emergency medical services (EMS) levy also increase the levy rate with only a simple majority vote, rather than the 60 percent needed to initially impose an EMS levy?

BRIEF ANSWER

No. The plain language of RCW 84.52.069(2) allows a simple majority vote only where the proposed levy is an “uninterrupted continuation” of a six-year or ten-year EMS levy. An increase in the levy rate is not an “uninterrupted continuation” and, thus, the 60 percent requirement applies to EMS levies that propose increased levy rates. To conclude otherwise would allow an eligible taxing district to obtain, with 60 percent voter approval, a six-year or ten-year levy at a low rate, and then obtain a subsequent six-year or ten-year levy at the maximum rate with only simple majority approval. Emergency medical services are of course vitally important, but we believe that if the legislature had intended a levy increase to be valid with simple majority approval, it would have said so expressly.

BACKGROUND

An EMS levy is a voter-approved property tax levy used to provide emergency medical care and emergency medical services within a taxing district. RCW 84.52.069(5). An EMS levy may be imposed for six years, ten years, or permanently, and it cannot exceed fifty cents per

thousand dollars of assessed value of the property in the taxing district. RCW 84.52.069(2). Until 2012, under subsection (2) of the EMS levy statute, all EMS levies had to be approved by three-fifths (60 percent) of registered voters voting in the election, so long as voter turnout exceeded 40 percent of voter turnout at the last general election. Former RCW 84.52.069 (2011).¹ The law also provided that “any future increase up to the maximum allowable levy amount [had to be] specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.” RCW 84.52.069(8).

In 2012, the legislature amended subsection (2) of RCW 84.52.069 to provide that a “permanent [EMS] tax levy . . . or the initial imposition of a six-year or ten-year [EMS] levy . . . must be specifically authorized by a majority of at least three-fifths of the registered voters . . . at a general or special election,” so long as voter turnout requirements are met.² Substitute S.B. 5381, § 1(2), 62d Leg., Reg. Sess. (Wash. 2012), *enacted as* Laws of 2012, ch. 115, § 1(2). The 2012 legislation also added the following sentence to subsection (2): “The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election.” SSB 5381, § 1(2). The 2012 legislation did not alter the EMS levy statute’s provision regarding increases in levy amounts. Thus, the law still states that “any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.” RCW 84.52.069(8).

In sum, the provision in the EMS levy statute addressing levy increases says only that they must be “specifically authorized by the voters in accordance with subsection (2).” RCW 84.52.069(8). The 2012 legislation for the first time drew a distinction in subsection (2) between (a) permanent EMS levies and “the initial imposition of a six-year or ten-year [EMS] levy” and (b) the “uninterrupted continuation of a six-year or ten-year tax levy.” RCW 84.52.069(2). A permanent or initial imposition of a temporary EMS tax levy must be adopted by 60 percent voter approval, while an “uninterrupted continuation” of a six-year or ten-year EMS levy can now be approved by a simple majority.

As you noted in your request, Assistant Attorney General Jonathon Bashford responded to a request for an opinion on a related topic from Representative Pearson on November 30, 2012. Letter from Jonathon Bashford, Assistant Attorney General, State of Washington, to Kirk Pearson, State Representative, State of Washington (Nov. 30, 2012) (Pearson Informal Opinion).³ In the course of that informal opinion, Mr. Bashford concluded: “A ballot measure that asks the voters to approve an EMS levy at a higher rate is not simply an ‘uninterrupted

¹ Where voter turnout was less than 40 percent of the turnout in the last general election, the “yes” vote had to exceed 24 percent of the total number of votes in the last general election. *See* RCW 84.52.069(2) (requiring approval of 60 percent of 40 percent of voters voting in the last general election, which equals 24 percent (.6 x .4 = .24) of the total number of votes in the last general election).

² The new legislation retained the EMS levy statute’s voter turnout provision. *See supra* note 1.

³ A copy of the Pearson Informal Opinion is attached for ease of reference.

continuation' of the prior levy." Pearson Informal Opinion at 7. You have asked that we reconsider this conclusion.

ANALYSIS

In any question involving statutory construction, we must first strive to ascertain the intent of the legislature by examining the statute's plain meaning. *E.g., Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). A statute's plain meaning should be discerned "from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). Where the legislature does not define a nontechnical term that appears in a statute, we may look to the dictionary definition as part of the plain meaning analysis. *E.g., State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). We do not resort to legislative history or other construction aids unless, after a plain meaning analysis, the statute remains ambiguous. *Campbell & Gwinn*, 146 Wn.2d at 12. "A statute is not ambiguous merely because different interpretations are conceivable"; it must be "susceptible to two or more reasonable interpretations." *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005).

The EMS levy statute does not define "uninterrupted continuation," and so these terms should be given their ordinary meaning. The word "uninterrupted" means "not interrupted : CONTINUOUS." *Webster's Third New International Dictionary* 2499 (2002). The first definition of the word "continuation" is "continuance in a state, existence, or activity : uninterrupted extension or succession : PROLONGATION : the causing of something to continue." *Webster's* at 493. In turn, the definition of the word "continuance" is "a holding on or remaining in a particular state or course of action." *Webster's* at 493. While the third definition of "continuation" is "something that continues, extends, increases, or supplements," that definition is followed by an example: "< the border is a [continuation] of the central design>." *Webster's* at 493.

Thus, the first definition of the word "continuation," in particular, contemplates remaining in a certain "state" or "existence," not a change of a significant or essential characteristic. Moreover, the legislature's use of both "uninterrupted" and "continuation" indicates that the legislature intended "continuation" to have independent meaning beyond simply "uninterrupted" in time. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (recognizing that statutes must be construed so that all language is given effect and no portion is rendered superfluous). The third definition of "continuation" includes the word "increase," but when read in context, including the example, even that definition does not suggest that a "continuation" can change an essential characteristic of the original; rather, it merely suggests that the same thing (e.g., a border or pattern) can "increase" by continuing onward.

The levy amount is an essential characteristic that the voters must consider and approve. *See* RCW 84.52.069(2), (8), .010(1) ("all taxes must be *levied* or voted in specific amounts")

(emphasis added)). Because the ordinary meaning of the word “continuation” does not imply a change in a significant or essential characteristic (here, the levy amount), the ordinary meaning of “uninterrupted continuation of a six-year or ten-year tax levy” would be continuation of the levy as originally passed. As expressed in the Pearson Informal Opinion, “[w]here two levies are authorized at different rates the second cannot be considered a mere ‘continuation’ of the first, even if they are ‘uninterrupted’ in time.” Pearson Informal Opinion at 7.

Moreover, in order to find that an “uninterrupted continuation” of an EMS levy could occur despite an increase in the levy rate, we would have to read “levy” as used in subsection (2) to mean only the imposition of the tax, not the levy rate. But the surrounding context of RCW 84.52 suggests otherwise. While the legislature has sometimes used the term “levy rate” in RCW 84.52 to refer specifically to the rate of a levy, the term “levy” alone is also often used in RCW 84.52 to convey both the fact of a tax *and* the particular tax rate. RCW 84.52.135(7), .085(1) (referring to adjustment of rate as adjustment of “the levy”), .044(1)(a) (“The regular levy of the district . . . shall not exceed fifty cents per thousand dollars of assessed value . . .”).

In addition, RCW 84.52.010 explains that “all taxes must be *levied* or voted in specific amounts,” with some unrelated exceptions. RCW 84.52.010(1) (emphasis added). According to this language, the act of levying must involve imposing a specific property tax rate. Thus, RCW 84.52.010 also weighs against distinguishing the fact of the tax from the levy rate in a way that would permit us to read “uninterrupted continuation of a six-year or ten-year tax levy” as you suggest.

In sum, the plain meaning of “uninterrupted continuation of a six-year or ten-year tax levy,” considering both the ordinary meaning of the words and the full context of the statute, contemplates continuation of both the levy itself and its rate. Thus, a simple majority vote can approve the continuation of a six-year or ten-year levy only if the levy rate remains the same. If an increase in the levy rate is proposed, then the new levy is an “initial imposition of a six-year or ten-year [EMS] levy” *at that increased rate*, and it must be specifically authorized by a 60 percent vote.

You ask us to reconsider this conclusion, as expressed in the Pearson Informal Opinion, based upon comments made during debate on the floor of the House of Representatives in opposition to Substitute Senate Bill 5381 and in opposition to an identically worded House Bill. Washington courts do not resort to legislative history or other construction aids unless, after a plain meaning analysis, the statute remains ambiguous. *Campbell & Gwinn*, 146 Wn.2d at 12. As a result, it is unnecessary to turn to legislative history in this case. Even if we were to consider it, however, the legislative history of the 2012 legislation, considered as a whole, lends weight to our conclusion.

While speaking against passage of Substitute Senate Bill 5381, an opponent of the bill stated that “under the definition of ‘renewal’ in this bill, there could actually be a tax increase.” He explained that the statute *could be* interpreted to allow a simple majority of voters to approve

an increase.⁴ House Floor Debate on Substitute Senate Bill 5381, 62d Leg., Reg. Sess. (Wash. Feb. 29, 2012), at 44:25-44:46, *video recording by TVW*, Washington State's Public Affairs Network, available at http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2012020184A. The statement was equivocal, reflecting only one construction that the bill could receive. House Floor Debate at 44:25-44:46; *see also* Pearson Informal Opinion at 7 n.8 (discussing the same passage from legislative debate). Moreover, comments of an individual legislator do not necessarily reflect the understanding of the legislature as a whole. *See Spokane Cnty. Health Dist. v. Brockett*, 120 Wn.2d 140, 154-55, 839 P.2d 324 (1992). As a practical matter, other legislators may not have understood the member's description to reflect the true impact of the legislation because it simply reflects the statement of a single member who was opposed to the bill, and the proponent did not describe the bill in this way. *See* 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 48:16 (2007) (the views of a single member do not necessarily demonstrate the understanding of the entire body); *see also* House Floor Debate at 43:46-44:13.

If a court were to consider legislative history, it would also consider the evolution of the bill within the legislature. *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 470, 139 P.3d 1078 (2006) (sequential drafts of a bill may aid in determining legislative intent). Senate Bill 5381 was originally introduced in the 2011 legislative session, proposing amendments to the EMS levy statute. The original version of the bill proposed amending the statute to eliminate the 60 percent voter approval requirement for all EMS levies, instead imposing a requirement that EMS levies be approved by a simple majority vote. S.B. 5381, 62d Leg., Reg. Sess., § 1 (2011). The bill did not receive senate committee approval in 2011. *See S.B. 5381 - 2011-12*, Wash. St. Legislature, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5381&year=2011> (last visited Sep. 17, 2013).

The legislature amended the same bill in the 2012 legislative session in a substitute bill. *S.B. 5381 - 2011-12*; *see Buchanan v. Simplot Feeders, Ltd.*, 134 Wn.2d 673, 688, 952 P.2d 610 (1998) (tracing sequential drafts of the same bill from one session to the next within the same legislature). As amended in 2012, and subsequently enacted, the bill no longer amended RCW 84.52.069(2) to replace the 60 percent approval requirement with majority approval, but merely permitted the "uninterrupted continuation of a six-year or ten-year tax levy" upon a simple majority vote. Laws of 2012, ch. 115, § 1(2). When the legislature adopted this approach, it chose to allow simple majority approval of an EMS levy only in certain limited circumstances.

If we were to interpret "uninterrupted continuation of a six-year or ten-year tax levy" to include uninterrupted continuation of the tax, but at an increased amount, a taxing district faced with voter resistance to an expensive EMS levy could reach the maximum levy amount without ever achieving 60 percent approval of the maximum rate. A taxing district could obtain 60 percent voter approval of an initial six-year or ten-year EMS levy at a low levy amount. Then,

⁴ It is not entirely clear whether the opponent was referring to a levy rate increase or the levy lid increase at issue in the Pearson Informal Opinion.

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upon expiration, the taxing district could raise the levy amount dramatically, even up to the statutory maximum, with only majority voter approval. This construction would be inconsistent with the history of the bill's sequential drafts, because it would ignore the legislature's conscious effort to specifically identify the limited circumstances under which a simple majority vote would be sufficient. We believe that had the legislature intended such a result, it would have said so expressly.⁵

We trust that the foregoing will be useful to you.



kdj
Attachment

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⁵ In your request, you also pointed to a post by Judy Cox on the Municipal Research and Services Center website, and emphasized Ms. Cox's expertise. Ms. Cox originally reported that a member of the Department of Revenue staff had indicated to her that they and legislative staff believed "the new tax rate is not an issue" when a county seeks to renew a six-year or ten-year levy. Judy Cox, *It's Now Easier to Renew an EMS Levy!* (May 11, 2012), <http://insight.mrsc.org/2012/05/11/now-easier-to-renew-an-ems-levy>. But Ms. Cox later revisited the question and expressed agreement with this office's informal [Pearson] opinion:

Mr. Bashford's opinion makes sense to me. If this were not the case, an entity could theoretically put the first or initial 6- or 10-year EMS levy on the ballot at some low rate that they think the supporters are likely to pass with a 60 percent vote. Then, the entity could do a continuation levy at a higher rate with a simple majority vote, with the result that the levy rate could be increased without a 60 percent vote.

Judy Cox, *Revisiting the 'Uninterrupted Continuation' EMS Levy with an Informal Attorney General's Opinion* (Feb. 4, 2013), <http://insight.mrsc.org/2013/02/04/revisiting-the-uninterrupted-continuation-ems-levy-with-an-informal-attorney-generals-opinion>.



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November 30, 2012

The Honorable Kirk Pearson
State Representative, District 39
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Dear Representative Pearson:

By letter previously acknowledged, you requested an informal opinion from this office on two questions which I have paraphrased as follows:

1. **If a taxing district receives voter approval to continue an emergency medical service levy for an additional multi-year term as permitted by RCW 84.52.069(2), is the district's tax collection in the first year of the renewed multi-year term limited by the one-percent growth rule set forth in RCW 84.55.010?**
2. **Where a taxing district seeks to continue a previously-approved multi-year emergency medical service levy, does the portion of votes required to approve the continuation levy depend on voter turnout?**

BRIEF ANSWER

I conclude that an emergency medical service (EMS) levy approved by voters under RCW 84.52.069(2) qualifies for an exception from the one-percent growth rule in the first year it is levied by the taxing district, regardless of whether it is an initial multi-year levy or the uninterrupted continuation of a previously-approved levy. A taxing district thus may increase the tax actually collected up to the full amount authorized by the voters without submitting a separate levy lid lift measure for voter approval, even if the amount actually collected thereby constitutes an annual property tax growth rate in excess of the district's normal levy lid. Additionally, when a continuation EMS levy is brought to a public vote at a general or special election, the measure need only pass by a simple majority regardless of voter turnout.

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BACKGROUND

State law allows the voters of various taxing districts¹ to impose a property tax levy for the specific purpose of providing emergency medical care or emergency medical services. RCW 84.52.069(2), (5). Such EMS levies are limited to a maximum rate of fifty cents per thousand dollars of the total assessed value of property in the district. RCW 84.52.069(2). The levy may be imposed indefinitely, or limited to a term of six or ten consecutive years. RCW 84.52.069(2).

In the 2012 regular session, the legislature amended the EMS levy statute by enacting Substitute Senate Bill 5381 (Laws of 2012, ch. 115). That bill made changes to subsection (2), which now reads as follows:

Except [in the case of a city located in two counties], a taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax is imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. *A permanent tax levy under this section, or the initial imposition of a six-year or ten-year levy under this section, must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election.* Ballot propositions must conform with RCW 29A.36.210. A taxing district may not submit to the voters at the same election multiple propositions to impose a levy under this section.

RCW 84.52.069(2) (relevant new language from SSB 5381 italicized).²

¹ A "taxing district" for the purposes of EMS levies means "a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district." RCW 84.52.069(1).

² For ease of reference, a copy of RCW 84.52.069 is attached.

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SSB 5381 thus created a distinction in state law between imposing a new EMS levy and continuing a previously-approved levy in effect for longer than the six or ten years initially approved by the voters. “Initial” levies must be approved by a supermajority of registered voters, while the “uninterrupted continuation” of an existing levy requires only a simple majority.

The statute elsewhere provides a mechanism for the taxing district to increase the amount of an existing EMS levy:

If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

RCW 84.52.069(8). A taxing district that initially requests voter approval of a levy for less than the maximum rate of fifty cents may thus later increase the levy amount, but only with separate voter authorization. As the Department of Revenue describes it, “a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining additional voter approval.” WAC 458-19-060.

In addition to the rate limitations in RCW 84.52, regular property taxes—including EMS levies—are generally subject to the legal provisions in RCW 84.55 defining and limiting the extent to which taxing districts may increase the total dollar amount of regular property tax levies over the amounts collected in previous years. Taxing districts generally are limited each year to collecting no more than one percent above the amount of regular property taxes lawfully levied in the highest of the three most recent years. RCW 84.55.005(2), .010.³ The maximum dollar amount that a district may levy in a particular year is commonly known as a “levy lid.”

The assessed dollar value of existing property in a taxing district may rise faster than one percent per year. When that happens, the levy lid restricts the total dollar amount the taxing district can collect, resulting in a reduction to the rate per thousand dollars of assessed property value. Thus, over time the levy lid can result in the district collecting less than the full voter-approved EMS levy rate. *See* RCW 84.55.010 (limiting the amount of tax payable).

The statute authorizing EMS levies allows the taxing district to impose the full voter-approved EMS levy rate for the “first levy imposed” following a qualifying public vote, even if

³ The limit factor also takes into account increased valuation within the district due to new construction, the construction of certain wind turbines, property improvements, and the increased value of state-assessed property. RCW 84.55.010.

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the voter-approved rate generates a dollar amount greater than the otherwise-applicable levy lid under RCW 84.55. Specifically, RCW 84.52.069(9) provides:

The limitation in RCW 84.55.010 does not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

The voters' approval of an EMS levy accordingly also operates as voter approval to increase the taxing district's levy lid by incorporating the first year's tax collections under the EMS levy into the limit imposed by RCW 84.55.010.⁴ The district's levy lid for future years would then be calculated based on the actual EMS tax dollars collected in the first levy year following voter approval.

With this background in mind, I turn to your specific questions.

ANALYSIS

- 1. If a taxing district receives voter approval to continue an emergency medical service levy for an additional multi-year term as permitted by RCW 84.52.069(2), is the district's tax collection in the first year of the renewed multi-year term limited by the one-percent growth rule set forth in RCW 84.55.010?**

You first ask whether the uninterrupted continuation of a multi-year levy is subject to the one percent annual growth limit under the levy lid statute. RCW 84.52.069(9) provides that the levy lid "does not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section." I conclude that a continuation levy falls within the terms of subsection (9) because the voters' approval of a continuation levy constitutes "the approval of such levy . . . pursuant to subsection (2)[.]" Because voter approval of a continuation EMS levy excludes the first imposition of that levy from the levy lid, a taxing district may collect the full voter-approved rate in the first year of the continuation levy's multi-year term, even if doing so entails more than one percent growth over the EMS property tax dollars collected in the final year of the expiring multi-year levy.

Under the plain language of subsection (9), the "first" imposition of a voter-authorized EMS levy is excluded from the otherwise applicable levy lid as long as it has been approved by voters pursuant to subsection (2). Subsection (2) describes three different standards for voter approval of an EMS levy: a three-fifths supermajority for an initial multi-year levy, a three-fifths supermajority plus additional procedural requirements for a permanent levy, and a simple majority for a continuation multi-year levy. Because subsection (9) applies to all three forms of

⁴ State law would allow the voters to separately approve an increase in the taxing district's levy lid in later years, either temporarily or permanently. RCW 84.55.050.

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voter approval, voter authorization of a continuation levy in accordance with the requirements of subsection (2) triggers the exception in subsection (9). When the taxing district first levies a property tax under the voter-authorized multi-year term of the continuation levy, the amount collected is not restricted to the district's normal levy lid increase.

I have considered the alternative argument that the reference in RCW 84.52.069(9) to "the first levy imposed" means only the "initial" imposition of a six-year or ten-year levy under RCW 84.52.069(2). In common parlance, the words "first" and "initial" can indeed have similar meanings. However, there is no reason to equate the reference to "the first levy imposed" in RCW 84.52.069(9) with "the initial imposition of a six-year or ten-year levy" in RCW 84.52.069(2). The terms used are different, and "[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). In context, it is clear that the reference in subsection (9) is to the "first" imposition of any levy approved pursuant to subsection (2), because subsection (9) makes no distinction among the various methods of approving a levy under subsection (2). Rather, the reference in subsection (9) to the "first levy imposed" simply reflects the manner in which property taxes are imposed. Property taxes are levied in one year, to be collected in the next. RCW 84.52.030 (time of levy of property tax); RCW 84.56.020 (time of collection of property tax). RCW 84.52.069(2) permits imposition of levies each year, for multi-year periods. Excluding the "first levy imposed" from the levy limitation of RCW 84.55.010 has the effect of incorporating the EMS levy into the calculation of the levy limit for each of the subsequent years that the voters authorize. Thus, when the voters approve a continuation of the initial levy, they also approve its inclusion in calculating the levy lid. In light of that broader statutory scheme and the legislature's decision to use two different terms in the same statute, the text of RCW 84.52.069(9) suggests no basis for excluding the "first levy imposed" under a voter-approved continuation levy from its scope.

Because the current language of RCW 84.52.069(9) is not ambiguous, there is no need to resort to its legislative history. *E.g.*, *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305-06, 268 P.3d 892 (2011) ("If a statute is ambiguous, we may look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." (Internal quotation marks omitted.)). However, even if the statute were ambiguous, its legislative history would confirm that the "first levy imposed . . . following the approval of such levy by the voters" refers to any of the types of voter approval allowed under subsection (2). RCW 84.52.069(9).

While subsection (2) now distinguishes between "initial" multi-year levies and "uninterrupted continuation" multi-year levies, the language in subsection (9) regarding "the first levy imposed" predates that statutory distinction. Prior to the passage of SSB 5381, RCW 84.52.069 did not include a category of "initial" levies. There were only six-year EMS levies, ten-year EMS levies, and permanent EMS levies. At that time, "the first levy imposed pursuant to this section" could not have been a reference to the "initial" imposition of a multi-year levy because

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initial levies did not yet exist as a separate category from continuation levies. Rather, the reference in subsection (9) to “the approval of such levy by the voters pursuant to subsection (2)” clearly incorporated all of the voter approval methods described in subsection (2).

In fact, the language of subsection (9) has remained essentially unchanged since the EMS levy statute was created in 1979. *See* Laws of 1979, Ex. Sess., ch. 200, § 1 (“The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.”).⁵ At that time, subsection (2) included only one method for voter approval of an EMS levy: a three-fifths majority vote to approve a six-year levy. Over the years the legislature has amended subsection (2) in a number of ways, including by allowing voters to authorize a ten-year levy or a permanent levy. Laws of 1999, ch. 224, § 1. Like SSB 5381, the 1999 amendment to RCW 84.52.069 left subsection (9) unchanged. In the absence of any substantive change to subsection (9) since the original 1979 EMS levy legislation, it is reasonable to assume that the legislature has not intended to restrict the application of subsection (9) only to a subset of the voter approval procedures described in subsection (2), even as the list of acceptable voter approval procedures has been expanded over time. That history reinforces that the plain meaning of subsection (9) controls.

In posing your question, you suggest the possibility that a taxing district, having previously received voter authorization to impose an initial multi-year levy for less than the statutory maximum rate, might simultaneously seek to continue that levy and to raise the authorized levy rate.⁶ As you note, if the taxing district could do so as a continuation levy based upon a simple majority vote, and if RCW 84.52.069(9) excluded the first imposition of such a levy from the levy lid, then the result would be an increase of the EMS levy rate upon less than a three-fifths vote. You suggest that this result might be a basis for concluding that RCW 84.52.069(9) does not apply to continuation levies, but only to initial levies, which require a two-thirds vote. This suggestion, however, assumes that a measure proposing not only to authorize an EMS levy for an additional six-year or ten-year period but to simultaneously increase the rate of the levy would constitute an “uninterrupted continuation” of the initial levy. Only if it did would such a levy qualify for approval based on a simple majority. RCW 84.52.069(2).

⁵ What is now subsection (9) was originally enumerated as subsection (6) in the 1979 legislation. In 2011, the legislature amended subsection (9) to replace the phrase “shall not” with the phrase “does not” with no apparent change in meaning. Laws of 2011, ch. 365, § 2.

⁶ For example, in the August 2012 primary election, Skagit County voters were asked to approve Proposition 1, which asked voters to continue Skagit County’s EMS levy for six additional years, and simultaneously to increase the levy amount from \$0.25 to \$0.375 per \$1,000 of assessed valuation. According to the website of the Skagit County Assessor, Proposition 1 passed with 79.48 percent of the vote. There may be similar examples from other taxing districts. The purpose of this opinion is to assist you in your legislative capacity by providing our analysis of the applicable law so that you can determine whether further legislation on the topic may be desirable. The purpose is not to resolve any particular dispute regarding any specific local tax levy.

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A ballot measure that asks the voters to approve an EMS levy at a higher rate is not simply an “uninterrupted continuation” of the prior levy. Where two levies are authorized at different rates the second cannot be considered a mere “continuation” of the first, even if they are “uninterrupted” in time.⁷ To qualify as a “continuation” of the first levy, the second levy must prolong the same levy rate previously approved by a three-fifths majority of the voters in the initial multi-year levy. A levy authorization that is uninterrupted in time, but discontinuous in effect, is a new “initial” levy rather than a continuation levy qualifying for voter approval by a simple majority vote.⁸

I therefore conclude that RCW 84.52.069(9) excludes the first imposition of a continuation levy from the levy lid of RCW 84.55.010. Because SSB 5381 did not amend subsection (9), that subsection retains its historic and plain meaning, excluding the first year of a voter-authorized EMS levy from the district’s generally applicable levy lid regardless of which of the subsection (2) voter approval methods the district relies upon to impose that levy.

⁷ The EMS levy statute does not define the term “uninterrupted continuation,” and so it should be given its ordinary meaning. *State v. Chester*, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). “[W]e may discern the plain meaning of nontechnical statutory terms from their dictionary definitions.” *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010) (alteration in original). The word “continuation” has two meanings that may be relevant here. The first definition given by *Webster’s* is “continuance in a state, existence, or activity : uninterrupted extension or succession : PROLONGATION . . . : the causing of something to continue.” *Webster’s Third New International Dictionary* 493 (2002). Alternatively, “continuation” may refer to “something that continues, extends, increases, or supplements.” *Id.* “Continuation” must mean more than merely “uninterrupted,” since that word immediately precedes “continuation” in the statute. See *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” (Internal quotation marks omitted.)). The key term from the first definition, “continuance,” has the relevant meaning of “a holding on or remaining in a particular state or course of action.” *Webster’s* at 493. In the context of this statute, the relevant “state,” “activity,” or “course of action” being extended is the voter-authorized levy rate.

⁸ One passage from the House floor debate on SSB 5381 might suggest a contrary conclusion. One opponent of the bill argued that it would allow a taxing district to increase taxes based on a simple majority vote. House Floor Debate on Substitute S.B. 5381, 62d Leg., Reg. Sess. (Wash. Feb. 29, 2012), at 44:21, *video recording by TVW*, Washington State’s Public Affairs Network, *available at* http://www.tvw.org/index.php?option=com_tvw_player&eventID=2012020184A (remarks of Rep. Ed Orcutt: “[U]nder the definition of ‘renewal’ in this bill there could actually be a tax increase.”). However, that statement is at best ambiguous: it may have been a reference to the interaction of SSB 5381 with subsection (9) which, as discussed above, allows a continuing levy to be imposed at the full voter-approved rate even if doing so constitutes a tax increase of more than one percent compared to the amount collected in previous years. Even if the floor statement were not ambiguous, “a legislator’s comments from the floor are not necessarily indicative of legislative intent.” *Spokane Cnty. Health Dist. v. Brockett*, 120 Wn.2d 140, 154-55, 839 P.2d 324 (1992). This is particularly so when the member spoke in opposition to the bill. 2A Norman B. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 48:16 (2007). In any case, since the language of RCW 84.52.069 is plain on its face, there is no need to resort to legislative history. “If the statute’s meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended.” *TracFone Wireless, Inc. v. Dep’t of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010).

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2. Where a taxing district seeks to continue a previously-approved multi-year emergency medical service levy, does the portion of votes required to approve the continuation levy depend on voter turnout?

Your second question relates to the voter turnout required to pass a continuation EMS levy. A three-fifths supermajority of the voters is generally required to approve a permanent levy or “the initial imposition of a six-year or ten-year levy[.]” RCW 84.52.069(2). However, that three-fifths threshold is subject to the requirement that “the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election.” RCW 84.52.069(2). When the public vote on a permanent or initial multi-year EMS levy fails to attain more than forty percent turnout compared to the most recent general election, the levy will not pass unless “the number of persons voting ‘yes’ on the proposition . . . constitute[s] three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election[.]” RCW 84.52.069(2).

The effect of those provisions is to set a minimum floor for the number of “yes” votes required to pass an EMS levy, even if the proportion of “yes” votes constitutes a three-fifths majority of those voting on the proposition. In other words, a permanent or initial EMS levy proposition that fails to receive a minimum forty percent voter turnout compared to the preceding general election must garner an adequate number of “yes” votes to have constituted a three-fifths majority if turnout had reached the forty percent mark. In the case of low voter turnout, an EMS levy will need even more than a three-fifths supermajority to pass. The exact proportion of “yes” votes required to pass an initial or permanent EMS levy can thus vary depending on the precise number of votes cast on the proposition compared to turnout in prior elections.

You ask whether a similar voter turnout requirement applies where a district seeks voter authorization of a continuation EMS levy rather than an initial or permanent levy. It does not.

The turnout-sensitive three-fifths supermajority requirement described above applies only to “[a] permanent tax levy . . . or the initial imposition of a six-year or ten-year levy[.]” RCW 84.52.069(2). The voter authorization requirements for “[t]he uninterrupted continuation of a six-year or ten-year tax levy” is described separately. RCW 84.52.069(2). That requirement reads in full:

The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election.

RCW 84.52.069(2). The statute thus requires a continuation levy to be “specifically authorized by a majority” vote. Additionally, the vote must take place during “a general or special

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election.” RCW 84.52.069(2). The plain language of the statute does not impose the kind of turnout-related conditions on continuation EMS levy approval that are imposed on the approval of an initial or permanent EMS levy.

The voter turnout requirements for initial and permanent EMS levies are imposed in the sentence immediately preceding the sentence that governs voter authorization requirements for continuation multi-year levies. Had the legislature meant to impose a similar turnout-dependent sliding scale on continuation levies as it imposes on initial and permanent levies, it could easily and clearly have done so by adopting similar language. In the absence of such language, the plain meaning of the phrase “a majority of the registered voters thereof approving a proposition” is that such a ballot proposition will pass if it garners a majority of votes, regardless of voter turnout compared to prior elections.⁹

I hope the foregoing information will prove useful. This is an informal opinion and will not be published as an official Attorney General Opinion.

Sincerely,



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⁹ The three-fifths majority vote requirement and the forty percent turnout requirement applicable to initial and permanent EMS levies under RCW 84.52.069(2) mirror the standard imposed by the Washington Constitution for voter approval of an aggregate annual levy amount, from all state and local sources, exceeding “one per centum of the true and fair value” on any real or personal property. Const. art. VII, § 2; *see* Const. art. VII, § 2(a). Regardless of whether the legislature meant the voting requirements for initial and permanent EMS levies to simultaneously meet the requirement for exceeding the aggregate one percent limitation—a possibility we will not analyze here—the lower vote threshold applicable to continuation levies clearly falls short of that constitutional requirement. A continuing EMS levy that results in the aggregate tax rate on some properties exceeding one percent of true and fair value would require separate and specific voter authorization under article VII, section 2.

RCW 84.52.069

Emergency medical care and service levies.

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district.

(2) Except as provided in subsection (10) of this section, a taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax is imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. A permanent tax levy under this section, or the initial imposition of a six-year or ten-year levy under this section, must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election. Ballot propositions must conform with RCW 29A.36.210. A taxing district may not submit to the voters at the same election multiple propositions to impose a levy under this section.

(3) A taxing district imposing a permanent levy under this section shall provide for separate accounting of expenditures of the revenues generated by the levy. The taxing district must maintain a statement of the accounting which must be updated at least every two years and must be available to the public upon request at no charge.

(4) (a) A taxing district imposing a permanent levy under this section must provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. This referendum procedure must specify that a referendum petition may be filed at any time with a filing officer, as identified in the ordinance or resolution. Within ten days, the filing officer must confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner has thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the taxing district, as of the last general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer must verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, must certify the referendum measure to the next election within the taxing district if one is to be held within one hundred eighty days from the date of filing of the

referendum petition, or at a special election to be called for that purpose in accordance with RCW 29A.04.330.

(b) The referendum procedure provided in this subsection (4) is exclusive in all instances for any taxing district imposing the tax under this section and supersedes the procedures provided under all other statutory or charter provisions for initiative or referendum which might otherwise apply.

(5) Any tax imposed under this section may be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(6) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county must be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied countywide, the service must, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no countywide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is limited in duration and that is authorized subsequent to a county emergency medical service levy that is limited in duration, expires concurrently with the county emergency medical service levy. A fire protection district that has annexed an area described in subsection (10) of this section may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection (6).

(7) The limitations in RCW 84.52.043 do not apply to the tax levy authorized in this section.

(8) If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any

future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

(9) The limitation in RCW 84.55.010 does not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(10) For purposes of imposing the tax authorized under this section, the boundary of a county with a population greater than one million five hundred thousand does not include all of the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

(11) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.