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Washington State Senate

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May 11, 2017

The Honorable Curtis King
PO Box 40414
Olympia, WA 98504-0414

The Honorable Mike Padden
PO Box 40404
Olympia, WA 98504-0404

Dear Senator King & Senator Padden:

As you are both aware, the legislature has been very concerned about the impact that the collection of the motor vehicle excise tax (MVET) by Sound Transit has had on taxpayers in our districts. Early in the regular session, we introduced legislation to address the inflated schedule and the rate that Sound Transit uses to calculate the tax, and we urged the legislature to address the systemic governance issue that has led to overcharging taxpayers and its lack of overall accountability to voters, i.e., that a single individual appoints a majority of the board members of Sound Transit. The Senate took leadership in hearing and passing effective legislation to address these issues. We remain committed to finding a legislative fix during the special session that will resolve these matters in a way that creates real relief for taxpayers.

However, as more information has emerged in the media, and as we have delved more deeply into Sound Transit's practices, it is clear that legislation may not be enough. We are concerned that Sound Transit may have engaged in a systematic effort to confuse and misrepresent the impact and cost of the ST3 authorization to legislators and the public. Senator Padden's suggestion during a floor debate as quoted in a recent media report that "the attorney general of the state ought to be investigating Sound Transit for consumer fraud" was not lost on us. Although we still have outstanding public records requests to Sound Transit, here is what has come to light to date:

1. Unconstitutional MVET authorization language. Sound Transit promoted a version of a bill in 2015 that was unconstitutionally drafted in such a way as to resurrect a twice-repealed MVET schedule in violation of Article 2, Section 37 of the Washington State Constitution. As outlined in our letter to the Attorney General, the purpose of this constitutional restriction to drafting statutes by reference is to "prevent mischief" and "to protect the Legislature and public from fraud and deception and to avoid confusion, ambiguity and uncertainty."¹ The unconstitutionally drafted legislation was included in the ten or so bills that made up the 2015 Connecting Washington transportation revenue package.

¹ *State v. Tessema*, 139 Wash. App. 483 (2007) *rev. denied* 163 Wash. 2d 1018 (Wash. 2007)

According to a recent news article, the language was so opaque that Rep. Judy Clibborn, the chairwoman of the House Transportation Committee and deeply involved in forming and negotiating the package, said it hadn't even occurred to her that Sound Transit would use the older

method to calculate car-tab fees, which lawmakers long ago decided was unfair. "Sometimes if you don't think to ask the question, you make an assumption, because it's not even on your radar screen," said Clibborn, D-Mercer Island.² Similarly, Senator King in the same article stated that he "was focused on the difference in rates in negotiations not the rate increase."³ We believe the misleading and unconstitutional provision may have been intentional.

2. Unclear length of authorization. The same news story cited above indicates that Sound Transit may have misled lawmakers about the total time period for the package for which they sought authorization. At a committee hearing in 2015, Sound Transit board members repeatedly spoke of needing the Legislature to authorize "the full \$15 billion" in taxing authority if the agency was to extend light rail to Tacoma and Everett.⁴ According to the article, several lawmakers said those kinds of statements led them to think they were approving only \$15 billion in taxes for Sound Transit — not the nearly double in amount, or \$28 billion that with bond revenue increased to a \$54 billion package that Sound Transit sought later in the ST3 measure.

Rep. Clibborn was quoted as saying that she is not sure lawmakers would have signed off on Sound Transit 3 if they had known how big the tax proposal would become. "I think if you had said, 'We're going to bond this and we're going to ask for \$54 billion,' it would not have gone anywhere," Clibborn said. "Nobody was going to do that. ... Everybody was having this \$15 billion in front of them."⁵ The bottom line is that the reason that legislators relied on Sound Transit's representations in committee testimony was that the total authorization was \$15 billion over a 16-year time period. Based upon that testimony, they had no reason to limit the time period of the authorization.

3. Sound Transit's Improper Participation in Prop. 1 Election. RCW 42.17A.555 prohibits any official or employee of a public agency from using any of the facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for the promotion of any ballot proposition. There are strong indications that Sound Transit may have directly or indirectly participated in the public campaign to support the ballot measure.

First, Sound Transit conducted a public-outreach survey distributed by the agency in 2016 that sought feedback about Sound Transit's planned expansion and at least one question gauged whether voters would be willing to vote for the ballot measure. After the Public Disclosure Commission said the poll likely ran afoul of state law that bars public agencies from supporting political campaigns, Sound Transit pulled the question from the survey.⁶ Second, a few months later, Sound Transit illegally provided the email addresses of ORCA cardholders to a political

² <http://www.theolympian.com/news/politics-government/article144829399.html>

³ Id.

⁴ Id.

⁵ Id.

⁶ <http://www.seattletimes.com/seattle-news/sound-transit-pulls-survey-question-that-may-break-state-law/>

campaign in favor of Prop. 1.⁷ Third, Sound Transit spent \$7.8 million in 2016 on “marketing, lobbying, communications and neighborhood outreach” (including \$858,379 on a “ribbon cutting”

party to celebrate the long-delayed opening of Capitol Hill and UW stations) which coincided with the campaign to support ST3.⁸ According to Sound Transit's own budgeting documentation, this represented an increase in its communications and external affairs budget of almost \$2 million from 2014 to 2016 - a 25% increase that was implemented during the budgeting process at the time the legislature was considering and passing the Connecting Washington package.⁹ Fourth, Sound Transit downplayed the actual cost of ST3 to taxpayers, evidenced by the intensity of taxpayer outrage from every corner of the RTA, including many who voted for ST3. For example, Sound Transit led people to conclude that the combined taxes (sales, property and MVET) they would pay would be about \$169 per adult per year or roughly \$14 a month - a figure that clearly was misleading.¹⁰

At a minimum, the actions described above require scrutiny from the Legislature. We are requesting that, as chairs of the Senate Transportation and Law and Justice Committees, respectively, one of you conduct investigatory work sessions and/or hearings on these matters. As we receive and review more Sound Transit documents as they are produced to us over the next number of weeks, it is certainly possible additional issues may surface and we will apprise you of the same on a timely basis.

As you are aware, committees of the legislature have overlapping jurisdiction. The Senate Transportation Committee has already had one work session on concerns regarding Sound Transit and has heard and passed legislation aimed at remedying them. The Senate Law and Justice Committee has oversight on constitutional matters as well as issues that pertain to public records, criminal and civil law, and the consumer protection act. Either committee would be an appropriate venue for allowing further public scrutiny in an effort to resolve the allegations above.

On behalf of our constituents, taxpayers, and the citizens of our state, please consider our request.

Sincerely,



Senator Steve O'Ban
28th Legislative District



Senator Dino Rossi
45th Legislative District

⁷ <http://www.seattletimes.com/seattle-news/politics/sound-transit-improperly-gave-173000-orca-cardholders-info-to-ballot-measure-promoters/>

⁸ <http://www.seattletimes.com/seattle-news/transportation/party-at-uw-capitol-hill-light-rail-stations-cost-taxpayers-858k/>

⁹ <https://www.soundtransit.org/sites/default/files/Adopted%202016%20Budget.pdf>

¹⁰ https://st32.blob.core.windows.net/media/Default/Document%20Library%20Featured/July_2016/ST3TaxImpactMemo070716.pdf; <http://www.thenewstribune.com/news/local/news-columns-blogs/matt-driscoll/article145358024.html>