RULING ON SSB 5987: APPLICATION OF RULE SIXTY-FOUR'S SUPERMAJORITY VOTE REQUIREMENT TO ADVANCE TO THIRD READING

(March 2, 2015)

In ruling upon the point of order raised by Senator Cleveland concerning the number of votes necessary to advance Substitute Senate Bill 5987 to third reading, the President finds and rules as follows:

Senate Rule 64 provides in part that "any bill that creates a new tax shall require the affirmative vote of two-thirds of the senators elected or appointed to advance to third reading . . . ."

Setting aside the question of constitutionality, as that question has not been asked, this is the first opportunity to provide guidance to the body on the interpretation and implementation of the rule. The President asks for the body's patience as he provides an explanation for how he interprets which specific actions trigger the rule.

Rule 64 requires a supermajority vote to advance a bill that "creates a new tax." The President analyzes and applies this rule to a revenue item by breaking it into a two part test:

1. Is the revenue item a new revenue item? and
2. Is the revenue item a tax?

If the answer to both questions is "yes," then the rule is triggered and a supermajority vote is required to advance the bill.

Senate Bill 5987 raises the gas tax as well as a number of transportation related fees. Unlike previous initiatives, merely increasing an existing tax or fee does not trigger the new supermajority vote rule. There must be the creation of a <u>new</u> tax.

Additionally, the bill contains some revenue items that are new, but are clearly fees, rather than taxes. The new rule is also not triggered by these items.

As a reminder to the body, the President has a long line of previous rulings differentiating between taxes and fees which the members may find instructive to review. In short, a tax raises revenue for general government purposes, while a fee is charged to a specific class of payors to provide for a specific service or program. The President focuses on the nexus between those paying and the purpose for which the funds are to be used. The tighter the nexus, the more likely the revenue item is a fee. When a tight nexus is lacking, the revenue item is more likely a tax.

Applying the two part test to specific provisions within Substitute Senate Bill 5987, the President finds two provisions that require greater scrutiny.

Section 201 establishes a “freight project fee” to be paid by those with vehicles over ten thousand pounds. Although it is based on weight it is called out separately from the weight fees, and appears to be a new fee created for the first time in the bill. It is a new revenue item, and meets part one of the test.

Turning to whether this “freight project fee” is a tax or a fee, the President looks at whether there is a nexus between those with vehicles over ten thousand pounds and the purpose for which the funds are spent. The bill distributes the funds to a variety of accounts, some of which appear to have a nexus to the fee payors (accounts funding transportation projects), but also broad accounts funding the operations of the state patrol and ferries. Those funds benefit the general public and are not as tightly linked to the fee payors. The lack of a narrow nexus meets part two of the test, and the President finds that this item is a new tax.

Additionally, sections 211 and 212 contain what the bill calls “fee equalization” provisions. Some background on these provisions may be helpful. Under current law, whether or not a person pays a service fee on a report of sale or transitional ownership transaction depends upon who processes the transaction. A “service fee” is currently paid by customers going through a subagent or the auditor, but not by those purchasing through the department of licensing.

By ensuring that everyone pays the same fee no matter which entity processes the transaction, the class of people who pay the “service fee” is expanded. Because this fee is new for the group of customers who previously purchased these transactions through the department of licensing, this is a new revenue item and meets the first part of the analysis to trigger the supermajority vote rule.

The bill uses the funds paid by these purchasers of reports of sale and transitional ownership transactions to fund ferry vessel replacement. The President finds no nexus between the payors and the purpose for which the funds are spent, making this item a tax, and meeting part two of the analysis.

Finding that Sections 201, 211 and 212 of the bill create new taxes, the President rules that Substitute Senate Bill 5987, in its current form, triggers Senate Rule 64 and thirty-three votes are required to advance the bill from second to third reading.