

Rulings of Lieutenant Governor Brad Owen

1997-2016



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EDITOR'S NOTES

Please note the following:

1. **Not exclusive.** The body of precedent within is neither conclusive nor exhaustive on every matter. Moreover, not every ruling of Lieutenant Governor Brad Owen is included. Instead, those rulings deemed most relevant and helpful to parliamentary matters were chosen. Where a point had been made by another ruling, similar rulings were excluded. Finally, general “housekeeping” rulings were omitted (i.e., questions as to what measure was presently before the Senate, time for caucus, etc.).
2. **References to the Senate Rules are generally to the Rule in effect at the time.** On most topics, the differences (if any) should be slight. Moreover, “Rule” without any further citation refers to a Senate Rule.
3. **References to *Reed’s Parliamentary Rules* are to “Rules.”** Technically, *Reed’s Parliamentary Rules* is broken into chapters and sections. Because of common use and the confusion of switching between rules and sections, sections are presented as rules. Thus, “Reed’s Rule 212” is, to be technically accurate, section 212 of Chapter XIII.
4. **References to *Mason’s Manual of Legislative Procedure* are to “Rules.”** Technically, *Mason’s Manual of Legislative Procedure* is broken into parts, chapters, and sections. Because of common use and the confusion of switching between rules and sections, sections are presented as rules. Thus, “Mason’s Rule 310” is, to be technically accurate, section 310 of Chapter 32, Part IV. The 2000 edition has been used.

ADJOURNMENT

Motion to Adjourn Cannot Be Made While Under A Call of the Senate¹

POINT OF ORDER

Senator Benton: “A point of order. A motion to adjourn–.” (Page 850–2000).

REPLY BY THE PRESIDENT PRO TEMPORE

President Pro Tempore Wojahn: “The motion to adjourn is not debatable and the question before the Senate is shall we now adjourn.” (Page 850–2000).

REMARKS BY SENATOR SNYDER

Senator Snyder: “I believe the motion to adjourn cannot be made while we are under the Call of the Senate. We would have to dispense with the Call of the Senate before we could act on the motion to adjourn.” (Page 850–2000).

RULING BY THE PRESIDENT PRO TEMPORE

President Pro Tempore Wojahn: “According to Rule 38, adjournment cannot be called for while we are still under the Call of the Senate. We are still under the Call of the Senate.” (Page 851–2000).

Motion to Adjourn is the Highest Motion and Cannot Be Amended or Debated

PARLIAMENTARY INQUIRY

¹ See Senate Rule 21 (Precedence of Motions, motion to adjourn is highest privileged motion) and Senate Rule 38 (motion to adjourn always in order except

Senator Johnson: “A parliamentary inquiry, can that motion be pending while Senator Sheahan is recognized to give notice of reconsideration?” (Page 339–2000).

REPLY BY THE PRESIDENT

President Owen: “A motion to adjourn is nondebtable.” (Page 339–2000).

RULING BY THE PRESIDENT

President Owen: “The President believes that a motion to adjourn—he doesn’t believe—he knows—is the highest order and privileged motion of the highest order and nondebtable. There is no other motion that can be debated until that motion is taken care–disposed of.” (Page 339–2000).

MOTION

Senator Johnson moved to table the motion to adjourn. (Page 340–2000).

REPLY BY THE PRESIDENT

President Owen: “The President believes that a motion to table cannot be made, but we will find out.” (Page 340–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the inquiry by Senator Johnson, in Reed’s Rules, it states, ‘To adjourn–not amendable, not debatable; has precedence over all other motions.’ so, the only motion before us, unless withdrawn, is the motion by Senator Betti Sheldon to adjourn until Friday at 9:00 a.m.” (Page 340–2000).

when under the Call of the Senate). See also Reed’s Rule 201 (not debatable or amendable, has precedence over all other motions).

ADVISORY OPINIONS

President Generally Does Not Issue

POINT OF ORDER

Senator West: “A point of order, Mr. President. After reading Senate Bill No. 6613, I submit that Senate Bill No. 6613 is in violation of Senate Rule 25, which states as follows: ‘No bill shall embrace more than one subject and that subject shall be expressed in the title. I submit that Senate Bill No. 6613 contains two subjects and that the subjects are not expressed in the title of the bill.

“Senate Bill No. 6613 is titled ‘An act relating to child passenger restraints systems.’ Section 1 of this act would make certain changes to the law relating to child restraint system in an automobile for children under three and does not make district requirements based on weight. Section 1 would, for example, require that a child of less than one year of age must be properly restrained in a rear-facing seat and other requirements.

“However, the bill then takes a wild turn. In Section 2, Mr. President, the bill would amend RCW 46.61.668. That statute currently states generally, first, that all persons, including persons over the age of sixteen must wear safety belts; and second, that enforcement of the seatbelt requirement may be accomplished only as a secondary action. Section 2 of this bill would delete the requirement that seatbelt violations relating to any person, including adults, may be enforced only as secondary offenses. These violations would not be enforceable as primary actions.

“Mr. President, in a 1998 ruling you held that because Senate Rule 25 is identical to Article 2, Section 19 of the State Constitution, you would look to cases interpreting Article 2, Section 19, when

ruling on these points of order under Rule 25 (1998 Senate Journal, page 776). As you noted in your 1998 ruling, although there is a heavy burden on the challenger of a statute, the cases dictate that there must be some ‘rational unity’ between the general subject and the incidental subjects in a measure.

“Mr. President, I submit that there is no unity here whatsoever, let alone a rational unity, between the general subject that makes distinctions in the kinds of safety seats children must occupy, and an incidental subject that allows for the first time the adult seatbelt law to be enforced as a primary action. Clearly, this action, the way the bill is drafted, Mr. President, is what we would call ‘logrolling,’ where you attach an unpopular concept and force the body to have to vote against something they want to do when they are trying to prevent something that they don’t want to happen.

“So, I would ask you to rule, sir, that this bill violates Rule 25 and also Article 2, Section 19, of the State Constitution.” (Page 422–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling on the point of order by Senator West concerning whether Senate Bill No. 6613 violates Senate Rules 25, the President notes that he has entertained this point of order on two occasions in the past, both times when the measure in question was on third reading. The President believes that the proper time to make this point of order is on third reading. Until that time, the body may perfect the measure.

“You’re asking for an advisory opinion. The President does not give advisory opinions. The President makes rulings on points of order. If the President ruled on a point of order on second reading that a measure fails to comply with Senate Rule 25, this would have the effect of preventing

further consideration of that measure, and of preventing the body from perfecting the measure so that it does comply with Senate Rule 25.

“The President believes that the proper time to make a point of order under Senate Rule 25 is on third reading. Until that time, the body may perfect the measure and, if necessary, consult with advisers concerning the measure’s compliance with Senate Rule 25.” (Page 431–2000).

President May Issue Advisory Opinions

PARLIAMENTARY INQUIRY

Senator McCaslin: “Mr. President, a point of parliamentary inquiry. Senate Rule 45 (1)² requires committees to either provide or vote to waive five days’ notice before hearing a measure. Mr. President, I ask, assuming the first and only time a committee considers a measure is during executive session, does the five day notice rule apply? If not, I am concerned that committees could pass bills without any public notice whatsoever.” (Page 417–2001).

RULING BY THE PRESIDENT

President Owen: “In ruling on the point of parliamentary inquiry raised by Senator McCaslin concerning whether the

five day notice requirement in Senate Rule 45 (1) applies to bills in committee considered for the first time in executive session. It is not the President’s practice to issue advisory opinions of hypothetical facts. Each point of order must be judged on its individual merits. Although the President will wait for a point of order on actual facts to issue a binding opinion on this issue, the President might suggest that the safest course for committee chairs is to adhere to the five day rule—either give or waive five days’ notice as the case may be—for bills considered for the first time in executive session.” (Page 417–2001).

AMENDMENTS

Amendment to Amendment to Amendment³

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry. Mr. President, I’m a little confused, I guess. Is this an amendment to the amendment to the amendment?” (Page 1368–1997).

REPLY BY THE PRESIDENT

² Rule 45 provides: “1. At least five days notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing. By a majority vote of the committee members present at any committee meeting such notice may be dispensed with. The reason for such action shall be set forth in a written statement preserved in the records of the meeting...”

³ Reed’s Rule 133 provides: “Amendment to the Amendment.— In case the amendment offered, while

satisfactory in its design does not in the opinion of a member exactly meet the case, he is at liberty to propose an amendment to the amendment. Here, however, the process must end, for there must somewhere be a limit or confusion would ensue. The general judgment of assemblies has settled upon the limitation of amendments to the second degree. If the amendment to the amendment is not satisfactory to the assembly it can be voted down, and then a new amendment to the amendment will be in order, which in its turn can be rejected, and so on until the assembly is satisfied.”

President Owen: "Senator Snyder, I think I almost had an answer. Yes, that is what it is."(Page 1368–1997).

Amendments to Striking Amendments

In a quick ruling (non-written) on April 13, 2009 (Page 1160–2009), the President ruled that, while a striking amendment could itself be amended, an amendment which acted as a striker—in whole or substantially—was out of order, as it should more properly be viewed as a competing striker in its own right and offered as such. See Reed's Parliamentary Rules 138: "Amendment by Striking Out, Continued—Effect of Action.—If the amendment to strike out be decided in the negative, it can not be renewed as to the whole or a part of the words. A negative vote is a decision on the part of the assembly that the words proposed to be stricken out shall stand part of the main question. It may, however, be proposed that these words with others, or a part of these words with others, be stricken out, provided the words newly proposed to be stricken out constitute substantially a new proposition different from the one already decided. In like manner if a motion to strike out a paragraph be lost, the paragraph cannot be amended. Hence all motions to amend a paragraph should be put before the motion to strike out is put."

PARLIAMENTARY INQUIRY

Senator Snyder: "A point of parliamentary inquiry, Mr. President. If the body adopts the striking amendment by Senators Finkbeiner and Rossi, what will the status of the striking amendments by Senators Brown and Jacobsen be?" (Page 738–1997).

REPLY BY THE PRESIDENT

President Owen: "Senator Snyder, it would be the ruling of the Chair, that the first striking amendment would be an amendment to the bill. The second striker would be an amendment to the striking amendment and, therefore, you could have an amendment to the amendment and handle the second striker as well."

Senator Snyder: "Your ruling rules that the striking amendment by Senators Brown and Jacobsen can be offered as amendment to the amendment?"

President Owen: "That is correct."

Senator Snyder: "I think that is probably what the sponsors of the amendment would like to do then."

President Owen: "Yes, Senator, that would be correct." (Page 738–1997).

REPLY BY THE PRESIDENT

President Owen: "The President would like to take this opportunity to clarify the question that was brought up yesterday about consecutive striking amendments, because I suspect we will see that happen again in the future."

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of inquiry by Senator Snyder on March 18, 1997, concerning the effect of two striking amendments to a single measure. On Engrossed Substitute Senate Bill No. 6006, the President notes that an oral correction to the amendment by Senator Brown made that amendment no longer a striking amendment to the bill, but an amendment to the striking amendment by Senator Finkbeiner. As such, Senator Snyder's inquiry was rendered moot. However, the President deems the issue of sufficient import to require the President to set down guidelines for the future."

“The Senate Rules are silent on the issue. Therefore, the President looks to Reed’s Rules to the extent they are applicable, and to Senate procedural precedent to the extent Reed’s Rules are not applicable. Reed’s Rule 144 (addressing amendments to strike and insert paragraphs) and Reed’s Rule 156 (addressing amendments to strike and insert an entire bill) suggest that only one striking amendment can be adopted. Senate precedent has followed this procedure. Also, under Senate precedent, the striking amendment that is first in number will be taken up first. As such, if the first striking amendment is adopted, the body will have chosen, and the second striking amendment will no longer be in order. If the first striking amendment is not adopted, then following Reed’s Rule 142, the second striking amendment is properly before the body.

“If there are three striking amendments and the body rejects the first two, then the third is properly before the body and so on until the body has adopted a striking amendment or rejected them all.” (Page 765–1997).

PARLIAMENTARY INQUIRY

Senator West: “A parliamentary inquiry, Mr. President. The striking amendment by Senators Brown and Jacobsen is a drafted to the underlying bill and not to the striking amendment by Senators Finkbeiner and Rossi. So, for the amendment by Senators Brown and Jacobsen to be considered as an amendment to the striking amendment by Senators Finkbeiner and Rossi, I believe it would have to be written to the striking amendment.” (Page 738–1997).

⁴ At the time of this ruling, Senate Rule 53 provided: “No amendment to the budget, capital budget or supplemental budget, not incorporated in the bill as reported by the ways and means committee, shall be

REPLY BY THE PRESIDENT

President Owen: “Senator West, the issue is we have a striking amendment and then we have another striking amendment that would perfect. Therefore, we are handling it as though it is an amendment to the striking amendment.” (Page 738–1997).

Budget Amendments Cannot Contain Substantive Law

Please see this same topic under “Budget,” below. Includes Legislature v. Locke case/test.

Budget Amendments Require Sixty Percent Vote?⁴

*****Rule was repealed in 2011 and a similar version reinstated in 2015. *****

PARLIAMENTARY INQUIRY

Senator Benton: “A parliamentary inquiry, Mr. President. How many votes does it take to adopt amendment to the budget bill?” (Page 704–2001).

REPLY BY THE PRESIDENT

President Owen: “Senator Benton, it takes thirty votes.” (Page 704–2001).

adopted except by the affirmative vote of sixty percent of the senators elected or appointed.” *****Repealed in 2011. *****

Budget Amendments Require Sixty Percent Vote?⁵ - Constitutionality

In ruling upon the point of order raised by Senator Fain asking whether the provisions found in Senate Rule 53, requiring a sixty percent affirmative vote to amend a bill reported by the Ways & Means Committee, the President finds and rules as follows:

The President's recent decision regarding the majority's adoption of a supermajority voting requirement was based on language from the 2013 decision in the League of Education Voters case. That case reaffirmed the right of a political majority to pass a bill in the form that the majority prefers. As he has done in previous rulings, the President followed the Court's approach and cited some of its language in support of his Ruling.

The newest supermajority provision adopted by the majority would limit the body's ability to amend certain budgets. It would require a sixty percent affirmative vote to amend a budget that had been reported out of the Committee on Ways & Means.

When the President ruled that the previous supermajority tax provisions violated Article 2, Section 22 of the state constitution, the President noted:

In contrast to the other procedural supermajority requirements found in the Senate Rules, these "new tax" provisions do not act to slow down legislation; they act to stop legislation that creates a new tax until a two-thirds supermajority can be persuaded to support it. It is important to note that there is no way to avoid this barrier other than to suspend the rules, which coincidentally also requires a two-thirds vote.

⁵ Senate Rule 53 provides: "No amendment to the operating budget or supplemental budget, not incorporated in the bill as reported by the ways and

Certainly the "60% to amend" raises similar concerns. It protects the decisions of the members of the Committee on Ways & Means. It allows members on the floor to vote in support of an amendment that they know will not be adopted even if a majority of members support it. Although the rule was part of Senate practice for many years, it was discarded on a bipartisan basis in 2012. The 2012 rule change returned the Senate to operating largely on a majoritarian basis.

Regardless of the President's views of the merits of the rule, it must be noted that if a political majority is blocked from adopting an amendment on the floor, the members of that majority are not without recourse. They can withhold their support from the bill on final passage; they can seek to withhold their support for advancing the bill to final passage. Simply put, they can stop the bill from ever leaving the Senate.

More importantly, that same majority can still achieve the result it prefers. When combined with the power of the majority to introduce legislation and advance that legislation to final passage through the use of parliamentary tools, the "60% to amend" rule does not prohibit the majority from acting to accomplish its aims. This ability for a majority to act constitutes a significant distinction from the earlier unconstitutional provisions.

These choices are not ideal. They introduce significant conflict into the legislative process. They can force a political majority to make difficult and risky decisions. But the President is not prepared to find a rule unconstitutional solely because it presents challenging problems for a majority.

For these reasons, the provision found in Senate Rule 53, requiring a 60% vote to amend a budget bill that was reported out of the Ways & Means Committee, does not violate the Washington Constitution.

means committee, shall be adopted except by the affirmative vote of sixty percent of the senators elected or appointed."

(April 2, 2015)

Concur in or Recede from Entire Amendment Only.⁶

POINT OF ORDER

Senator Fraser: “A point of order, Mr. President. Pertaining to the motion that was just made, my question is when the Senate is asked to recede from a Senate amendment to a House Bill, do the rules allow the Senate to recede from only a portion of that amendment? That, in effect, is what this motion is.” (Page 1127–1998).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Fraser challenging Senator Morton’s motion to recede in part to the Senate striking

⁶ See Rule 67: “When there is a disagreement between the senate and house on a measure before the senate, the senate may act upon the measure with the following motions which have priority in the following order:

- To concur
- To non-concur
- To recede
- To insist
- To adhere

These motions are in order as to any single amendment or to a series of amendments. (See Reed’s Rules 247 through 254.)

A senate bill, passed by the house with amendment or amendments which shall change the scope and object of the bill, upon being received in the senate, shall be referred to an appropriate committee and shall take the same course as for original bills, unless a motion to ask the house to recede, to insist or to adhere is made prior to the measure being referred to committee.” See also **Reed’s Rule 245**: “Method of Obtaining Conference.— Whenever the two Houses have reached the point where they disagree, the House which has the papers may reject the amendments of

amendment to Second Engrossed Substitute House Bill No. 1354, and to insist in part of the amendment, the President finds that Senate Rule 67 clearly states that motions to recede and insist ‘are in order as to any single amendment or to a series of amendments.’ Senator Morton’s motion would apply to parts of a single amendment.

“The President, therefore, rules under Senate Rule 67 that the motion is out of order and the point is well taken.” (Page 1127–1998).

Debate - Reference to Underlying Bill

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry, Mr. President. The Senator from the Forty-first District admonished the Senator from the Thirty-seventh District for speaking to the underlying bill. We are required to keep our

the other House and ask a conference, or, if there be urgency, one House may amend the bill, and without waiting for the rejection of these amendments may ask a conference. Of course the adoption of the amendments obviates the necessity of a conference and prevents any reply to the request. Such is the practice in Congress. The formal method, which perhaps any House has a right to insist on, is illustrated in this way: A bill passed by one House is amended in the other and returned. The originating House disagrees to the amendment, and notifies the amending House by a message, returning the papers. Thereupon the amending body either recedes and concurs or insists and asks for a conference. The conference may report agreement with amendments, but may not change any item already agreed to by both Houses. The report of a conference committee can not be amended. It must be accepted or rejected as it stands. If the body acting on the conference report finds itself unable to agree to it, and desires to agree with a modification, the method of procedure is to reject the report, ask for another conference, and then instruct the committee to ask the conferees of the other body to agree to the proposed amendment to the report.”

comments germane to the subject, so how could the underlying bill, when you have an amendment to it, not be germane to the subject before us?" (Page 582—1997).

REPLY BY THE PRESIDENT

President Owen: "Senator Heavey, you can reference the underlying bill, but if your discussion is totally on the underlying bill, that would be inappropriate. (Page 582—1997).

Distribution of Amendments

POINT OF ORDER

Senator West: "A point of order, Mr. President. Not to delay the process, but this amendment is not on our desks. The one I received in caucus—the Secretary of Senate did not distribute it to the desks. They distributed it in caucus. Mr. President, we do not have it on our desks here." (Page 1109—2000).

REPLY BY THE PRESIDENT

President Owen: "The members do have the right to have the amendment on their desks and we will have to wait until the amendment is distributed." (Page 1109—2000).

Effect Statement Not Required

PARLIAMENTARY INQUIRY

Senator Hale: "A parliamentary inquiry, Mr. President. I have two large amendments on my desk that do not have the

⁷ Mason's Rule 527 provides: "...A legislative body always has authority to correct its records to make them state the truth."

description on the bottom of what the effect would be to the bill. I was hoping, and I thought we agreed, that there would be some indication of what the effect would be, because there are so many papers flying over our desks right now, it is hard to keep track. Those in particular are Senate Bill No. 6625 and Senate Bill No. 5904. Thank you." (Page 521—2001).

REPLY BY THE PRESIDENT

President Owen: "Senator Hale, there isn't a rule on that. Those are directions that we have given, but it is up to the sponsors whether they do that or not." (Page 521—2001).

Erroneous Reference/ Typographical Error⁷

PARLIAMENTARY INQUIRY

Senator Heavey: "A point of parliamentary inquiry. There is no word 'section' on line 22, page 4, and the amendment says, 'On page 4, line 22, after "section," There is no 'section' on line 22.'" (Page 318—1997).

REPLY BY THE PRESIDENT

President Owen: "Senate Bill No. 5835 shows—that we have—shows that there is, Senator Heavey. The first word on the line." (Page 318—1997).

Failure to Concur Results in Non-Concur

POINT OF ORDER

Senator Goings: “A point of order. Mr. President, this bill left the Senate with a series of projects unanimously. If the Senate fails to concur, meaning we vote ‘no’ on the motion to do concur, is it true then we would be in the place to revisit that earlier bill, because we would not have concurred with the House changes? Would we have automatically receded and be back at our original bill that came out unanimously?” (Page 1415-1416–1998).

POINT OF ORDER

Senator Deccio: “I believe Senator Goings has already spoken once.” (Page 1416–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator Goings is on a point of order.”

Senator Deccio: “He can speak twice, then?”

President Owen: “No, he is on a point of order and the answer to the inquiry, the President believes that if, in fact, the Senate votes on the motion to concur, but votes ‘no’ you in effect have voted to not concur.”

Senator Goings: “So, Mr. President, we would in essence, be back at the bill that passed unanimously, then?”

President Owen: “The bill would go back to the House with a message that we did not concur.”

Senator Goings: “Thank you, Mr. President.”

President Owen: “Just one second, Senator Goings. The President believes that the bill would go back to the House with a ‘do not concur.’ - motion.” (Page 1416–1998).

House Bill Titles

“Senator Honeyford has raised two related questions on the striking amendment to House Bill 1187: First, he asks whether it is appropriate for the Senate to substantively amend the title of a House Bill; and second, he asks whether the proposed amendment is beyond the scope and object of the underlying bill.

As to the first question, the President takes note of the fact that House rules and practice differ from those of the Senate with respect to title amendments, and it is probably fair to characterize the House’s rules as stricter with respect to such amendments. That said, in the interest of comity and promoting good relations between the chambers, the President generally does not rule on matters of procedure within the House. Our rules allow for title amendments, and this body may make such amendments if it chooses. The body may be well-advised, of course, to take note of House practice and traditions in making such choices, but these are matters of negotiation and policy, not Senate procedure.

On the second question, relating to whether the striking amendment goes beyond the scope and object of the underlying bill, the President begins by taking a look at the measure in the form in which it originally came over from the House. In this case, the measure can be fairly characterized as a purely technical recodification of affordable housing statutes. There are no substantive provisions of law changed or enacted beyond this. By contrast, the striking amendment includes very substantive law allowing local governments to set up relocation assistance programs. It includes monetary amounts, notice provisions, language on condominium moratoriums, lease termination provisions, and limitations on interior construction. This language goes well beyond recodifying affordable housing statutes and is clearly

outside the subject matter of the underlying bill as it came over from the House

For these reasons, Senator Honeyford’s second point is well-taken, and the amendment is beyond the scope and object of the underlying bill.” (Pages 1357-58, 2007).

Inconsistent or Incompatible Amendments

In a brief ruling/response to questions on April 13, 2009 (Page 1160—2009) the President—who gave a quick ruling, verbally, not written up—stated that inconsistent amendments which conflicted with earlier-adopted amendments were permissible and not viewed as amendments to the earlier amendments. In so doing, he relied on these two provisions of Reed’s Parliamentary Rules:

133. Amendment to the Amendment.— In case the amendment offered, while satisfactory in its design does not in the opinion of a member exactly meet the case, he is at liberty to propose an amendment to the amendment. Here, however, the process must end, for there must somewhere be a limit or confusion would ensue. The general judgment of assemblies has settled upon the limitation of amendments to the second degree. If the amendment to the amendment is not satisfactory to the assembly it can be voted down, and then a new amendment to the amendment will be in order, which in its turn can be rejected, and so on until the assembly is satisfied. (See Sec. 149.)

⁸ See Rule 64: “...No amendment shall be considered by the senate until it shall have been sent to the secretary's desk in writing and read by the secretary...” Editor’s Note: it appears to be the

161. Incompatibility or Inconsistency.— An amendment may be inconsistent or incompatible with the words left in the bill, or with other amendments already adopted, but that is for the assembly to decide, and not for the presiding officer. For him to pass upon such a question would be very embarrassing to the assembly, and still more so to him. So, also, the question of constitutionality is not for him to decide. Incompatibility, inconsistency, and unconstitutionality are matters of argument.

Generally, the limitation on amendment to an amendment being stopped in the second degree is aimed at logistical confusion—e.g., keeping paperwork straight. If, however, the body wishes to adopt “inconsistent” amendments, it may do so, on the theory that the body knows what it previously adopted and is free to continue to modify or strike portions of those earlier-adopted amendments.

Must be Written⁸

POINT OF ORDER

Senator West: “Mr. President, I am going to raise the point—and I can’t find the rule reference, but I know it is here from memory—that amendments have to be in writing. This amendment is so critical that we could find ourselves in a court of law—that if it is drafted improperly, we may find ourselves ending up costing the state money that we shouldn’t have to pay and so I would

practice that oral amendments may be accepted unless an objection is raised.

object very strenuously to doing this as an oral amendment on the floor and would raise that as a point of order.” (Page 337–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator West, you are correct, but the practice has been without objection, we have allowed for oral amendments. There is an objection, therefore, there would have to be a written amendment.” (Page 337-1998).

Oral Amendments⁹

PARLIAMENTARY INQUIRY

Senator Patterson: “Mr. President, I have a point of parliamentary inquiry. I would like to know, under what circumstances, an oral amendment is appropriate and if this is one of those circumstances.” (Page 418–2000).

REPLY BY THE PRESIDENT

President Owen: “The President, just for future reference—I think I know what is going to happen here—but for future reference, when we have had a member offer an oral amendment, we have allowed that if there were not objections from the body. If there are objections, then we have the amendment drafted. So, at this point, Senator West has offered to strike ‘under this section’ from these two amendments. If there are no objections from the body—the oral

⁹ See Rule 64: “...No amendment shall be considered by the senate until it shall have been sent to the secretary's desk in writing and read by the secretary...” Editor’s Note: it appears to be the practice that oral amendments may be accepted unless an objection is raised.

amendments will be adopted.” (Page 418–2000).

Only Amend on Second Reading – Need 2/3 Vote to Advance

POINT OF ORDER

Senator Snyder: “I believe this is a motion to suspend the rules and in the past, it has been customary to just have one speech on each side of the motion.” (Page 230–2001).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, the interesting point here is that Senator Sheahan made a motion to amend Senator Sheldon’s motion so it is a two-step process. First, we have to amend the motion and then suspend the rules to advance it to second reading.”¹⁰ (Page 230–2001).

PARLIAMENTARY INQUIRY

Senator Snyder: “A point of inquiry, Mr. President. What is the status of Senate Bill No. 5959? Will it be on the second reading calendar and does that need a two-thirds vote to get it to second reading?” (Page 231–2001).

REPLY BY THE PRESIDENT

President Owen: “We just amended the motion by Senator Sheldon. Now, you have to pass the motion, which would take a

¹⁰ See Rule 64: “Upon second reading, the bill shall...be subject to amendment.”

two-thirds vote, because the rules have to be suspended to advance it to second reading.”

Senator Snyder: “Thank you.” (Page 231–2001).

Order of Amendments¹¹

Editor’s Note: *The practice in the Senate is for perfecting amendments to be taken up in page and line order. Beyond this, amendments are taken up in the order received (for example, when amendments are submitted after others have been passed out or considered).*

General Order of Amendments

“In ruling upon the point of order raised by Senator Eide as to amendment number 396, the President finds and rules as follows: Senator Eide argues that Reed’s Rule 130 requires that amendments be considered in paragraph order, such that—once the body has moved beyond a particular section—it may not go back to a previous paragraph absent the consent of the body. Senator Eide is correct: the Senate may not consider an amendment to a section which has previously been available or considered for amendment without leave of the body. The rationale of this rule is to avoid confusion by ensuring that amendments are taken in a logical and consistent manner, and the body’s time is not wasted by continuously revisiting matters already considered.

¹¹ Reed’s Rule 130 provides: “**Method of Procedure by Paragraphs or Sections.**— When the main question is in paragraphs or sections, the second reading is by paragraphs or sections for amendment, and each paragraph is amended in its turn; and it is not permissible, except by general consent, to recur to a paragraph already passed. The main question may be

For these reasons, Senator Eide’s point is well-taken, and the amendment may not be considered without leave of the body.” (Page 1568 - 2011).

Title Amendments & Order

“In ruling upon the point of order raised by Senator Benton as to amendment number 397, the President finds and rules as follows: Senator Benton argues that the body is beyond the page and line number for consideration of this amendment as called for under Reed’s Rule 130. The President believes, however, that the proper reference for this determination is the substantive amendment language, not the title amendment portion of the amendment that Senator Benton referenced. The title amendment will necessarily always come at the end. The body has not considered an amendment beyond the line and page presented by this amendment.

For these reasons Senator Benton’s point is not well-taken, and the amendment is properly before the body.” (Page 1570 - 2011).

“Rolling Back” to Second Reading

[President Owen made a quick ruling that moving from Third back to Second Reading for the purpose of amendment takes a suspension of the rules, but that he would

debated on the first reading as a whole, and then the second reading can be had for amendments. Where the main question is prefaced by a preamble, the preamble is passed upon last, because, giving as it does the motives of action, it can not be properly worded until the action is determined upon.”

interpret Rule 62¹² as allowing this to be done with only a simple majority—as opposed to a 2/3—vote of the body near *Sine Die* or cutoff. (Page 1278-2005). President Pro Tempore Franklin also made a quick ruling on March 8, 2007, holding that returning a bill to second reading requires a suspension of the rules and takes 2/3 vote.]

Same Amendment¹³

In a quick ruling (not written up in advance) made on April 12, 2011, the President ruled that an amendment (to E2SHB 1267, Amendment 370 by Senator Brown) must be substantially different from one previously considered (stricken)¹⁴ before it may be considered. Thus, he found an amendment which simply changed two words—“a” to

¹² Senate Rule 62 provides: “Rule 62. Every bill shall be read on three separate days unless the senate deems it expedient to suspend this rule. On and after the tenth day preceding adjournment sine die of any session, or three days prior to any cut-off date for consideration of bills, as determined pursuant to Article 2, Section 12 of the Constitution or concurrent resolution, this rule may be suspended by a majority vote. (See also Rule 59).”

¹³ See Reed’s Rule 142: “If the motion to strike out and insert be decided in the negative it can not be renewed in the same terms; but inasmuch as it is a combination of the motion to strike out and the motion to insert, the negative result does not prevent a great variety of subsequent motions to strike out and insert, or to strike out or to insert, some of which are as follows:

- 1st. To strike out the same words and insert nothing.
- 2d. To strike out the same words and insert other words.
- 3d. To strike out the same words and insert part of the proposed words.
- 4th. To strike out the same words with others and insert the proposed words.
- 5th. To strike out the same words with others and insert part of the proposed words.

“the” and added the (arguably redundant) word “child”—at the end of a section previously struck was out of order.

POINT OF ORDER

Senator West: “A point of order, Mr. President. The amendment is substantially similar to the previous amendment by Senator Brown. These amendments strike the same section and insert similar words. I believe the body has made this decision by turning down the amendment by Senator Brown. The good gentleman’s amendment would have been appropriate as an amendment to the amendment by Senator Brown, but is not appropriate at this time.”

REPLY BY THE PRESIDENT

6th. To strike out part of the same words and insert the proposed words or part of them.

7th. To strike out part of the same words and insert other words.

8th. To strike out nothing, but insert the same words proposed.

Still other varieties may be suggested, but those named may give an idea of the others. Of course each one of these motions must involve a substantially new proposition.”

¹⁴ See Reed’s Rule 139: “Amendment by Striking Out—Effect of Action—Continued.— If the amendment to strike out be decided in the affirmative, then the words stricken out definitely cease to be a part of the main question and can not be reinstated in whole or in part; but the same words with others, or a part of the same words with others, may be inserted, provided they constitute substantially a new proposition. In the United States House of Representatives, by Rule XVI, a motion to strike out being lost does not preclude amendment of words proposed to be stricken out. Under that rule it is as if no such motion had been made.”

President Owen: “Are you raising the point of order that the amendment by Senator Doumit is an issue that has already been decided and may not be decided twice?”

Senator West: “That is correct, Mr. President.”

Debate ensued.

RULING BY THE PRESIDENT

President Owen: “In ruling on the point of order by Senator West regarding the amendment by Senator Doumit on page 1, line 16, to Substitute Senate Bill No. 5904, the President finds that Rule 142 of Reed’s Rules states in part, in this case where the previous amendment was defeated: ‘the negative result does not prevent a great variety of subsequent motions to strike out and insert or to strike out or to insert, some of which are as follows.’ Then it states a number of different examples. The President believes that the amendment by Senator Doumit is appropriate, and the point is not well taken.” (Page 641-2003)

Scope & Object¹⁵

Autonomy of Each House in Determining

PARLIAMENTARY INQUIRY

Senator Snyder: “I don’t necessarily rise only on this bill, but I think it is on the process. I think the presiding officer in the other House ruled that this is within the scope and object of the underlying bill and I just wonder if we would be setting a precedent

¹⁵ Rule 66 provides: “No amendment to any bill shall be allowed which shall change the scope and object of the bill. (See also Art. 2, Sec. 38, State Constitution.) Substitute bills shall be considered amendments for the purposes of this rule. A point of order raising the question of scope and object may be raised at any time

here or if we have had rulings in the past that would let this house determine what the other house has already decided.” (Page 1078–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, in researching the previous rulings, we have found that both houses are autonomous and neither house is bound by the other house rulings.” (Page 1078–2000).

Basis of Comparison – Bill as it left the Senate

“In ruling upon the point of order raised by Senator Holmquist that the House amendments to Engrossed Senate Bill 5831 are beyond the scope and object of the underlying bill, the President finds and rules as follows:

The President begins by reminding the body that the title of a bill is not controlling for purposes of his analysis; rather, the President will consider the entirety of a measure in making a scope and object determination. Similarly, the version which is relevant for this analysis is the version ultimately passed by the Senate, not the version which was originally introduced. Once this body has taken an affirmative action to amend a measure, that newly-changed version then becomes the dispositive version against which subsequent changes will be compared. Likewise, the Senate’s determination in this regard is ultimately preeminent on Senate measures, just as the President defers to the

during consideration of an amendment prior to voting on the amendment.” See also **Washington Constitution**, Article II, § 38: “LIMITATION ON AMENDMENTS. No amendment to any bill shall be allowed which shall change the scope and object of the bill.

House for scope and object rulings on House measures. All of this is in keeping with past precedent, but it is worth reminding the body, again, as this issue is considered.

Turning now to the bill before us, the President notes that all versions of this measure share a common subject: the certification and regulation of HVAC professionals. In this sense, the House amendments could meet the scope of the bill as it left the Senate. This is not the end of the analysis, however, as the President must next consider the specific purpose—that is, the object—of the bill and amendments.

The underlying bill as it left the Senate essentially did one thing: It formed a task force to study HVAC licensing and certification, charging this task force to report its findings back by next year. While the House amendments include the task force, they also add a complete program of licensing and certification relating to HVAC. While this is within the scope, or subject matter, of the bill as it left the Senate, it exceeds the specific purpose, or object, of the Senate version.

For these reasons, the President therefore finds that the House amendments are beyond the object of the underlying bill, and Senator Holmquist’s point is well-taken.” (Page 1172—2008).

Basis of Comparison – Bill as amended by the Body

In ruling on the Point of Order raised by Senator Braun as to whether Amendment 602 by Sen. Liias to Senate Bill 6220 expands the scope and object of the bill, the President finds and rules as follows.

SB 6220 addressed one issue: the imposition of a 17% charge on the sale of spirits from certain retailers to restaurants. If Amendment 602 were offered against the bill in the form it had when initially brought before the Senate, the amendment would clearly be outside the scope and object of that bill.

The President’s determination is made more difficult by the adoption of Amendment 605, prior to the body’s consideration of Amendment 602. Amendment 605 broadened the scope of the bill by clarifying – if not altering – the imposition of a fee upon the sale of spirits from a manufacturer to liquor distributors and retailers.

This previous amendment changed the scope and object of the bill, but was not challenged. Instead of affecting only a single commercial relationship, involving only retailers and certain sellers of spirits, the bill expanded to include a second significant commercial relationship, the one existing between manufacturers, on the one hand, and distributors or retailers on the other.

The proposed amendment adds yet another commercial relationship into the mix: the relationship at the point of sale from a retailer to a consumer.

This is not a clear and easy decision for the President, but it presents a question that is not often faced: the adoption of a discrete amendment that sufficiently alters the scope and object of the original bill to allow additional matters to be properly offered and considered. In this instance, the President finds that the adoption of Amendment 605, by introducing a second form of commercial relationship into the bill, opens the bill for the consideration of other commercial relationships, such as that between retailers and consumers.

The President would further advise against the body taking this ruling too far. Initiative 1183, as adopted by the voters, contains a series of commercial relationships that are not found in many arenas. By failing to limit the bill to addressing a single discrete commercial relationship, the body may no longer be able to procedurally limit amendments involving other commercial relationships.

For these reasons, the President finds that the proposed amendment is within the scope and object of the underlying bill, and Senator Braun's point is not well-taken (March 5, 2014).

Defining the Class

RULING BY THE PRESIDENT

“In ruling upon the points of order raised by Senator Deccio as to the scope and object of Amendments 211 and 213 to Substitute Senate Bill 5904, the President finds and rules as follows:

With respect to Amendment 211, the President finds that Substitute Senate Bill 5904 is a bill that provides several means to reduce the cost of prescription drugs to the residents of the State of Washington. While major sections of the bill provide programs limited to low-income elderly residents, other sections of the bill are clearly applicable to all residents, regardless of age or income level.

Amendment 211 would expand eligibility for participation in the discount purchase program set forth in the underlying bill and also add further definitions to that program. In previous rulings, the President has allowed amendments which change or further define the class of persons eligible for

programs or benefits set forth in a bill. In keeping with these rulings, the President finds that Amendment 211 simply expands upon the class of persons eligible for one of the programs set forth in the underlying bill and is therefore within the scope and object of Substitute Senate Bill 5904. The President finds, therefore, that Senator Deccio's point is not well taken and Amendment 211 is within the scope and object of the underlying bill.

With respect to Amendment 213, the President finds that the amendment would create a totally new committee to create a new program not in the underlying bill. Moreover, Section 5 of the amendment addresses the practice of medicine in a way which is not related to the programs in the underlying measure, which are aimed at reducing the costs of prescription drugs. For these reasons, Amendment 213 is outside the scope and object of Substitute Senate Bill 5904 and the point is well taken.” (640-2003)

Different RCW

POINT OF ORDER

Senator Kline: “Thank you, Mr. President. I raise an objection to the scope and object of the amendment to Second Substitute House Bill No. 2054 and I am prepared to argue the relevant part in section 7. The first six parts of Second Substitute House Bill No. 2054 have to do with water resource management, WRIA's, and the allocation of resources among them. The new section 7 entitled ‘Appeals’ amends the Administrative Procedures Act, a different RCW-RCW 34.05—and creates a new cause of action in superior court for proceedings involving relinquishments of a water right and amends RCW 43.21B, limiting jurisdiction of the Pollution Control Hearings Board. It is clearly outside the scope and

object of the original bill, dealing with water management.” (Page 1603–1997).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Kline, the President finds that Second Substitute House Bill No. 2054 is a measure which makes various changes in water resource planning, water rights and permit processes, including standards for relinquishment.

“The striking amendment by Senator Morton would also make various changes in water resource planning, water rights and permit processes, including procedures for appeals or relinquishments. In addition, the striking amendment would in part VIII - authorize specific diversions of certain waters for municipal purposes.

“The President, therefore, finds that the proposed amendment does change the scope and object of the bill and the point of order is well taken.” (Page 1603–1997).

Duplicating Existing Law

POINT OF ORDER

Senator Thibaudeau: “A point of order, Mr. President. I would respectfully request a ruling on scope and object of this amendment. I would hope that the body knows that the source of the funding for family planning services, which is Title 10, and which is matched by the state with ten percent and the feds with ninety percent, specifically prohibits the use of these funds for abortions.” (Page 411–2001).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Thibaudeau to the scope and object of the amendment by

Senators Stevens, Deccio, Oke, Benton, Long, Morton, McCaslin, Sheahan, Rossi, Swecker, Hochstatter, Roach and McDonald on page 1, line 17, to Senate Bill No. 5186, the President finds that Senate Bill No. 5186 is a measure which provides that the Department of Social and Health Services may seek and implement a federal waiver to expand eligibility for family planning service funding. The measure defines the kinds of family planning services which are eligible to receive funding, including sterilization and contraception services. The amendment would refine eligibility criteria by excluding from participation those organizations that provide family planning services which include abortion services or referrals.

“In reference to Senator Thibaudeau argument that the amendment would merely restate federal law as it now exists, the President notes that whether an amendment duplicates existing law is not relevant to question of scope and object. The President, therefore, rules that the point of order is not well taken and the amendment on page 1, line 17, to be in order.” (Page 417–2001).

Focus is on Changes or Additions to Law

“In ruling upon the Points of Order raised by Senator Hatfield as to whether Amendments 64, 23, and 69 to Senate Bill 5575 fit within the scope and object of the underlying bill, the President finds and rules as follows:

This legislation makes changes to the Energy Independence Act, approved by the voters in 2006 as Initiative Number 937. Very generally, I-937 set certain targets for energy conservation and use of renewable resources. The underlying bill relates specifically to biomass energy. It provides definitions and sets standards as to qualifying facilities and communities.

The President believes it is appropriate to harmonize and explain some of his past precedent on scope and object in approaching this particular ruling. In the past, the President has ruled that, in dealing with a particular subject or class, a bill often necessarily and inadvertently opens up that entire subject or class to modification, which can result in amendments being proposed which are drastically different from those envisioned by the proponents of a bill but still within the subject or class opened up by the plain language of the bill. The determining factor is always the way in which the underlying law is modified. This can often be a matter of careful drafting, and it is certainly the case that some sections of the law lend themselves more easily to discrete and precise changes than do others.

Merely mentioning a topic or class—for example, setting forth a statute in full because this is required by law—does not, however, mean that every single line set forth may be changed and fit within the scope and object of the bill. In those cases where only a discrete section is changed, the scope and object is similarly discretely limited. One example might be changes in the criminal code which affect the sentencing grid: a bill on kidnapping, for instance, might require setting forth the full sentencing grid, but this would not mean that every crime within it was being re-visited and that any crime amendment would be within scope. Put another way, the limits of scope and object flow from the *changes or additions to existing law* within a bill, not every conceivable subject touched upon by the bill.

In the matter before us, had the underlying bill been adding biomass as a new form of renewable resource, then it might be that other renewable resources could also be added, such as hydroelectric or solar power.

In fact, however, this is not how the bill is drafted. Instead of adding biomass to the class of eligible resources, the bill simply changes—albeit significantly and substantively—the definition of biomass already present in the underlying law. Consequently, amendments to this bill must also fit within the definitions of biomass energy and qualified biomass energy supplied by the bill. The proposed amendments introduce new subjects that are arguably within the scope of I-937 itself, but outside the scope and object of the discrete changes to the definitions of biomass within the bill before the body.

For these reasons, the President finds that the amendments are beyond the scope and object of the bill, and Senator Hatfield’s point is well-taken.” (Page 537 - 2011).

“Four Corners” Test

In ruling upon the point of order raised by Senator Keiser that amendment number 580 to the committee striking amendment is beyond the scope and object of the underlying bill, the President finds and rules as follows:

Senator Deccio argues that both his amendment and the underlying bill share a common goal: expanding the coverage options available to uninsured people through the Health Care Authority. While the President agrees that they share similar goals, the measures take different approaches in trying to meet them. The underlying measure would require certain persons applying for enrollment in the Basic Health Plan to complete a standard health questionnaire. The results of this questionnaire are then used to determine eligibility for the high-risk

insurance pool or the Basic Health Plan. The amendment requires the Health Care Authority to implement a program to assist small employers in providing health care coverage to their employees. While the goals may be similar, the President must first and foremost look to the language within the four corners of the underlying measure and the amendment.

In this case, adding a whole new program is an expansion clearly not contemplated by the measure before us, which relates to questionnaires and eligibility for existing programs. For these reasons, Senator Keiser's point is well-taken. The amendment is beyond the scope and object of the bill and is not properly before us. (Page 1193–2005).

House Amendment Changing Scope & Object of Senate Bill - Effect

PARLIAMENTARY INQUIRY

Senator McCaslin: "A parliamentary inquiry, Mr. President. Just for my own information, when an amendment is out of scope and object, is it possible to concur?" (Page 881–2000).

REPLY BY THE PRESIDENT

President Owen: "No." (Page 881–2000).

House Amendment Changing Scope & Object of Senate Bill – Next Steps

PARLIAMENTARY INQUIRY

Senator West: "A parliamentary inquiry, Mr. President. Did the President rule

that the amendment was out of scope and object?" (Page 880–2000).

REPLY BY THE PRESIDENT

President Owen: "That is correct."

Senator West: "Mr. President, by tradition in the Senate, when a Senate Bill has House amendments that are outside of the scope and object, the bill is immediately sent to committee and is no longer considered by the body."

President Owen: "The President believes that you would be correct if he had dropped the gavel on the ruling, but she made the motion prior to that, to ask the House to recede from the amendment."

Senator West: "Mr. President, when I asked you if you had ruled, you state, 'yes'. Now, you are saying, because you had not dropped the gavel that you had not ruled—if I am to interpret what you are saying correctly."

President Owen: "Well, Senator West, I think we are dancing around semantics. Just give me a moment—just give me a moment here, so that I can answer you correctly."

Senator West: "I just want it to be clear for a permanent record, because this could be important in the future." (Page 880–2000).

FURTHER REPLY BY THE PRESIDENT

President Owen: "Senator West, the President will try to explain this clearly if he can. You are correct. I did make the ruling. However, the thing that would follow would be that the President would refer the bill back to the committee. That is what I did not drop

the gavel on. If I don't drop the gavel prior to referring the bill back to committee, she has the opportunity to ask the House to recede therefrom." (Page 880-2000).¹⁶

Intent Sections

"In ruling on the Point of Order raised by Senator Ranker as to whether the striking amendment to SSB 6406 fits within the scope and object of the underlying bill, the President finds and rules as follows.

SSB 6406 presents a challenge between the substitute bill passed by committee and properly substituted on the floor, and a proposed striking amendment. For the purposes of determining whether the striking amendment is outside the scope of the underlying bill, the appropriate comparison is between the substitute bill and the striker.

SSB 6406 is initially described by its intent section. That provision states that the bill's purpose is: "to modify programs that provide for management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies...."

It does this in four different ways: altering provisions relating to hydraulic permits, forest practices, state environmental processes, and the growth management act. These changes affect both state agency processes and local government actions as well.

¹⁶ See Rule 67: "...A senate bill, passed by the house with amendment or amendments which shall change the scope and object of the bill, upon being received in the senate, shall be referred to an appropriate

The substitute bill does not impact storm water provisions. The addition of the storm water provisions are appropriate only if those provisions do not impermissibly alter the bill's scope and object.

Here, the substitute bill approaches what the President has referred to as an omnibus bill. It takes four different substantive areas, altering each one in a manner consistent with the bill's intent section. By adding a fifth area, in a manner consistent with the policies as expressed in the bill, the striking amendment does not broaden the scope and object of the underlying bill.

For these reasons, the President finds that the amendment is within the scope and object of the substitute bill, and Senator Ranker's point of order is not well-taken." (Page 879 - 2012).

Intent Sections – Adding an intent section

"In ruling on the Point of Order raised by Senator Ericksen as to whether amendment #152 to SSB 5735 fits within the scope and object of the underlying bill, the President finds and rules as follows.

SSB 5732 would create a new category under the definition of "eligible renewable resource," to allow certain utilities to claim carbon reduction investments as a means to meet the utilities' goals under Initiative 937. The bill provides "incentives for carbon reduction investments" by allowing utilities to include investments that "reduce, prevent, or remove from the atmosphere the emissions of greenhouse gases in the state." The bill further provides a technical

committee and shall take the same course as for original bills, unless a motion to ask the house to recede, to insist or to adhere is made prior to the measure being referred to committee."

definition describing the chemicals that constitute greenhouse gases.

Amendment 153 by Sen. Habib provides an intent section for the bill. It does not alter the substance of the bill. It includes findings that the state will be harmed if substantial reductions in greenhouse gases do not occur, ties the emission of greenhouse gases to climate change, notes that reduction in emissions helps to support the legislature's 2008 emission limitations, and broadly supports efforts to reduce carbon emissions from all sectors. Most controversially, it includes a finding that climate change is real.

The underlying bill does not have an intent section that could assist the President in determining its object. Therefore the President must rely solely on the bill's substantive content to determine its limits under Rule 66 (scope and object).

An intent section alters nothing about the statutory changes contained in a bill. If passed in its current form, SSB 5735 would allow certain expenses to be claimed as renewable resources; the bill would function the same with or without the intent section.

The President would caution that adding solely an intent section to a bill does have limitations. It would not be appropriate for an intent section to be entirely unrelated to the underlying bill. In this case, however, the relation between the bill and proposed amendment is sufficient. The bill provides for a specific form of credit available to utilities that make investments to reduce greenhouse gases, a goal that the bill's proponents support. The proposed intent section builds upon that goal by describing its relationship to the issue of climate change. Although the intent section also provides a statement about applying such

action to "all sectors" of the state, this aspirational statement does not alter the bill's goal of providing a means for utilities to reduce greenhouse emissions.

For these reasons, the President finds that the amendment is within the scope and object of the underlying bill, and Senator Ericksen's point is not well-taken."

(March 9, 2015)

Omnibus Bill

"In ruling on the Point of Order raised by Senator Benton as to whether the committee amendment to HB 2016 fits within the scope and object of the underlying bill, the President finds and rules as follows.

In considering whether a particular proposed amendment fits within the scope and object of a bill, the President begins with a thorough review of the underlying bill. HB 2016 revises most portions of Chapter 42.17 RCW. These changes affect the operation of the Public Disclosure Commission, the reporting requirements of candidates and political action committees, the ability of both major and minor political parties to participate in elections, the disclosure requirements of lobbyists, and the routine financial disclosures required of state employees. Although the bill contains numerous technical changes, it also introduces several significant policy changes to these areas.

The Point of Order challenges the addition of an additional policy change: limiting the use of public service announcements by certain state officials in the period shortly before an election. Although the underlying bill contains a slight reference to public service announcements, the amendment would go

further and limit their use during an election year.

Consistent with his past rulings, the President considers HB 2016 an omnibus measure which makes technical changes, clarifications, and substantive policy changes to a host of statutes that affect candidates, political groups, and state employees. The bill is sufficiently broad to include within its scope the limitation contained in the proposed amendment.

For these reasons, the President finds that the amendment is within the scope and object of the underlying bill, and Senator Benton's point is not well-taken." (Page 618—2010.)

Study v. Substantive Law

"In ruling upon the point of order raised by Senator Honeyford that the House amendments to Substitute Senate Bill 6231 are beyond the scope and object of the underlying bill, the President finds and rules as follows:

The President begins with the argument that the geographic limitations of the original bill are very different from those found in the House amendments. The President believes that the geographic description in the Senate version is sufficiently open so as to encompass the House's language. This may have policy significance, but it is not dispositive in deciding scope and object. Instead, the President looks at the four-corners of the bill as it left the Senate and compares this with the changes made in the House.

The bill as it left the Senate establishes a work group to study and make recommendation as to marine protected areas. The House changes essentially keep this work group, but also contain some substantive provisions relating to the Puget Sound Partnership, including directing the Partnership to develop a plan that will have the force and effect of law. While it is permissible for the Partnership to be a part of the work group and make recommendations, adoption of a plan which will make substantive law goes beyond simply studying marine protection areas and making recommendations back to the legislature. It is these substantive provisions of law which are impermissibly broad.

For these reasons, the President finds that the House amendments are beyond the scope and object of the underlying bill, and Senator Honeyford's point is well-taken." (Page 1322—2008).

Substantive Law in Budget Inappropriate

Please see this same topic under "Budget," below. Includes Legislature v. Locke case/test.

Task Force v. Program

"In ruling upon the point of order raised by Senator Holmquist that the House amendments to Engrossed Senate Bill 5831 are beyond the scope and object of the underlying bill, the President finds and rules as follows:

The President begins by reminding the body that the title of a bill is not controlling for purposes of his analysis; rather, the President

will consider the entirety of a measure in making a scope and object determination. Similarly, the version which is relevant for this analysis is the version ultimately passed by the Senate, not the version which was originally introduced. Once this body has taken an affirmative action to amend a measure, that newly-changed version then becomes the dispositive version against which subsequent changes will be compared. Likewise, the Senate's determination in this regard is ultimately preeminent on Senate measures, just as the President defers to the House for scope and object rulings on House measures. All of this is in keeping with past precedent, but it is worth reminding the body, again, as this issue is considered.

Turning now to the bill before us, the President notes that all versions of this measure share a common subject: the certification and regulation of HVAC professionals. In this sense, the House amendments could meet the scope of the bill as it left the Senate. This is not the end of the analysis, however, as the President must next consider the specific purpose—that is, the object—of the bill and amendments.

The underlying bill as it left the Senate essentially did one thing: It formed a task force to study HVAC licensing and certification, charging this task force to report its findings back by next year. While the House amendments include the task force, they also add a complete program of licensing and certification relating to HVAC. While this is within the scope, or subject matter, of the bill as it left the Senate, it exceeds the specific purpose, or object, of the Senate version.

For these reasons, the President therefore finds that the House amendments are beyond the object of the underlying bill, and Senator

Holmquist's point is well-taken." (Page 1172—2008).

Technical Corrections v. Substantive Law

“In ruling upon the points of order raised by Senators Brandland and King as to whether the floor amendments are beyond the scope and object of Substitute House Bill 1597, the President finds and rules as follows:

It is fair to characterize the underlying bill as being an omnibus measure which makes numerous corrections, technical changes, clarifications, and administrative changes to various state and local tax provisions. One of the amendments at issue relates to the point at which natural and manufactured gas is taxed; the other amendment relates to the taxation of bunker fuel.

The Senators are correct that the amendments may be properly viewed as fairly substantive changes to Washington's tax law. In and of itself, however, this argument is not dispositive. The question is not whether or not major policy changes are being proposed; rather, the question is whether those policy changes fit within the subject matter of the underlying bill. The body—and, for that matter, the individual members—may have different opinions as to what may properly be termed a technical clean-up bill. It is for this reason that the President does not rely on such shorthand descriptions for his analysis, but instead compares the amendments to the plain language of the underlying bill in its entirety. In this case, the President believes that this omnibus bill contains a host of substantive tax changes which can include the subjects within the proposed amendments.

For these reasons, the President finds that the amendments are within the scope and object

of the underlying bill and properly before the body for consideration.” (Page 1927—2009).

Title Does Not Control

POINT OF ORDER

Senator Finkbeiner: “I rise to challenge the scope and object of the substitute bill. The original Senate Bill No. 5588, as we can see the title right here—classifying false advertising—deals specifically with false advertising by a health insurance carrier. As a matter of fact—in the public interest—for purposes of the Consumer Protection Act. The substitute bill, however, would expand that beyond both the scope and object of the title and of the original bill and would make any violation of Chapter 48.30 of our RCWs, a matter of affecting public interest—this again expanding beyond the scope and object of both the original title and the original bill.” (Page 518—1999).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Finkbeiner on the scope and object of Substitute Senate Bill No. 5588, the President must first state that the original bill is not a model of good legislative drafting, and that the President did have a difficult time discerning the scope and object of the original bill. After considerable deliberation, the President finds that the original bill would make all unfair practices under Chapter 48.30 RCW by health carriers subject to the Consumer Protection Act.

“The substitute measure would also make all unfair practices under Chapter 48.30 subject to the Consumer Act.

“The President, therefore, finds that the substitute bill does not change the scope and object of the bill and the point of order is not well taken.”

Senator Finkbeiner referred the title of the original bill in his argument. The President would like to remind the body of President Cherberg’s words in this regard: ‘It is important to note that the Constitution and the rule on scope and object are not concerned with the title of the bill.’” (Page 529—1999).

Title Does Not Control – Body of the Bill

POINT OF ORDER

Senator Finkbeiner: “I rise to a point of order. I challenge the scope and object of this amendment. House Bill No. 1599 creates extraordinary criminal justice accounts in order to reimburse counties for certain costs relating to the adjudication of aggravated murder cases. The appropriations may be made from the general fund or from public safety and education accounts. The bill’s purpose is to address this one specific problem which is that local governments and particularly local governments in rural areas do not have to resources in their budgets to deal with an aggravated murder case. The bill gives the county some financial relief when an aggravated murder case threatens to break the county budget, as has happened recently.

“The striking amendment adds two completely separate and independent issues—funding for regional law libraries through increased filing fees for parties making a demand for a jury trial as well as authorizing fees for a party requesting a trial to a no vote or an arbitration award. These additions do not, in any way, address county funding of aggravated murder cases, which is the focus of the underlying bill. Instead, the amendment brings in new issues which are not addressed in the contents of the underlying bill and for that reason, I ask that you find the amendment outside the scope

and object of the underlying bill. I would like to say that I am rising to challenge Sections two and three of the amendment by Senators Costa, Sheahan, Kline, McCaslin and Heavey. Thank you.” (Page 1052–1999).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Finkbeiner to the scope and object of the striking amendment by Senators Costa, Sheahan, Kline, McCaslin and Heavey, the President finds that House Bill No. 1599 is a measure which creates an extraordinary criminal justice account to reimburse counties for costs related to aggravated murder cases.

“The striking amendment would also create an extraordinary criminal justice account in section one. However, section two would provide funds to regional county law libraries through increased court filing fees; and section three would generally increase fees for jury demand and for trial de nova requests.

“The President, therefore, finds that because sections two and three of the amendment do change the scope and object of the bill, the point of order is well taken.

“The President would once again remind the members that it is not the title of the bill, but the body of the bill that determines the scope and object.” (Page 1067–1999).

Title Does not Control - May Be Amended if Within Scope & Object

POINT OF ORDER

Senator Haugen: “A point of order, Mr. President. I rise to challenge the floor amendments, the ones we just heard, as well as the amendments that are on the desk, under Senate Rule 32, as exceeding the scope of the

title of this bill. The title of this legislation is ‘Implementing the recommendations of the land use study commission.’ the recommendations of the commission are set forth in this legislation and expressed in the intent sections of the legislation as requiring a framework of state guidance on rural development. These floor amendments are directly contrary to the commission’s recommendations and, therefore, under no circumstances, could they be considered as implementing the commission’s recommendations. Therefore, I ask you, Mr. President, to rule that these amendments are beyond the scope.” (Page 696–1997).

POINT OF ORDER

Senator Haugen. “Thank you, Mr. President. My motion was that these amendments exceed the scope of the title of this bill, because the title is implementing the recommendations.” (Page 697–1997).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Haugen, the President finds that Senate Bill No. 5758 is a measure which makes various changes to the Growth Management Act, including several provisions relating to rural lands and development.

“The amendments by Senator Swecker on page 4, lines 24 and 27; page 8, lines 7, 27 and 29(2); and page 9, lines 4 and 16; would also make changes to the Growth Management Act relating to rural lands and development.”

“The President, therefore, finds that the proposed amendments do not change the scope and object of the bill and the point of order is not well taken.”

“The President would like to remind the members of the body that in analyzing points of order concerning scope and object,

the President examines the subject of the bill, and then looks to the title. If the amendment is within the scope and object of the bill, the Senate may amend the title if necessary.” (Page 703–1997).

Title-Only Bills - Scope & Object

“In ruling upon the point of order raised by Senator Schoesler that the proposed substitute is beyond the scope and object of Senate Bill 6156, the President finds and rules as follows:

The underlying bill falls into the category of what is commonly known as a title-only bill. These are measures which are introduced without any substantive provisions, but instead contain only generalized language which may be replaced by more specific provisions at a later date. It is fair to say that they are used as a tactic for meeting or even getting around applicable legislative deadlines. Whatever the Constitutional and legal challenges posed by such measures may be, the President must decide the parliamentary propriety of such measures, at least as raised by this scope and object challenge.

The President believes this is a matter of first impression. In the 31 years the President has served in various capacities, he is unaware of this matter ever having been raised. Likewise, a review of years of past precedent of this body reveals no instance where this specific issue has been raised or decided. As a result, the President must provide a thorough rationale both in deciding this particular point and in providing guidance for the body as to future practice.

Applying traditional scope and object analysis to a title-only measure is of limited utility, and it quickly becomes problematic.

On the one hand, because there is no substantive language in the bill, it can be argued that almost any subject matter could be properly included except as limited by the title itself, in which case, of course, this language would be proper and within the scope and object of the bill. Such an argument is tenuous, however, because this body has never relied solely on titles in determining scope and object. On the other hand, another argument, and one which is in keeping with past precedent, is to restrict the subject matter to that set forth in the underlying bill, as limited as that may be. Under such an analysis, the proposed substitute before us would be outside the scope and object of the underlying bill.

The President believes, however, that he has a duty to this body to ensure that it is able to conduct and complete its business, and that it is not unreasonable for the body to rely on its past practices when this has been the unchallenged tradition for as long as the President can recall. Accordingly, the President rules that the body may so substitute language which is germane to the overall subject expressed in title-only bills for the remainder of this Session.

In so holding, the President recognizes that this ruling may not perfectly harmonize past rulings with respect to scope and object, but the President believes the greater equities weigh in favor of deferring to past practice. It may be that the body finds it desirable to change its rules for future sessions, or to be more specific as to title-only bills for the future, or even abandon the practice altogether. However the body chooses to order its business for future sessions, the President encourages the body to be cognizant of the limited latitude granted the practice for this Session only.

For these reasons, the President finds that the substitute bill may be considered, but cautions the body as to its use of title-only measures in future Sessions.”¹⁷ (Page 2169—2007).

Striking a Striker

In a quick ruling (non-written) on April 13, 2009 (Page 1160—2009), the President ruled that, while a striking amendment could itself be amended, an amendment which acted as a striker—in whole or substantially—was out of order, as it should more properly be viewed as a competing striker in its own right and offered as such. See Reed’s Parliamentary Rules 138: “Amendment by Striking Out, Continued—Effect of Action.—If the amendment to strike out be decided in the negative, it can not be renewed as to the whole or a part of the words. A negative vote is a decision on the part of the assembly that the words proposed to be stricken out shall stand part of the main question. It may, however, be proposed that these words with others, or a part of these words with others, be stricken out, provided the words newly proposed to be stricken out constitute substantially a new proposition different from the one already decided. In like manner if a motion to strike out a paragraph be lost, the paragraph can not be amended. Hence all motions to amend a paragraph should be put before the motion to strike out is put.”

¹⁷ The Senate subsequently adopted the following addition to Senate Rule 66:

“A proposed amendment to an unamended title-only bill shall be within the scope and object of the bill if the subject of the amendment fits within the language of the title.”

¹⁸ See Former Rule 53: “No amendment to the budget, capital budget or supplemental budget, not

Votes Necessary: Majority v. Sixty Percent; Present v. Elected¹⁸

PARLIAMENTARY INQUIRY

Senator West: “A parliamentary inquiry. Mr. President, I can understand if there were more than half the people present voting by standing and that being declared as passing, but to have less than half the people—it is not uncommon for the people to be absent from the floor or missing from the floor. So, to not ask for the number of ‘nays’, I think—and to declare the vote as being failed—an amendment requires a simple majority, not a constitutional majority and so I would ask the President to consider that as far as the last vote was concerned.” (Page 1428—1999).

REPLY BY THE PRESIDENT

President Owen: “Senator West, you are correct, but the President has pretty good eyes and every member on the floor is required to vote. This side over here was not standing and it was pretty clear that when I took the vote that there would not be enough votes to get the sixty percent required to pass an amendment. Based on your request, I will see to it that every time we take a division, we have both sides standing and the count be taken. Every member has that right.”

FURTHER REMARKS BY PRESIDENT OWEN IN ANSWER TO SENATOR WEST’S PARLIAMENTARY INQUIRY

incorporated in the bill as reported by the ways and means committee, shall be adopted except by the affirmative vote of sixty percent of the senators elected or appointed.” See also **Rule 54**: “...“Majority” shall mean a majority of those members present unless otherwise stated.”

President Owen: “Senator West, the President would like your indulgence for one moment. You are accurate when it comes to amendments and the President did not realize this either, but the staff has pointed it out to us. In most cases, it is fifty percent of those on the floor who are voting on an amendment. In the case of the budget, it takes sixty percent of the members elected, so the President believes that when he does take the vote on the budget, if there are not thirty members standing, he will not go on and take the ‘nay’ votes. I did not realize that either, Senator.”

Senator West: “Thank you for that clarification. I agree with you and find that information helpful.” (Page 1429–1999).”

Withdrawal Of Amendment¹⁹

REMARKS BY SENATOR BENTON

Senator Benton: “Thank you, Mr. President. With the consent of the Senate, I would like to withdraw this amendment and I would like to speak to it. This amendment could have been offered and passed; it would have provided real property tax reform to the people of the state of Washington. Now, the underlying bill does exactly what it says it will do. It will slow the growth of taxes, but it does not reduce property taxes. The people next door may receive their tax bill—will receive a bill that is higher than it is today. If we passed this amendment, that would not be true. This amendment will take this business out of—this amendment would take the state out of property taxes for over the next ten years, slowly, methodically, carefully over the next ten years—would reduce the state’s portion completely. I plan to offer this again

¹⁹ See Rule 20: “1. No motion shall be entertained or debated until announced by the president and every motion shall be deemed to have been seconded. It shall be reduced to writing and read by the secretary, if

at a future date, because it is important, I think, to move this bill out of here today and that is why I am withdrawing it. Thank you.” (Page 322–1997).

REMARKS BY PRESIDENT OWEN

President Owen: “With permission of the Senate, the amendment is—Senator McCaslin?” (Page 322–1997).

PARLIAMENTARY INQUIRY

Senator McCaslin: “A point of parliamentary inquiry. When a Senator withdraws an amendment, which means it is no longer before the body, shouldn’t he be speaking to a point of personal privilege, rather than to the amendment that is no longer before us?” (Page 322–1997).

REPLY BY THE PRESIDENT

President Owen: “I believe that is correct.”

Senator McCaslin: “Thank you.”

President Owen: “Senator McCaslin, I had not yet withdrawn the amendment. I let him speak before—.”

Senator McCaslin: So, even though the Senator withdraws it, until the President says it is withdrawn—.”

President Owen: “With the permission of the Senate, that is correct.”

Senator McCaslin: “I would appreciate it if you would be faster.”

President Owen: “Patience, first year.” (Page 323–1997).

PARLIAMENTARY INQUIRY

desired by the president or any senator, before it shall be debated, and by the consent of the senate may be withdrawn before amendment or action.” See also **Rule 21** (Motion to Withdraw is an incidental motion).

Senator Snyder: “A parliamentary inquiry. Can a member of the Senate move that the amendment be adopted? Would that be the positive motion, rather than the motion to withdraw?” (Page 323–1997).

REPLY BY THE PRESIDENT

President Owen: “I believe that an objection should be made when the—with no objections and then yes, a member could move the amendment. However, Senator Snyder, I would point out to the members that an identical amendment has been place on your desk.”

REMARKS BY PRESIDENT OWEN

President Owen: “For the members’ information, this is exactly the same amendment that Senator Benton had introduced and withdrawn and is now reintroduced by Senator Hargrove, so rather than reprinting and supporting the timber industry in Senator Hargrove’s district, we chose to allow the same amendment to be used with Senator Hargrove’s name.” (Page 323–1997).

BREAKFAST

Not Provided in Rules²⁰

PARLIAMENTARY INQUIRY

Senator McCaslin: “A parliamentary inquiry, Madam President. Rule 15 states that we will have ninety minutes for lunch and ninety minutes for dinner. How about

²⁰ Dinner and Lunch may be provided. See Rule 15: “The senate shall convene at 10:00 a.m. each working day, unless adjourned to a different hour. The senate shall adjourn not later than 10:00 p.m. of each working day. The senate shall recess ninety minutes for lunch

breakfast? We are going to be here until breakfast unless we keep going here folks. Drop some of those HOVs and that stuff—unless we are going to be here for breakfast.” (Page 845–2000).

REPLY BY THE PRESIDENT PRO
TEMPORE

President Pro Tempore Wojahn: “I have no rule in my books that deals with breakfast, Senator, so I can’t give you a decision.” (Page 845–2000).

BUDGET

I-601/I-960/I-1053

Please see I-601, I-960, and I-1053 sections in Appendix I.

Measures Necessary to Implement the Budget

Please see this same section under “Cutoff” category, below.

Substantive Law in Budget Bill

**Substantive Law in Budget Improper –
General Rule**

“In ruling upon the point of order raised by Senator Brown asserting that Amendment # 388 includes substantive law in violation of Senate Rules 25 and 66, the President finds and rules as follows:

each working day. When reconvening on the same day the senate shall recess ninety minutes for dinner each working evening. This rule may be suspended by a majority.”

Very generally, the proposed amendment by Senator Benton seeks to include in the transportation budget language identity verification requirements for applicants seeking various permits and licenses.

The President does believe that this amendment is more tightly connected to funding—and, therefore, closer to being a proviso as opposed to substantive law—than was the last amendment offered on this same subject. Nonetheless, this amendment still impermissibly adds substantive law into a budget bill.

One general test to determine whether policy language is an appropriate budget proviso as opposed to substantive law is whether or not the language, if separated from its associated funding, would still function. This test is imperfect and incomplete, but it provides a general starting point that is useful in making such determinations. Simply put, any policy language must serve to modify an appropriation, not function as an independent mandate.

In the case of the amendment before us, it is true that there is an appropriation of \$90,000 which the language purports to limit. Looking carefully at the full amendment, however, it becomes clear that the proviso language—by its own terms—seeks to effectively modify the requirements found in another statute, disconnected from the funding and appropriation made within the budget, itself. In this sense, the language would operate irrespective of any funding amount, and it is thus properly viewed as substantive law, not a limited proviso.

For these reasons, and consistent with his earlier ruling on this same subject matter on this same budget, the President believes this amendment would violate Rules 25 and 66, and Senator Brown’s point is well-taken.” (April 20, 2011).

Adding Substantive Law to a Budget

In ruling upon the point of order raised by Senators Hobbs and Liias asserting that Amendments # 745 and 746 include substantive law in violation of Senate Rules 25 and 66, the President finds and rules as follows:

The proposed amendments offered by Sen. Benton seek to include in the transportation budget provisions that would require the department of licensing to verify the lawful presence of applicants for various licenses. One amendment represents a permanent change to substantive law, and the other creates substantive provisions as part of a pilot project.

As the President recognized on this same issue in 2011, the President has long held that a budget bill – whether for the purposes of transportation, or the operation of state agencies – is not an appropriate forum for changing state substantive law. In determining whether substantive law is present, several alternative factors may be considered. Two of these are: first, whether the proposed language seeks to include a policy change that was the subject of a separate bill, and second, whether the inclusion of the language would redefine rights or eligibility for services.

Here, the offered amendments seek to include the licensing requirements found in a separate bill which did not pass. That bill, and these amendments, would reduce the number of persons currently eligible to obtain drivers licenses or similar permits. Both of these factors indicate that the amendments would affect state substantive law.

Today, Washington residents can apply for a drivers’ license without proving legal residence; by September, they will not be able to do so if the amendments are adopted and made part of this bill. This alters current substantive law because the amendments create a new requirement for obtaining a

drivers' license that does not exist without passage of the amendments.

The fact that amendment #746 purports to be a pilot project does not alter this analysis. A budget that suspended the operation of a substantive criminal statute for two years would clearly violate the rule against including policy changes in a budget. The licenses produced under the restrictions in this amendment will continue for several years after the expiration of this pilot project, so it is not entirely correct to view this amendment as one that only affects Washingtonians for the next year.

For these reasons, if adopted, Senator Benton's amendments would violate Rules 25 and 66, and Senator Hobbs's and Liias's point is well-taken. (March 8, 2016)

**Adoption of *Legislature v. Locke*²¹ –
Substantive Law in Budget Improper**

POINT OF ORDER

Senator Johnson: "Mr. President, I am raising a point of order. This bill, Engrossed Substitute Senate Bill No. 6153, fails the test of Senate Rule 25, which is taken from Article II, Section 19 of the State Constitution. The provisions of that rule and constitutional amendment are identical. They provide that no bill shall embrace more than one subject, and that shall be expressed in the title. The title of this bill is an Act Relating to Fiscal Matters and further--Making Appropriations. The

²¹ The Supreme Court wrote: "Indeed, as we stated in *Lowry*, legislative attempts at weaving substantive policy provisions into omnibus appropriations or operating budget bills may be constitutionally infirm. . . . We decline to adopt a categorical definition of 'substantive law,' but where the policy set forth in the budget has been treated in a separate substantive bill,

substance of the bill to which I refer is Section No. 514, Sub. 17, which is a matter of substance, was in the provisions of that section--most of that subsection were in Senate Bill No. 5625 and that bill did not pass, so most of those provisions are now in the budget. They are substantive provisions; they are hardly appropriations related. That is, the Superintendent of Public Instruction is mandated to do certain things, the Accountability Commission is mandated to do certain things. The relief that is given to these schools that are badly in need of help will, undoubtedly continue through this biennium and on, because if you remember that bill, present members of the Senate, it was more than a two year term to get the schools turned around. It it part of that program.

"Now, what do we do? As I indicated earlier, the Supreme Court case directly on point and the case that is on point is the Supreme Court case of *Legislature versus Locke* is on point to the constitutional amendment, then it is on point with our rule as well, because they are identical in language. Once again, it says, 'Issues that failed on their merits may not be resurrected by their inclusion in an operating budget bill.' There has been a valiant effort by the drafters of the language to which I refer to make it fit, but it still violates the rule.

"So, what is the remedy? The remedy is to take this bill back to second reading and reconsider the amendment by which we simply say that the bill doesn't pass-- the substantive bill--then the appropriation isn't there. If does pass, the appropriation is there. Thank you."

its duration extends beyond the two year time period of the budget, or the policy defines rights or eligibility for services, such factors may certainly indicate substantive law is present. These are not the exclusive factors defining substantive law, however." 139 Wn.2d 129 at 144, 147 (1999).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Johnson that Engrossed Substitute Senate Bill No. 6153 contains two subjects in violation of Senate Rule 25, the President finds that this rule is taken verbatim from Article II, Section 19 of the State Constitution. In 1998, the President ruled, in interpreting Senate Rule 25, that it is appropriate to rely on decisions by the Supreme Court interpreting Article II, Section 19.

“In 1991, the Supreme Court held without dissent in *Legislature v. Locke* that under Article II, Section 19, substantive law may not be included within an omnibus appropriations measure. The court stated: ‘We decline to adopt a categorical definition of ‘substantive law,’ but where the policy set forth in the budget has been treated in a separate substantive bill, its duration extends beyond the two year time period of the budget, or the policy defines rights or eligibility for services, such factors may certainly indicate substantive law is present. These are not the exclusive factors, however.’

“In addressing Senator Snyder’s argument about the previous practices of the Senate, the President finds that the change in the Supreme Court’s position in *Locke* dictates that prior Senate practice on the subject is no longer helpful in assisting the President in this question. In applying the *Locke* test, the President finds that Section 514 (17) of the budget bill contains some mandates that exceed the duration of the budget and some that do not. This factor is not conclusive. However, there is no question whatsoever that the policy set forth in Section 514(17) has been treated in a substantive bill, namely Engrossed Substitute Senate Bill No. 5625. Extraordinarily, Section 514(17) provides that if Engrossed Substitute Bill No. 5625 does not pass, then its provisions shall be adopted in the budget

bill. The President need not even look behind Section 514(17) to make a determination. Senator Brown argues that this is ‘typical’ budget language. The President disagrees.

“For this reason, the President finds that Engrossed Substitute Senate Bill No. 6153 does violate Senate Rule 25 and that Senator Johnson’s point of order is well taken.” (Pages 1675, 1712-2001).

**Substantive Law in Budget Improper –
Factors to Consider**

“In ruling upon the point of order raised by Senator Ericksen as to whether Sections 701, 704, 706, and 710 of the striking amendment include changes to substantive law in violation of Senate Rules 25 and 66, the President finds and rules as follows:

The President begins by noting that some of the issues presented are novel and involve complex and interrelated budget provisions, so the President asks for the body’s patience as he goes through each section in turn.

Section 701 would amend RCW 47.29.170 to continue the prohibition which prevents the Transportation Commission from accepting or considering unsolicited bids. While the wholesale introduction of such a change to the RCW might go beyond what can properly be done within a budget bill, it should be noted that the change in this case is simply the year involved. Effectively, this change merely continues current law into the next biennium to achieve additional savings for the budget. This section is therefore a proper change.

Section 704 would make changes to RCW 46.63.170 to permit the continued use of traffic cameras in certain areas and for certain purposes as a pilot project. The President does believe that this change could have represented an impermissible substantive change to law had it been raised and challenged prior to the adoption of the last

budget back in 2009. It was not, however, challenged, and this law did become part of the statute when the budget was enacted. Substantive or not, it is current law, and the modifications contemplated by the amendment before us for this budget again merely change the dates to continue these pilot projects into the next biennium. This section is also, therefore, a proper change.

Section 706 would amend RCW 43.19.642 to exempt the state ferry system from the biodiesel use requirements found in that statute. This change is properly limited to the fiscal biennium to achieve cost savings, and it is therefore a permissible amendment.

Section 710 would amend RCW 47.28.030 to provide an exception to certain bid requirements for ferry system work. While the current law does include a similar exception, that particular law is set to expire at the end of this fiscal year. Rather than simply change this date, the proposed changes in this section actually change the date and the dollar threshold. This adds an entirely new section to the statute in question. The President believes this constitutes an impermissible change to substantive law, effectively acting as an additional subject. The President believes that there are many possible ways the same or similar policy could properly be included as a budget proviso, so the President wishes to be clear that he is ruling on the technical language of the section, not the underlying policy or savings to be achieved.

The President believes that some explanatory and cautionary remarks may be helpful to the body on similar issues in the future. Neither this body nor the courts have exhaustively discussed the limits of budget provisos, and it is unlikely that the President could issue any ruling which would cover every conceivable situation. Nonetheless, the President recognizes that the body has and should have wide latitude in making limited legal changes in order to effect budget savings or realize revenue. Factors to consider include:

1. Whether the change is limited to the fiscal years affected;
2. Whether the proviso or additions were the subject of another bill;
3. Whether rights or eligibility for services are affected; and
4. Whether an express policy found in statute is being contravened, repealed, or modified in a manner which renders the underlying statutory scheme inoperative.

In every case, there should be a connection between the proviso and savings, spending, or raising of revenue achieved within the budget.

The President believes he has simply restated existing law and precedent for the convenience of the body, and he does not believe this ruling should act to invite wholesale challenge of budget provisos or the traditional means of budgeting that have historically been relied upon by the Legislature.

For these reasons, Senator Ericksen's point on Section 710 is well-taken, and therefore this amendment in its present form is not properly before the body for its consideration." (Page 1569 - 2011).

Substantive Law v. Rationally Related to Budget

POINT OF ORDER (1ST SPECIAL SESSION)

Senator West: "Mr. President, I rise to a point of order. Senate Rules provide that a bill contain one subject. This bill, in Section 907, amends Initiative 601, which is substantive law. This is a budget document and in *Legislature v. Locke*, where the Legislature actually attempted to amend substantive law through the budget—I believe in that case it was day care and we challenged the Governor's Veto and the court found us

wrong in attempting to amend substantive law in the budget document.

“I think there are many numerous other cases or other cases that would point to a similar issue. I don’t think we are allowed to amend substantive law in a budget document. This is an act relating to fiscal matters; it is for purposes of adopting the budget. If we want to amend substantive law, we should introduce a bill and do that separately.” (Page 1098–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator West that Substitute Senate Bill No. 6404 contains two subjects and violates Senate Rule 25, the President finds that Section 907 of the bill would amend RCW 43.135.045 to permit a transfer of up to three hundred million dollars from the emergency reserve fund to the multi modal fund.

“Senator Snyder referred to the President’s ruling in 1998 that the measure that became Referendum 49 did not contain two subjects. Because that ruling did not concern a budget bill, the prior ruling is not squarely on point. Senator West points out that the recent decision in *Legislature v. Locke* did concern a second subject in a budget bill in violation of Article II, Section 19 of the State Constitution. The President finds that the *Locke* case provides guidance here.

“In *Locke*, the Supreme Court set forth the following questions to consider in weighting whether a provision of the budget constitutes a second subject: (1) whether the provision was treated in a separate substantive bill; (2) whether the duration of the provision extends beyond the two year time period of the budget; or (3) whether the provision defines rights or eligibility for services. In the case of Section 907 of the

budget bill before us, the answer to all three questions is ‘No.’

“The President also finds that the fund shift in Section 907 is rationally related to the budget; in fact the budget depends on the fund shift.

“For these reasons, the Presidents finds that Second Substitute Bill No. 6404 does not contain two subjects in violation of Senate Rule 25, and the point of order is not well taken.” (Page 1102–2000).

Substantive Law in Budget Improper – Single Subject Violation Leads to Scope & Object Violation

“In ruling upon the point of order raised by Senator Brown asserting that Amendment # 379 includes substantive law in violation of Senate Rules 25 and 66, the President finds and rules as follows:

The proposed amendment offered by Senator Benton seeks to include in the transportation budget a provision that would require the department of licensing to verify the lawful presence of applicants for various licenses.

The President has long held that a budget bill – whether for the purposes of transportation, or the operation of state agencies – is not an appropriate forum for changing state substantive law. This position was developed in part after the Supreme Court’s decision in *Legislature v. Locke*. In determining whether substantive law is present, several alternative factors may be considered. Two of these are: first, whether the proposed language seeks to include a policy change that was the subject of a separate bill; and second, whether the inclusion of the language would redefine rights or eligibility for services.

Here, the offered amendment seeks to include the licensing requirements found in a separate bill, Senate Bill 5407, which did not pass. That bill, and this amendment, would reduce the number of persons currently eligible to obtain drivers licenses or similar

permits. Both of these factors indicate that the amendment would affect state substantive law and are appropriately part of a policy bill, but are not appropriate for inclusion in a budget bill.

Having so decided, the President would note that Sen. Brown’s motion raised objections under Rule 25 and Rule 66. An amendment that, if adopted, would add a second subject to a bill in violation of Senate Rule 25, almost by definition violates Rule 66, which prohibits changing the scope and object of a bill. This is different from the President’s analysis of the two-subject rule when applied to a bill, as a bill may contain two subjects as it is drafted, and the scope and object concerns under Rule 66 never apply. In this case, it is not necessary to specifically decide which violation is more significant, as the result is the same: the amendment is out of order.

For these reasons, if adopted, Senator Benton’s amendment would violate Rules 25 and 66, and Senator Brown’s point is well-taken.” (Page 1541 - 2011).

Taxes & Fees in Budget Bill

“In ruling upon the point of order raised by Senator West that the House striking amendment to ESSB 6153 violates Senate Rule 25, the President finds that four of the fees cited by Senator West were previously authorized in statute to cover the cost of pre-existing statutory programs:

The board of accountancy fee in Section 145 is authorized in RCW 18.04.065

The labor and industries elevator fee in Section 217 is authorized in RCW 70.87.030

The department of health licensing fee in Section 220 is authorized in RCW 43.70.110

The department of licensing business license fee in Section 401 is authorized in RCW 43.24.086

Additionally, the tuition and fee increases set forth in Sections 601 and 603 are specifically authorized to occur in a budget bill in RCW 28B.15.067(3).

The President would distinguish the pre-existing fees in this budget bill from the child care co-pay provision addressed in *Legislature v. Locke*. In *Locke*, the court determined specifically that the “intent and effect of the copayment provision here is to restrict access to public assistance eligibility, [therefore] its inclusion by the Legislature in a budget bill violates art. II, Sec. 19.” The President does not find that the pre-existing administrative fees at issue in this budget are substantive provisions prohibited in a budget under Senate Rule 25.²² The President believes there is a distinction between a tax created or increased in a budget bill, for example, and the pre-existing administrative fees addressed in the budget. For the distinction between a “fee” and a “tax”, the President would refer the members to the President’s rulings on the subject under I-601.

In short, the President finds that the pre-existing fees at issue are rationally related to the appropriations sections in question, and that Senator West’s point of order is not well-taken..” (Pages 1872-73—2001).

²² Senate Rule 25 provides: “ONE SUBJECT IN BILL - No bill shall embrace more than one subject and that

shall be expressed in the title. (See also Art. 2, Sec. 19, State Constitution.)”

CALL OF THE SENATE

Motion to Adjourn Cannot Be Made While Under A Call of the Senate²³

POINT OF ORDER

Senator Benton: “A point of order. A motion to adjourn–.” (Page 850–2000).

REPLY BY THE PRESIDENT PRO TEMPORE

President Pro Tempore Wojahn: “The motion to adjourn is not debatable and the question before the Senate is shall we now adjourn.” (Page 850–2000).

REMARKS BY SENATOR SNYDER

Senator Snyder: “I believe the motion to adjourn cannot be made while we are under the Call of the Senate. We would have to dispense with the Call of the Senate before we could act on the motion to adjourn.” (Page 850–2000).

REMARKS BY SENATOR JOHNSON

Senator Johnson: “Has the President ruled on the objection by Senator Snyder?” (Page 850–2000).

REPLY BY THE PRESIDENT PRO TEMPORE

President Pro Tempore Wojahn: “Not yet.” (Page 850–2000).

RULING BY THE PRESIDENT PRO TEMPORE

²³ See Senate Rule 21 (Precedence of Motions, motion to adjourn is highest privileged motion) and Senate Rule 38 (motion to adjourn always in order except

President Pro Tempore Wojahn: “According to Rule 38, adjournment cannot be called for while we are still under the Call of the Senate. We are still under the Call of the Senate.” (Page 851–2000).

CAUCUS

Senate Be At Ease Subject to Call of the President

MOTION BY SENATOR PATTERSON

Senator Patterson: “I move that there be a democratic caucus immediately.” (Page 1084–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Patterson has moved that there be a democratic–Senator Patterson, the President is not familiar with such a motion. Are you asking for a recess?”

Senator Patterson: “I withdrew that motion and I move that the Senate be at ease subject to the call of the President.” (Page 1084–2000).

COMITY

Amending House Titles

“Senator Honeyford has raised two related questions on the striking amendment to House Bill 1187: First, he asks whether it is appropriate for the Senate to substantively amend the title of a House Bill; and second, he asks whether the proposed amendment is

when under the Call of the Senate). *See also* Reed’s Rule 201 (not debatable or amendable, has precedence over all other motions).

beyond the scope and object of the underlying bill.

As to the first question, the President takes note of the fact that House rules and practice differ from those of the Senate with respect to title amendments, and it is probably fair to characterize the House's rules as stricter with respect to such amendments. That said, in the interest of comity and promoting good relations between the chambers, the President generally does not rule on matters of procedure within the House. Our rules allow for title amendments, and this body may make such amendments if it chooses. The body may be well-advised, of course, to take note of House practice and traditions in making such choices, but these are matters of negotiation and policy, not Senate procedure.

On the second question, relating to whether the striking amendment goes beyond the scope and object of the underlying bill, the President begins by taking a look at the measure in the form in which it originally came over from the House. In this case, the measure can be fairly characterized as a purely technical recodification of affordable housing statutes. There are no substantive provisions of law changed or enacted beyond this. By contrast, the striking amendment includes very substantive law allowing local governments to set up relocation assistance programs. It includes monetary amounts, notice provisions, language on condominium moratoriums, lease termination provisions, and limitations on interior construction. This language goes well beyond recodifying affordable housing statutes and is clearly outside the subject matter of the underlying bill as it came over from the House

For these reasons, Senator Honeyford's second point is well-taken, and the amendment is beyond the scope and object of the underlying bill." (Pages 1357-58 - 2007).

Court Action

In ruling upon the point of inquiry raised by Senator Sheldon that this measure takes a two-thirds vote for final passage because it amends sections enacted by Initiative Number 872, the President finds and rules as follows:

Last Session, the President did rule that a similar measure required a two-thirds vote for final passage because it amended sections of the law enacted by I-872. Since that time, this has been a high-profile issue that is being litigated in the courts. The President begins by reminding the body that its presiding officers have a long tradition of ruling on parliamentary issues, not legal or constitutional matters. The President's rulings do not, however, take place in a vacuum. When appropriate, the President must, as a matter of comity and parliamentary necessity, take notice of actions undertaken by other branches of government which have a practical impact on parliamentary issues.

On July 15, 2005, a federal judge issued an order declaring, among other things, I-872 to be unconstitutional, and the judge's ruling is relevant to the analysis on this point of order. It is important to note the precise language used by the judge in the case because it bears directly on the state of the law before us. The judge wrote on page 38 of his Order:

In this case, the Court's holding that Initiative 872 is unconstitutional renders it a nullity, including any provisions within it purporting to repeal sections of the Revised Code of Washington. Therefore, the law as it existed before the passage of Initiative 872, including the Montana primary system, stands as if Initiative 872 had never been approved.

It is hard to imagine the Court being clearer in its statement that the law is returned to its former status as if I-872 had never been approved. Since this is the case, it necessarily follows that any change to the law proposed by this body takes only a simple majority vote because there is no initiative left to amend.

It may well be that the federal judge's ruling will not be the final word on this matter. The President is aware that the matter is being appealed and further litigated in the courts, and it is uncertain when or how further court action might change the trial court's decision. It may be prudent for proponents of this measure to seek a two-thirds vote as a means of removing all doubt and risk which may flow from subsequent and different court action. It is precisely because of this uncertainty, however, that the President cannot engage in speculative analysis, but must instead confine himself to the state of the law as it exists at the time of his ruling. Presently, a duly-constituted Court has declared I-872 unconstitutional and returned the law to its pre-I-872 status. In appropriate deference to this Order, the President finds and rules that the measure before us takes only a simple majority vote for final passage. (Pages 161-162—2006).

Deference to Executive Branch

In ruling on the inquiry raised by Senator Schoesler as to the application of Initiative Number 960 to Engrossed Substitute Senate Bill 5261, the President finds and rules as follows.

I-960 contains many provisions, but, for purposes of my analysis, its major sections may be properly segregated as conferring obligations on two branches of government: First, the Office of Financial Management, as part of the executive branch, is charged with providing certain fiscal analysis and public

notice when a bill imposes a tax or a fee. Second, I-960 imposes certain obligations upon the Legislature, requiring supermajority votes on and referral to the voters of particular measures under certain circumstances relating to the imposition of tax increases. In this particular case, Senator Schoesler is challenging OFM's determination that this measure is neither a tax nor a fee, and therefore those provisions of I-960 which require OFM to perform fiscal analysis and provide public notice are not triggered.

The President reminds the body that he provides parliamentary rulings, not legal advice. While the President can properly rule on those provisions of I-960 which affect this body and the votes required for a particular measure under consideration, he has no authority to decide the propriety of actions taken by coordinate branches of government. The President renders no opinion as to whether OFM should have applied the mandates of I-960 to this particular bill; instead, under long-established precedent with respect to comity, he defers to OFM's judgment that it has complied with its obligations under I-960. It is not the role of the presiding officer to second-guess the legal judgments of another branch of government.

The President wishes to make clear that he is deferring to OFM's judgment only with respect to its determination of its own duties under I-960; he reserves the right to independently determine whether a measure is a tax or fee for purposes of the ultimate vote needed in this chamber, and need not defer to OFM's prior opinion on this subject with respect to such a ruling. In such a case, his judgment will be independent from that of OFM, and he will analyze each measure on its own merits, irrespective of prior OFM action.

In this particular case, Senator Schoesler’s inquiry related to whether or not OFM should have provided fiscal analysis and public notice under I-960. Because it is not the President’s role to make a determination as to the legal obligations of a coordinate branch of government, the President finds that this measure is properly before the body for consideration, and Senator Schoesler’s point is not well-taken.” (Pages 149-50—2008).

Enrolled Bill Doctrine

In ruling upon the point of order raised by Senator Zarelli that Substitute Senate Bill 6078 is not properly before us because the House did not act upon it in time to comply with the cutoff dates set forth in Senate Concurrent Resolution 8400, the President finds and rules as follows:

Matters of difference between the Senate and the House must generally be resolved by the processes set forth for passage of bills within the Constitution, applicable codes, and any concurrent resolutions by and between the two bodies, such as the Joint Rules or the cutoff resolution. Conduct of affairs and conclusions reached within the House are not matters on which the President should properly rule. The President will make rulings, such as scope and object, with respect to bills passed from the House over to the Senate, where such a ruling is necessary to determine the actual text of the bill to be considered, or to determine the votes needed or similar parliamentary necessities. Beyond this, the President will defer to the House on the conduct of its affairs.

When the House reports a measure out or otherwise sends an official message to the Senate, the President will generally take this message as a proper communication as to the

disposition of the House’s business, and not look beyond this. Any other analysis risks generating bad will between the bodies and invites endless “second guessing” of procedural matters already decided. To avoid this and promote comity between the two chambers, the President follows an approach similar to the enrolled bill doctrine found at law, under which the body promulgating a measure is the final authority as to whether it followed its own applicable procedures. The President reserves the right, of course, to consider any substantial irregularities in process between the bodies. In general, however, the President will confine himself to ruling on the parliamentary merits of the matters before us, not the process followed in the House.

For these reasons, the President finds that Senator Zarelli’s point is not well-taken and the measure is properly before this body for consideration. (Page 1331–2005).

House Amendment to Senate Bill Cannot Be Changed By Senate

PARLIAMENTARY INQUIRY

Senator Snyder: “This is a bit unusual, but the House has passed Second Substitute Senate Bill No. 6404 with amendments and I would like to request a ruling on the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House. In the regular session, President Owen made a ruling on the votes necessary to pass Substitute Senate Bill No. 6404. He ruled that a simple majority vote was required to transfer money from the emergency fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account, but Section 907 of also expressly amended RCW 43.135.045

was adopted as part of Initiative 601 and the ruling in the earlier inquiry concerned the number of votes necessary to amend Initiative 601. I would like a ruling on the votes needed to pass Second Substitute Senate Bill No. 6404, as amended by the House. (Page 1138–2000).

**RULING BY THE PRESIDENT PRO
TEMPORE**

President Pro Tempore Wojahn: “In ruling on the point of inquiry raised by Senator Snyder on March 23, 2000, concerning the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House of Representatives, the President would first note that advisory rulings are not normally given by the President. For example, earlier this session, President Owen declined to rule on a point of order on whether a bill was properly before the Senate under Senate Rule 25, as long as that bill remained on Second Reading.

“The President reasoned that until such time as a bill is on final passage, it may be changed by the body. Second Substitute Senate Bill No. 6404, as amended by the House, will be on third reading if a motion to concur is adopted. The House amendment cannot be changed by the Senate. For these reasons, the President finds that Senator Snyder’s point of inquiry is timely.

“Section 501 of the House striking amendment to Second Substitute Senate Bill No. 6404 would allocate money from the emergency reserve fund to school districts to pay for increased fuel costs. Section 724 would transfer money from the emergency reserve fund to the multi modal transportation account for rail programs. RCW 43.135.045(2) provides that the Legislature appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each

house of the Legislature. The President, therefore, finds that final passage of Second Substitute Senate Bill No. 6404, as amended by the House, would require a two-thirds vote of the Senate (thirty-three members).

“The President would distinguish an earlier ruling on Substitute Senate Bill No. 6404 in which President Owen ruled that a simple majority vote was required to transfer money from the emergency reserve fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account. However, Section 907 also expressly amended RCW 43.135.045(2) to remove the statutory requirement for a two-thirds majority vote to make the transfer. RCW 43.135.045 was adopted as part of Initiative 601 and the point of inquiry in the earlier instance concerned the number of votes necessary to amend Initiative 601. President Owen ruled that only a simple majority was necessary to amend Initiative 601.” (Page 1139–2000).

**Reference to Another Body or Branch of
Government**

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry, with regard to the gentleman from the forty-eighth district speaking about what a Governor may or may not do. Is it inappropriate to, under Reed’s Rules, Section 224, to talk about another house or branch of government and what they may not do?” (Page 283–1997).

REPLY BY THE PRESIDENT

President Owen: “Senate Rules do prohibit that. However, the Senate has exercised some discretion over the years as it

pertains to that matter, Senator Heavey.” (Page 283–1997).

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry. Mr. President, which Senate Rules do we follow and which ones don’t we follow?” (Page 283–1997).

REPLY BY THE PRESIDENT

President Owen: “We follow them all. We are looking for the citation for you, Senator Heavey. Are you withdrawing your parliamentary inquiry? We will find the citation for you, Senator Heavey, but I would caution the members to be careful about referencing the other bodies.” (Page 283–1997).²⁴

POINT OF ORDER

Senator Johnson: “A point of order, Mr. President. The Senator is getting a little enthusiastic in his epitaphs toward one of the caucuses on the other side of the rotunda.” (Page 1125–2000).

REPLY BY THE PRESIDENT

President Owen: “It does happen, Senator Hargrove, that the rules prohibit you from talking about the other house. Would you please keep your remarks—and all members keep your remarks—to the subject matter before us.” (Page 1125–2000).

PARLIAMENTARY INQUIRY

²⁴See Reed’s Rule 224: “It is not permissible to allude to the action of the other house . . . Such conduct might lead to misunderstanding and ill-will between two bodies which must cooperate in order to serve the

Senator West: “Mr. President, I rise to a point of parliamentary inquiry. In light of the remarks by the gentleman from the nineteenth, I would think it would be worthwhile if the President reminded the Senate of Rule 224 in Reed’s as far as references in debate.” (Page 323–1999).

REPLY BY THE PRESIDENT

President Owen: “Thank you, Senator West. You are correct. The reference, in rule 224, says, ‘It is not permissible to allude to the action of the other house of a legislature, or to refer to a debate there, etc.’” (Page 323–1999).

REMARKS BY THE PRESIDENT

President Owen: “Since we have most of the members here and the new members particularly, the President would do a clarification: It’s quite often said that you may not mention the other house. You can mention the other house. ‘They are going to have a party. Great group of people.’ What you cannot do in debate is mention the actions on a measure so that it would affect how you vote or how the outcome of that measure would be in this body. So mentioning the other house is allowed, mentioning the actions of the other house and how it would affect your legislation is not allowed.” (Page 144 – 2013).

COMMITTEES

Appointment to Standing Committees

PARLIAMENTARY INQUIRY

people. So, also, the action of the other body should not be referred to influence the body the member is addressing.”

Senator Sheahan: “Thank you, Mr. President. A point of parliamentary inquiry. Because we are operating without Senate Rules and under general parliamentary rules, I would like to know how many votes are necessary to pass the motion to confirm the standing committee appointments.”(Page 23–2001).

REPLY BY THE PRESIDENT

President Owen: “In response to the parliamentary inquiry by Senator Sheahan, the President believes that it takes a majority of those present.” (Page 23–2001).

**Appointment to Standing Committees –
Amending**

REMARKS BY SENATOR WEST

Senator West: “Mr. President, I guess I wasn’t listening. I didn’t hear you make the appointments. Did you make that announcement that you had made the appointments?” (Page 20–2001).

REPLY BY THE PRESIDENT

President Owen: “No, I did not, Senator.”

Senator West: “Is it premature to confirm the appointments prior to making the appointments?”

President Owen: “I think the President may have misunderstood your question. The President has placed the appointments before you as shown on the lilac sheet and has made those in that gesture and therefore they are before you to be confirmed.” (Page 20–2001).

MOTION TO DIVIDE QUESTION

Senator West: “I move that the question be divided and that the Committee on Transportation, the Committee on Ways and Means and the Committee on Rules be considered separate from the rest of the committees.” (Page 20–2001).

REPLY TO SENATOR WEST

President Owen: “Senator West has moved that the question be divided and that the Committees on Transportation, Ways and Means and Rules be considered on a separate vote. Did you wish to elaborate on that, Senator West?” (Page 21–2001).

MOTION

Senator West: “Considering that motion failed, I would like to move now that the appointments to the Committee on Transportation, the Committee on Rules and the Committee on Ways and Means be added to as follows: I would like to move to confirm additional appointments to the Transportation Committee, adding the names of Senator Swecker and Senator West; additional names to the Rules Committee, adding the name of Senator Honeyford and additional members to the Ways and Means Committee, adding the names of Senator Carlson, Senator Hochstatter and Senator Parlette; and I would like to speak to my motion.” (Page 22–2001).

REPLY BY THE PRESIDENT

President Owen: “Senator West has moved the motion be amended to include the addition to the Transportation Committee of Senate Swecker and Senator West; the addition to the Rules Committee of Senator Honeyford, and the addition to the Ways and Means Committee of Senator Carlson,

Senator Hochstatter and Senator Parlette.” (Page 22–2001).

PARLIAMENTARY INQUIRY

Senator Snyder: “Thank you, Mr. President. I have a parliamentary inquiry. This is an oral amendment to the motion by Senator Sheldon to confirm the appointees to the standing committees?” (Page 22–2001).

REPLY BY THE PRESIDENT

President Owen: “That is the way the President understands it. This is an oral amendment to the motion by Senator Betti Sheldon to confirm the appointees by the President to the committees.” (Page 22–2001).

Five-Day Notice²⁵

PARLIAMENTARY INQUIRY

Senator McCaslin: “Mr. President, a point of parliamentary inquiry. Senate Rule 45 (1) requires committees to either provide or vote to waive five days’ notice before hearing a measure. Mr. President, I ask, assuming the first and only time a committee considers a measure is during executive session, does the five day notice rule apply? If not, I am concerned that committees could pass bills without any public notice whatsoever.” (Page 417–2001).

RULING BY THE PRESIDENT

²⁵ Rule 45 provides: “1. At least five days notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing. By a majority vote of the committee

President Owen: “In ruling on the point of parliamentary inquiry raised by Senator McCaslin concerning whether the five day notice requirement in Senate Rule 45 (1) applies to bills in committee considered for the first time in executive session. It is not the President’s practice to issue advisory opinions of hypothetical facts. Each point of order must be judged on its individual merits. Although the President will wait for a point of order on actual facts to issue a binding opinion on this issue, the President might suggest that the safest course for committee chairs is to adhere to the five day rule—either give or waive five days’ notice as the case may be—for bills considered for the first time in executive session.” (Page 417–2001).

Meeting During Session

Meeting During Session -Majority Vote Needed²⁶

POINT OF ORDER

Senator Snyder: “I wish to raise a point of order. Apparently, Senator West and Senator Strannigan and probably Senator Spanel are going to be excused, so they can meet in a conference committee. Now, the members on this side of the aisle haven’t had the privilege of a briefing or anything on the budget they are going to be discussing. We had a few minutes in caucus this morning, maybe fifteen or twenty minutes and we are kind of torn because we would like to be over and listen to the testimony at the conference committee and yet we are required to stay here and work on bills. I think that under Rule

members present at any committee meeting such notice may be dispensed with. The reason for such action shall be set forth in a written statement preserved in the records of the meeting...”

²⁶ Rule 46 provides: “No committee shall sit during the daily session of the senate unless by special leave. No committee shall sit during any scheduled caucus.”

46, it says, ‘No committee—‘it doesn’t say, ‘standing committee—‘ ’ no committee shall sit during the daily session of the senate unless by special leave.’

“So, that means that the Senate would have to give them permission and in order to suspend any rule of the Senate, where it is specifically mentioned, I think it takes a two-thirds vote. Now, we can bump bills now with a simple majority, because Rule 59, I believe it is—excuse me—Rule 62 says, “Every bill shall be read on three separate days unless the Senate deems it expedient to suspend this rule. On and after the tenth day preceding adjournment sine die of any session, or three days prior to any cut-off date for consideration of bills as determined pursuant to Article 2, Section 12 of the Constitution or concurrent resolution, this rule may be suspended by a majority vote,’ so that rule can be suspended. It only talks about that specific rule meaning advancing or in some cases, we can move a bill from third reading back to second reading by a simple majority, rather than a two-thirds. I maintain that in order to suspend Rule 46 and have a committee meeting during the session, it takes a two-thirds vote.” (Page 1247–1997).

MOTION

Senator Johnson: “Mr. President, pursuant to Rule 46, I move that the conference committee on the budget be granted leave to meet while the Senate is in session.”(Page 1247–1997).

RULING BY THE PRESIDENT

President Owen: “Senator Johnson has moved that the conference committee on the budget be granted leave to meet as per Rule 46, while the Senate is in session. The question is being examined at this point,

²⁷ Please see Rule 46, which provides, “No committee shall sit during the daily session of the senate unless

whether or not that takes a majority or a two-thirds vote. It has been determined that it takes twenty-five votes to suspend the rules in this case.” (Page 1247–1997).

Meeting During Session - Leave is 25 Votes of Those Present²⁷

“In ruling upon the points of order and inquiry raised by Senator Benton, the President finds and rules as follows:

All of the inquiries arise from a situation where a standing committee of the Senate began a meeting prior to a full floor Session of this body, and continued into the start of Session.

First, a question was raised as to whether or not Senator Brown’s motion to invoke Rule 46 to allow a committee to meet during Session was timely. The President finds that it was, because the first and only opportunity for any member to seek this leave is during Session itself. So long as leave is sought and granted during the Session at which same time a committee is meeting, the meeting is appropriate.

Second, a question was raised as to how many votes are necessary to grant such leave under Rule 46. Although Senator Brown initially stated her motion as a suspension of the rules—which would take a 2/3 vote—this is truly a motion to ask for leave as Rule 46 provides, not a suspension of the rules. As such, it takes a simple majority of those present.

Third, Senator Benton has raised an issue as to whether or not the committee has properly complied with notice requirements set forth in Rule 45. The President has long ruled that

by special leave. No committee shall sit during any scheduled caucus.”

the committees are the keepers of their own parliamentary matters, and the President will defer to parliamentary decisions made in committee unless and until an appeal from such a committee decision is proper on the Floor. For this reason, the President believes that Senator Benton may raise such a point depending on the ultimate action of the committee reported to the full Floor for action, but that it is not timely now.” (Pages 518-519—2006).

Meeting During Session – Time & Place

[In a quick ruling on February 16, 2007 (Journal Pages 270-71), in response to a point of order raised by Senator Roach, the President held that it was not timely to rule on a whether a hearing to be held in Portland with the Oregon Legislature needed leave of the Senate because (1) he was not sure it was a Senate hearing, and (2) until the time of the hearing conflicted with actual Floor time, he would not rule, even though it was logistically impossible to get from Olympia to Portland in time for both.]

Parliamentary Decisions of Committee

[Please see the last paragraph of the 2006 Ruling, Pages 518-519—2006, on “Meeting During Session – Leave is 25 Votes of Those Present,” above]

Pocket Veto/Transmittal of Report²⁸

²⁸ Please see Rule 63, which provides in pertinent part: “No committee chair shall exercise a pocket veto of any bill.”

²⁹ Senate Rule 48 provides: “Any standing committee of the senate may be relieved of further consideration

[Please see the last paragraph of the Reconsideration ruling of 4/17/03, below]

Recalling a Bill from Committee

RULING BY THE PRESIDENT

“In ruling on the point of order raised by Senator West the President finds and rules as follows:

A number of issues are presented by the floor action up to this point which need explanation. Consistent with past rulings on these issues, the President finds that all measures are subject to the cutoff resolution passed by both the House and the Senate this year, Senate Concurrent Resolution 8400. Pursuant to this cutoff resolution, April 4th was the last day to read in committee reports on House bills from all committees except fiscal committees, which could be read in no later than April 7th. The specific language within the cutoff resolution for these committee cutoff dates is very important because it relates only to reporting by committees, not to consideration of the measure by the full Senate. The only relevant date for consideration of a House bill by the full Senate is April 18. The ultimate say is and should be the will of the full body, which is reflected in Rule 48.²⁹

Rule 48 clearly and unambiguously allows this body to recall a bill from committee with a simple majority vote of the full membership, in other words, twenty-five votes. The cutoff resolution also clearly and unambiguously sets forth April 18 as the final day by which the Senate may consider a

of any bill, regardless of prior action of the committee, by a majority vote of the senators elected or appointed. The senate may then make such orderly disposition of the bill as they may direct by a majority vote of the members of the senate.”

House Bill. Combining these two precepts, the President rules, therefore, that the body may properly relieve any committee of a House bill for consideration by the full Senate so long as it does so on or before 5:00 p.m. on April 18.

The President has reviewed previous rulings on this subject and recognizes that this ruling is a departure from an earlier ruling in 1997. The President believes, however, that today's ruling better harmonizes the interplay between Rule 48 and the cutoff resolution and is more consistent with the principles expressed by both the Senate Rules, the cutoff resolution, and Reed's Parliamentary Rules which are to be construed in such a way as to allow the body to complete its business.

Therefore, the President finds that Senator Sheahan's motion, as amended, is properly before the body." (Page 1077-2003)

Reconsideration

RULING BY THE PRESIDENT

In ruling upon the point of order raised by Senator McCaslin, the President finds and rules as follows:

The President believes a brief recitation of the facts is appropriate to explain how this measure came before the body. The bill was originally moved by the committee upon a motion to recommend a substitute bill be adopted and passed. In fact, the underlying measure is a House bill, and the Senate cannot adopt a substitute to a House bill. Instead, the proper way to change

³⁰ Rule 45(7) provides: "Any measure which does not receive a majority vote of the members present may be reconsidered at that meeting and may again be considered upon motion of any committee member if one day's notice of said motion is provided to all committee members."

language in the underlying bill is with an amendment. Realizing the mistake, the committee later moved to report the bill out with a "do pass" recommendation as amended by the committee. This was the proper motion. Because the previous motion to substitute the bill was never proper, it could not properly be reported out. Put another way, the bill was never actually reported out until the motion was correctly put to adopt a striking amendment-- not a substitute. Therefore, the measure, as amended by the committee, is properly reported out and before this body for consideration.

Senator McCaslin is correct that Senate Rule 45(7)³⁰ provides a mechanism by which a committee may reconsider a measure that has failed to receive a majority vote by providing one day's notice. This is not, however, the exclusive authority by which a question may be reconsidered. The President believes that motions to reconsider achieve two primary purposes. First, they allow for the question to be decided by a true majority of the body or committee by providing an opportunity for a measure to pass that has failed because of a member's absence or a mistake. Likewise, they allow for a member to change his or her mind. Second, a motion to reconsider can serve as a means by which the body or committee can change mistakes made in the text of a bill, presentation of a motion, or in procedure. In this regard, the main thrust of reconsideration is to ensure that the will of the body is done and done correctly, whether the reconsideration be for a question that has failed or passed. Reed's Rule 202³¹ makes this clear. It states:

³¹ Reed's Rule 202 provides: "Reconsideration.— Even after a measure has passed the ordeal of consideration, of debate and amendment, and of final passage by the assembly, it has not yet, in American assemblies, reached an end. It is subject to a motion to reconsider. In England the motion to reconsider is not known. If any error has been committed, it is rectified by another act. So far is the doctrine that a member

Even after a measure has passed the ordeal of consideration, of debate and amendment, and of final passage by the assembly, it has not yet, in American assemblies, reached an end. It is subject to a motion to reconsider...

Reed's Rules, along with Senate Rule 37³², provide additional means of reconsideration which are supplemented, not excluded, by Rule 45(7). The need for Rule 45(7) to specifically state a mechanism for reconsideration of a failed measure in committee is clear: once a measure has failed in committee, it will generally not be presented on the floor for full consideration, and there may be no other practical opportunity to consider any other aspect—procedural or substantive— of the measure. By contrast, a measure which has passed will, as a practical matter, generally provide more opportunities to be revisited to correct procedural or substantive mistakes. Rule 45(7) clearly provides a process by which a measure which fails in committee may be reconsidered by that committee, but Senate Rules and Reed's Rules likewise provide a means by which that committee may

knows what he intends the first time carried there, that members who go by mistake into the wrong lobby are counted where they are, and not where they ought to be. If he is with the ayes, he is counted aye, and not allowed to correct his error.”

³² Senate Rule 37 provides: “**1.** After the final vote on any measure, before the adjournment of that day's session, any member who voted with the prevailing side may give notice of reconsideration unless a motion to immediately transmit the measure to the house has been decided in the affirmative and the measure is no longer in possession of the senate. Such motion to reconsider shall be in order only under the order of motions of the day immediately following the day upon which such notice of reconsideration is given, and may be made by any member who voted with the prevailing side. **2.** A motion to reconsider shall have precedence over every other motion, except

reconsider measures which have not failed. The President therefore finds that a committee may reconsider any question still pending or within its control, regardless of whether that question was previously positively or negatively decided by that committee. Any other interpretation would leave a committee without reasonable means to correct substantive or procedural mistakes.

With respect to the ability of a chair to hold a committee report or exercise a "pocket veto" under Senate Rule 63,³³ the President finds that a committee has a reasonable time to transmit a committee report to the Secretary of the Senate to be read in to the full body as part of the First Order of Business. If a member believes that a chair is not acting in good faith, that member has several options. First, he or she may move, in committee, that the report be immediately transmitted to the Secretary of the Senate to be read in to the full body as part of the First Order of Business. Second, he or she may move, on the floor of the Senate, that the report be read in during First Order. Third, under Rule 48, a bill may be recalled from committee by a majority vote of the membership. These are not necessarily the only remedies available, but should provide

a motion to adjourn; and when the senate adjourns while a motion to reconsider is pending or before passing the order of motions, the right to move a reconsideration shall continue to the next day of sitting. On and after the tenth day prior to adjournment sine die of any session, as determined pursuant to Article 2, Section 12, or concurrent resolution, or in the event that the measure is subject to a senate rule or resolution or a joint rule or concurrent resolution, which would preclude consideration on the next day of sitting a motion to reconsider shall only be in order on the same day upon which notice of reconsideration is given and may be made at any time that day. Motions to reconsider a vote upon amendments to any pending question may be made and decided at once.”

³³ Please see Rule 63, which provides in pertinent part: “No committee chair shall exercise a pocket veto of any bill.”

some guidance as to how a member may protest a perceived pocket veto.

Therefore, the President finds that Substitute House Bill 1734, and the amendment by the Committee on Land Use Planning, are properly before this body for consideration. The President thanks Senator McCaslin for an opportunity to elaborate on these important issues." (Page 1241-2003)

Rules Committee – Package Pulls

President Owen: "In addressing the parliamentary inquiry raised by Senator Brown as to the practice of the Committee on Rules, the President finds and advises as follows:

The Committee on Rules is generally subject to the same rules and traditions as other standing committees of the Senate, but its practices are further modified by traditions unique to it by its very nature of acting as the final arbiter of which measures are actually considered by the full Senate. Past practice, the sheer volume of bills, the need to conduct orderly and timely business, and the current general inconvenience imposed upon the body by its temporary quarters while the Legislative Building is renovated all militate in favor of conducting some Rules Committee meetings in abbreviated sessions within the Lieutenant Governor's offices,

³⁴ Rule 50 provides: "The lieutenant governor shall be a voting member and the chair of the committee on rules. The committee on rules shall have charge of the daily second and third reading calendar of the senate and shall direct the secretary of the senate the order in which the bills shall be considered by the senate and the committee on rules shall have the authority to directly refer any bill before them to any other standing committee. Such referral shall be reported out to the senate on the next day's business.

where packages of bills are moved around as deemed advisable by the members.

These factors must be balanced, however, against very strong interests in allowing as much openness to the public and as much notice to the membership as is reasonably possible. Senate Rule 50³⁴ provides that the floor calendar is to be placed upon the member's desks and list the bills which will be considered on the following day. There is a major exception to this mandate, however, which is found in the plain language of this same rule. This exception allows the body, in "emergent situations," at the discretion of the committee, to prepare the calendar and report for consideration those measures which it deems necessary or advisable for consideration at a time it deems necessary or advisable. The President will assume that a particular situation is sufficiently emergent unless the point is challenged by a member and then determined by the committee upon a majority vote— just as is the case with other matters before other committees. Likewise, as with other committee decisions, members who object to a committee determination or action always have the right, pursuant to Senate Rules and practice, to raise a point of order or make an appropriate motion at the appropriate time to object to the adoption of a committee report, the disposition or status of a bill, or the consideration of a particular measure, which would then be decided by an appropriate vote of the full Senate.

In so advising, the President would also add that, while the committee meetings

The senate may change the order of consideration of bills on the second or third reading calendar.

The calendar, except in emergent situations, as determined by the committee on rules, shall be on the desks and in the offices of the senators each day and shall cover the bills for consideration on the next following day."

to date have been within the rules of the Senate, the President urges the members to reasonably and fairly balance all of the competing needs and principles at stake to allow as much openness, participation, and notice as to the meetings and the floor calendar as is possible.”

(Page 182-2004)

CONCURRENT RESOLUTIONS

May Be Passed By Majority Vote on Day of First Reading

POINT OF ORDER

Senator Snyder: “A point of order, Mr. President. Rule 59 seems to be kind of confusing. It says, ‘concurrent resolutions shall be subject to the rules governing the course of bills and may be adopted without a roll call. Concurrent resolutions authorizing investigations and,’ and it goes on and on. If it is subjected to the rules governing the course of the bill, I would think that this would take a two-thirds vote, even though the last sentence seems to contradict the first part of the saying, ‘concurrent resolutions are subject to final passage on the day of the first reading without regard to Senate Rule 62.’ I would like to have a clarification on that please.” (Page 1154–1997).

REPLY BY THE PRESIDENT

President Owen: “Your question is whether it takes a majority or two-thirds vote?”

³⁵ Senate Rule 59 states, “Concurrent resolutions shall be subject to the rules governing the course of bills and may be adopted without a roll call. Concurrent resolutions authorizing investigations and authorizing the expenditure or allocation of any money must be

Senator Snyder: “To pass it to second reading.”(Page 1154–1997).

RULING BY THE PRESIDENT

President Owen: “Senator Snyder, Senate Rule 59 reads, ‘Concurrent resolutions are subject to final passage on the day of the first reading without regard to Senate Rule 62.’ The President believes that a precedent has been that it would take a majority vote for this motion.”³⁵ (Page 1154–1997).

Not Subject to Cutoff

PARLIAMENTARY INQUIRY

Senator Spanel: “A point of parliamentary inquiry, Mr. President. I believe that you just stated that this bill could be moved to the calendar, but could not be acted on.” (Page 1506–1997).

REPLY BY THE PRESIDENT

President Owen: “I believe that I stated Engrossed House Bill No. 1128 would be that way, but this is a concurrent resolution that is not subject to cutoff.” (Page 1506–1997).

adopted by roll call and the yeas and nays recorded in the journal. Concurrent resolutions are subject to final passage on the day of the first reading without regard to Senate Rule 62.” [Senate Rule 62 relates to reading of bills on three separate days].

CONFERENCE COMMITTEES

Cannot Meet During Session Without Leave³⁶

POINT OF ORDER

Senator Benton: “Thank you, Mr. President. I rise to a point of order. Under Rule 46, it says. ‘No committee shall sit during the daily session of the senate unless by special leave.’ My question is, I understand the Transportation Conference Committee is meeting. Has the President or the Senate granted them special leave to do so?” (Page 1956–1997).

REPLY BY THE PRESIDENT

President Owen: “Senator Benton, I believe there is a motion pending on that issue and we will resolve that momentarily.” (Page 1956–1997).

MOTION

On motion of Senator Johnson, all of the Conference Committees that have been meeting for the past twenty-five minutes were granted special leave. (Page 1956–1997).

FURTHER REMARKS BY THE PRESIDENT

President Owen: “Senator Johnson, I would like to respond to Senator Benton’s inquiry. It has been the tradition of the Senate

to allow Conference Committees to meet during a session. However, it would be appropriate that a motion be made to allow that to take place for the remainder of the session if it is going to happen in the future, since you have raised the question.” (Page 1956–1997).

“Senator Johnson, with the permission of the Senate, all Conference Committees were permitted to meet as scheduled, even though those meetings may take place during a regular session on the Senate floor. (Page 1956–1997).”

Discretion of the Body to Concur, Recede, or Conference

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry, Mr. President. Shouldn’t the proper motion be to not concur and ask the House to recede? Shouldn’t we give them an opportunity to recede from their amendment and an opportunity to concur in what the Senate originally sent over to them before we head to a conference committee?” (Page 1126–1997).

REMARKS BY SENATOR WEST

Senator West: “Thank you, Mr. President. I would simply call your attention and the attention of the body to Reed’s Rule 245, which outlines this procedure exactly.” (Page 1126–1997).³⁷

³⁶ Rule 46 provides: “No committee shall sit during the daily session of the senate unless by special leave. No committee shall sit during any scheduled caucus.”
Editor’s Note: In this ruling, the Lt. Governor notes that prior practice has allowed this.

³⁷ See Rule 67: “When there is a disagreement between the senate and house on a measure before the senate, the senate may act upon the measure with the

following motions which have priority in the following order:

- To concur
- To non-concur
- To recede
- To insist
- To adhere

REPLY BY THE PRESIDENT

President Owen: “Thank you, Senator West. Senator Snyder, it is at the discretion of the maker of the motion to determine which direction they wish to go, but it has been the practice of the body to try to bring the two houses together as quickly as possible.” (Page 1126–1997).

PARLIAMENTARY INQUIRY

Senator West: “Mr. President, just to be clear, if this motion were to fail, would that mean then that we did concur with the House budget and accepted it as the amendment to this bill?” (Page 1126–1997).

REPLY BY THE PRESIDENT

President Owen: “Senator West, yes that would carry with it the affirmative that we did concur if, in fact, this motion did fail.”(Page 1126–1997).

Requires a Motion

These motions are in order as to any single amendment or to a series of amendments. (See Reed’s Rules 247 through 254.)

A senate bill, passed by the house with amendment or amendments which shall change the scope and object of the bill, upon being received in the senate, shall be referred to an appropriate committee and shall take the same course as for original bills, unless a motion to ask the house to recede, to insist or to adhere is made prior to the measure being referred to committee.” *See also Reed’s Rule 245*: “Method of Obtaining Conference.— Whenever the two Houses have reached the point where they disagree, the House which has the papers may reject the amendments of the other House and ask a conference, or, if there be urgency, one House may amend the bill, and without waiting for the rejection of these amendments may ask a conference. Of course the adoption of the amendments obviates the necessity of a conference and prevents any reply to the request. Such is the

PARLIAMENTARY INQUIRY

Senator McAuliffe: “A parliamentary inquiry, please. If we ask them to recede, does it go to conference automatically?” (Page 1629–1997).

REPLY BY THE PRESIDENT

President Pro Tempore Newhouse: “You are asking a point of parliamentary information. State your question again.”

Senator McAuliffe: “If we do not concur and ask the House to recede, will it go into conference?”

President Pro Tempore Newhouse: “No, to go into conference, it requires a separate motion.” (Page 1629–1997).

practice in Congress. The formal method, which perhaps any House has a right to insist on, is illustrated in this way: A bill passed by one House is amended in the other and returned. The originating House disagrees to the amendment, and notifies the amending House by a message, returning the papers. Thereupon the amending body either recedes and concurs or insists and asks for a conference. The conference may report agreement with amendments, but may not change any item already agreed to by both Houses. The report of a conference committee can not be amended. It must be accepted or rejected as it stands. If the body acting on the conference report finds itself unable to agree to it, and desires to agree with a modification, the method of procedure is to reject the report, ask for another conference, and then instruct the committee to ask the conferees of the other body to agree to the proposed amendment to the report.”

CONFLICT OF INTEREST³⁸

Voting on the Gubernatorial Appointment of a Spouse

POINT OF INQUIRY

Senator Parlette: “Mr. President, a point of inquiry. Am I supposed to vote on this?”³⁹

REPLY BY THE PRESIDENT

President Owen: “Senator, the President believes that it is appropriate for you to vote on this confirmation.” (Page 1405-2003)

CONSIDERATION

Measure must be before the body

On April 21, the President made a ruling (not written up in advance) finding that a bill must be before the body before a motion is made to take action on the bill. In this case a member made a motion to not concur in the House amendments to a bill that was on the concurrence calendar. This is the transcript of the President’s Ruling:

MOTION

Sen. Liias: “Thank you Mr. President. I move the Senate not concur on the House amendments to SSB 5870 and ask the House to recede therefrom.”

³⁸ Senate Rule 22(1) provides: “...No senator shall be allowed to vote except when within the bar of the senate, or upon any question upon which he or she is in any way personally or directly interested, nor be allowed to explain a vote or discuss the question while the yeas and nays are being called, nor change a vote after the result has been announced...” See also **Washington Constitution** Article II, § 30: “...A

President: “Sen. Liias has moved that the Senate not concur on the House amendments to SB 5870 and ask the House to recede therefrom. Senator Fain.”

PARLIAMENTARY INQUIRY

Senator Fain: “Thank you Mr. President. Point of Parliamentary inquiry.”

President: “Please state your point.”

Senator Fain: “Is that bill before us at this moment?”

RULING BY THE PRESIDENT

“Once again, in order to expedite the procedure and not have to go and have you wait until we write this ruling up because it is somewhat of a precedent, the President is going to try to walk through this so please bear with me.

The question is whether or not the minority, or a member, can bring up a bill that is not either listed or brought up by the majority. The reason I say that is because historically, the traditional has been, the majority determines which bills are going to be brought before us for consideration. That is understood. Of course the minority, or anybody, can move to immediately consider a bill. This is a little different in that we are dealing with a message from the House, so we have no precedent on this. We have had one situation where a person did make that motion and no one objected, so the President brought it up and had the message read, which then it was defeated, by the way.

We have no rule on this procedure. So what the President has historically done,

member who has a private interest in any bill or measure proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.”

³⁹ The appointment in question would place Robert L. Parlette, Senator Parlette’s husband, on the Interagency Committee for Outdoor Recreation.

and I have rulings relative that I rely on tradition. The tradition of the body is that the majority will bring up the bills and we will deal with them and if the minority or anybody wishes to deal with a different, they can move to reconsider.

In this case since we did have a situation in the past where a motion was made to consider a message without a motion to immediately consider, that the President would recognize that motion unless there is an objection. If there is an objection, then there will be a vote to determine whether or not we immediately consider it. At this point, Sen. Lias has moved that we do not concur with the amendments to SB 5870. So unless there is an objection, the President will have that message read. Sen. Fain made a Parliamentary inquiry, he did not object. Sen. Schoesler?"

OBJECTION

Sen. Schoesler: "Mr. President, I object."

MOTION

President: "The question before us is now the motion by Senator Lias that we immediately consider that bill and the message on SB 5870."

(April 21, 2015)

Paperwork not Controlling

POINT OF CLARIFICATION

⁴⁰ See Reed's Rule 161 (italics supplied): "Incompatibility or Inconsistency.— An amendment may be inconsistent or incompatible with the words left in the bill, or with other amendments already adopted, but that is for the assembly to decide, and not for the presiding officer. For him to pass upon such a

Senator Benton: "Thank you, Mr. President. I rise to a point of clarification please. What are we working off of here? I have a third reading calendar and our list No. 1 was completed two appointments ago. This list No. 2 has no gubernatorial appointments on it, so I am just wondering what are we working off of here?" (Page 819–1999).

REPLY BY THE PRESIDENT

President Owen: "The issue before the Senate is Gubernatorial Appointment No. 9134, George Kargianis as a member of the Transportation Commission, which is shown on the screen up front, Senator Benton. The paper work is merely a guide, not a gospel."

Senator Benton: "Thank you. I'll speak to the appointment." (Page 819–1999).

CONSTITUTIONAL INTERPRETATION/MATTERS⁴⁰

Appropriate Form

PARLIAMENTARY INQUIRY

Senator Sheahan: "A parliamentary inquiry, Mr. President. I request a ruling by the President on whether this bill takes a two-thirds vote or a simple majority."

RULING BY THE PRESIDENT

President Owen: "Senator Sheahan, the President needs clarification on your parliamentary inquiry. Are you asking

question would be very embarrassing to the assembly, and still more so to him. *So, also, the question of constitutionality is not for him to decide. Incompatibility, inconsistency, and unconstitutionality are matters of argument.*"

whether or not this is a constitutional amendment?”

Senator Sheahan: “Yes sir. I am asking if this is a constitutional amendment.”

President Owen: “Senator Sheahan, let me take a stab at this. The body makes the determination on how they are going to present an issue before the Legislature. In this case, the sponsors have chosen to present it as a bill, not as a constitutional amendment. Therefore, that is the way that the President would rule as far as the vote requirement would be on that. If, in fact, it passes the Legislature and it goes before the court and they make a determination on that, that is not for the President to determine.” (Pages 336-337–2002).

Better Left to the Courts

In ruling upon the points of inquiry raised by Senator Honeyford and Senator Benton that House Bill 1397 is not properly before us for various legal, constitutional, and format reasons, the President finds and rules as follows:

The President begins by reminding the body that he does not make legal or constitutional interpretations as to the substantive law within a measure; instead, the President rules on parliamentary matters and those Constitutional or legal mandates affecting the vote on a particular matter. While there may be legal challenges that can be raised as to the substantive law in a bill, those challenges are better left to the courts for decision. Moreover, with respect to the challenge that this measure should have been placed within a Joint Resolution because it amends the Constitution, the President finds that no where within the express text of the bill does it amend any language found within the Washington Constitution. If the body believes a Constitutional amendment is

necessary, it would need, of course, to make such an amendment in the form of a Joint Resolution, but this does not preclude the body from taking up the language in this bill. For these reasons, the points are not well-taken and this measure is properly before the body for its consideration. (Page 1154–2005).

Future Legal Matters

In ruling upon the point of inquiry raised by Senator Johnson as to whether Senate Bill 6096 takes a simple majority or a two-thirds vote on final passage, the President finds and rules as follows:

Senator Johnson essentially argues that statutes enacted by Initiative No. 601 are still in force and effect notwithstanding the enactment, earlier this Session, of modifications to these statutes under Senate Bill 6078. He reasons that, because a referendum has been filed on Senate Bill 6078, its provisions are stayed from taking effect until the referendum is voted upon. For the sake of argument, the President takes notice of the fact that an Affidavit for Proposed Referendum Measure was filed with the Secretary of State today on Senate Bill 6078.

The President also notes, however, that Senate Bill 6078 contained, at Section 7, what is commonly referred to as an emergency clause that calls for the major provisions of the act at issue to take effect immediately. The Governor signed this act into law yesterday, and those provisions went into effect immediately. It may be that those seeking the referendum may prevail in their legal arguments to have the emergency clause set aside, and it may also be that the act, for this or other legal reasons, may be found unconstitutional in a court of law.

These are matters, however, to be decided by a court, not by the President.

The President reminds the body that he rules on parliamentary, and not legal, issues; it is up to the body to decide the policies and language to enact, and it is up to the courts to rule as to the various legal limitations or invalidities of such language. The body undoubtedly accepts some risk that a court decision could disaffirm all or parts of Senate Bill 6078, and such a ruling could also jeopardize any subsequent measures enacted pursuant to its mandates. Unless and until there is such a ruling, however, the President has no recourse other than to interpret those provisions of law enacted by Senate Bill 6078 to be in full force and effect. For these reasons, only a simple majority vote of this body is needed for final passage of this measure. (Page 1556–2005).

President Does Not Rule Upon⁴¹

RULING BY THE PRESIDENT

“In ruling upon the point of order raised by Senator Fraser that Substitute Senate Bill 5053 violates Article II, Section 37 of the Washington Constitution and Senate Rule 57, the President finds and rules as follows:

The President begins by affirming his past practice of ruling on parliamentary, and not legal, matters. For this reason, a decision on the Constitutional argument is better left to the courts.

⁴¹ See Reed’s Rule 161: “Incompatibility or inconsistency.— An amendment may be inconsistent or incompatible with the words left in the bill, or with other amendments already adopted, but that is for the assembly to decide, and not for the presiding officer.

As to the next point, it is instructive to keep in mind the President’s past ruling as to the timely raising of parliamentary issues before the body has taken action upon a question. Reed’s Rule 112 provides in part, “[O]bjections to present action must be presented before consideration has been entered upon. After debate has begun or other action has been taken it is too late.”

Applying this rationale to the matters before us, the time for raising such an objection was prior to the passage of this measure by the full Senate previously. Once the measure left this body with the language in question, that objection was waived.

For these reasons, Senator Fraser’s point is not well-taken and Substitute Senate Bill 5053 is properly before this body for consideration.” (Page 481-2004)

POINT OF ORDER

Senator Snyder: “I rise to a point of order, Mr. President. Senate Rule 25 says that no measure shall include more than one subject and that is based on Article II, Section 19 of the Constitution. Now, this measure has appropriations, it has taxes, it has a reaffirm of 601, it has a bond sale, and I could go on and on.

“Now, I want to refer you to 1951—the Senate Journal—the Eighth Day. A conference committee reported back a budget bill and in that budget bill, it included a tax measure, when the point of order was raised, Victor Aloysius Meyers, the President of the Senate

For him to pass upon such a question would be very embarrassing to the assembly, and still more so to him. So, also, the question of constitutionality is not for him to decide. Incompatibility, inconsistency, and unconstitutionality are matters of argument.”

at that time, agreed with the Senator that challenged and said that there were two subjects in that bill, but, the Senate appealed his ruling and they overrode his ruling. They did not sustain his ruling and went on and passed that legislation. One of the aggrieved people went to the Supreme Court of the state of Washington. The Supreme Court said, ‘Yes, Victor Aloysius Meyers, you were correct.’ the budget that they passed with a tax measure was thrown out. The state was broke. There was a special session within four days to right the wrong that was done at that time.

“So, I maintain that there are several subjects in this measure and, therefore, we cannot and should not vote on it.” (Page 754–1998).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Snyder under Senate Rule 25, concerning whether Engrossed House Bill No. 2894, as amended by the Senate, contains two subjects. The President finds that this rule is taken verbatim from Article II, Section 19 of the State Constitution.

“The President does not normally respond to constitutional questions. However, the President cannot avoid interpreting a Senate Rule. The President would note that the two subject rule has been invoked only rarely. The precedent raised by Senator Snyder appears to be the only other time the rule has been raised in the past fifty years.

“In interpreting Senate Rule 25, the President believes it appropriate to rely on decisions by the Supreme Court interpreting Article II, Section 19. In interpreting the two

subject rule, the Supreme Court maintains several premises, including; (1) That the statute is presumed to be constitutional; (2) that the challenger of the statute maintains a heavy burden to overcome the presumption; (3) That the constitutional requirement is to be liberally construed so as not to impose hampering restrictions upon the Legislature; and (4) That all that is required is that there be some ‘rational unity’ between the general subject and the incidental subdivisions. The President believes that he should not be more restrictive in interpreting Senate Rule 25 than is the Supreme Court in interpreting Article II, Section 19.

“Engrossed House Bill No. 2894, as amended by the Senate, is an Act relating to the reallocation of motor vehicle excise tax and general fund resources for the purpose of providing transportation funding, local criminal justice funding and tax reduction. The bill contains several incidental subjects, including authorizing bonds for highway construction, and making changes to Initiative 601 to accommodate the reallocation of MVET funds. The President cannot find under the existing Supreme Court precedents that any of these incidental subjects is wholly unrelated or without rational unity to the general subject of the measure.

“The President, therefore, finds that the measure does not violate Senate Rule 25, and that the point of order is not well taken.” (Page 776–1998).

CONTENT OF A BILL

Not a Matter for Presidential Comment⁴²

⁴² See Reed’s Rule 161: “Incompatibility or inconsistency.— An amendment may be inconsistent or incompatible with the words left in the bill, or with other amendments already adopted, but that is for the

assembly to decide, and not for the presiding officer. For him to pass upon such a question would be very embarrassing to the assembly, and still more so to him. So, also, the question of constitutionality is not for him

PARLIAMENTARY INQUIRY

Senator Benton: “A parliamentary inquiry, Mr. President. The good Senator from Blaine has said the information she has received says that this would need to go on the ballot, if I heard her correctly. Is that right? So, my question to you, Mr. President, does the measure include a referendum clause and if not, should one be included and if it is not included, is the measure properly before the Senate?” (Page 961–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Benton, normally an inquiry as to what is in a bill is not appropriate for the President, but in this case, the President is sure that there is a referendum clause in the bill.” (Page 961–2000).

COPIES OF MATERIALS

Copies of Full Bill Not Required

POINT OF ORDER

Senator Kohl: “A point of order, Mr. President. It seems that on any bills that come to us now in the form of a Conference Committee Report, I am not able to find anything in writing, on my desk, with regard to a bill report from what the bill was like before the Conference Committee Report—what the history of the bill was, how we voted on it before, how the House voted on it—unless I had happened to have saved the green bill book from a week to two ago— and I wouldn’t even know which one it was in. Unfortunately, I did not save all of them. Is there anyway that we can have more information provided to us? I represent

to decide. Incompatibility, inconsistency, and unconstitutionality are matters of argument.”

constituents and they often ask me how I voted on something, why I voted on something or why didn’t I vote for a bill. I am finding this very difficult—to be able to make good decisions on every bill when I can’t refer back to anything and find out about what the bill was like, except for this Conference Committee Report. I would appreciate being able to have sufficient material so that I can make good decisions in my voting. Thank you.” (Page 1325-1326–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator Kohl, the President believes that the rules only provide that you must have a copy of the Conference Committee Report available and this is the process that we have followed in the past. Although, I may agree that other information would be helpful, there is not a rule that I can find that it requires that it be there. You might want to confer with the conferees about the history—or the committee.”

Senator Kohl: “Thank you, Mr. President, and I appreciate that there may not be a Senate Rule, but we don’t seem to be having Senate Rules for everything anyway. Just for practical purposes, we are sent here, we are elected by our constituents to make good policy decisions and I don’t believe I am having all the information before me to be able to do that, especially with Conference Committee Reports that sometimes other bills are added in that perhaps we would not necessarily like. We do have opportunity to look at the Conference Committee Report, that is true, but I don’t find that we have enough information and I am asking—even though it is not covered by a Senate Rule—that we can get a bill report we are getting for some other bills, to find out what happened—the history of that bill as it came through the

Legislature. That, at least, would be appreciated. Thank you.”

President Owen: “Senator Kohl, the President can only respond to your point of order and the procedures are being followed properly. The rest must be taken up within the Senate members, themselves.” (Page 1326–1998).

Copies of Full Bill Preferred

POINT OF ORDER

Senator West: “A point of order, Mr. President. By the action of the body, we now have the original bill before us and we don’t have the original bill on our desks, so we can’t make reference to it. I have a point of order that I would like to raise, but I don’t have a copy of the original bill.” (Page 420–2000).

REPLY BY THE PRESIDENT

President Owen: “Your point of order is—?”

Senator West: “That we should have the written original bill on our desks.”

President Owen: “Thank you. Your point is well taken.” (Page 420–2000).

Materials Provided A Decision of the Senate

PERSONAL PRIVILEGE

Senator Benton: “I rise to a point of personal privilege, Mr. President. When this body votes on bills before it, we have a bill report, we have a copy of the bill provided to us, but when we vote on gubernatorial appointments, we have no information other than the fact that the appointee—what they are

being appointed to and what the committee report it—whether it is confirmed or not confirmed. There is no additional information provided to the members. Specifically, information relating to the term of the appointment, how long the appointment will be for, when it expires, etc.—or any personal information on that appointee.

“If the member has not been fortunate enough to serve on the committee, on which the appointment came through, which is a very small minority of the members of this body, the rest of us are not given the information or privileged with the information or privileged with the information to know what the background or qualifications of that gubernatorial appointee are, I would like to request that additional information on gubernatorial appointees be provided to all member on the Senate floor before we are asked to vote on their confirmation.” (Page 798–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator Benton, that is certainly an issue but the President believes that the decision needs to be made by the body, not the President. Your point is well taken.” (Page 798–1999).

CREATION OF A NEW TAX

Votes needed to advance to third reading

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 new 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.

(March 2, 2015)

Constitutionality of supermajority vote requirement for bills creating a new tax

In ruling upon the point of order raised by Senator Hobbs asserting that the provisions found in Senate Rules 62, 64, and 67, requiring a two-thirds affirmative vote prior to considering certain bills on final passage is unconstitutional, the President finds and rules as follows:

The history of supermajority voting requirements is long and complicated. Some originated in the Constitution, some in legislation or initiatives, and, in today’s challenge, in the Senate Rules. Whether a supermajority provision can be upheld depends in part upon the source of the provision, in part on how it operates to affect the progress of legislation before the Senate, and in part upon the authority of the President.

For over twenty years, supermajority voting requirements have been challenged in the courts. Lawsuits have been filed against the state of Washington, two Secretaries of State, and the office of the Lieutenant Governor. Most of those lawsuits were dismissed, but in 2013 the League of Education Voters decision (LEV) found unconstitutional a statute adopted by initiative that required a two-thirds vote on final passage for bills that increased state tax revenue. The court declared that the supermajority requirement violated Article 2, Section 22 of Washington’s constitution, a provision that applies only to the votes required to pass ordinary legislation. (Ordinary legislation is legislation that does not require a supermajority vote for a reason set forth in the constitution.)

The rules being challenged here do not apply to the final passage of a bill, and therefore are not explicitly prohibited by the LEV decision. Instead, they require, in all cases creating a new tax, an affirmative vote of two-thirds of the Senate, prior to the bill being considered on final passage, either initially or on concurrence. For the purposes of this Ruling, the President will refer to these as the supermajority provisions. One member supporting these changes accurately described them as an effort to do an “end-around” the Court’s decision in 2013.

Supermajority voting requirements, particularly for procedural matters, are found throughout the Senate Rules, and have been present since the first legislature. (Rule 31 of the 1889 Senate Rules created a supermajority voting requirement in order to

change a Special Order of Consideration.) For example, a supermajority vote is usually required to immediately advance a measure from Second to Third Reading, to pass a bill on the same day it is introduced, and to temporarily suspend most of the Senate Rules. These are traditional supermajority voting requirements, and are widely accepted as constitutionally appropriate limits on the rapid exercise of power by a political majority.

These supermajority provisions present a different issue. In contrast to the other procedural supermajority requirements found in the Senate Rules, these “new tax” provisions do not act to slow down legislation; they act to stop legislation that creates a new tax until a two-thirds supermajority can be persuaded to support it. It is important to note that there is no way to avoid this barrier other than to suspend the rules, which coincidentally also requires a two-thirds vote.

It is this unique feature of the supermajority provisions that requires the President to review the Court’s opinion in the LEV case. This is not the first time that the President has considered decisions of the Supreme Court in making his rulings. For example, the President adopted the Court’s decision in *Legislature v. Locke* in prohibiting the inclusion of substantive law in a budget: the Court found such an action unconstitutional, and the President followed the court’s decision, as his duty is to keep the legislature from acting in an unconstitutional manner, and decisions of the Supreme Court help establish those limitations.

Returning to the LEV decision, there is one consistent and repeated theme. It forms the basis for the result in the case. It underlies Reed’s Rules. And that theme is the constitutional right of the majority to pass ordinary legislation.

The LEV Court reaffirmed this principle repeatedly. These are only a few of the Court’s statements:

- The Framers never intended ordinary legislation to require a supermajority vote.
- The language and history of the constitution evince a principle favoring a simple majority vote for legislation.
- More importantly, the framers were particularly concerned with a tyranny of the minority.
- Allowing a supermajority requirement for ordinary legislation alters our system of government.

However, it must be noted once more that the challenged supermajority provisions do not on their face affect a vote on final passage. This is technically correct. However, in order for a functioning majority to pass a new tax under these rules, that majority must obtain the support of eight senators who oppose the measure. Such a process will inevitably alter the legislative result that the majority prefers, as is evident in the Ruling given only a few moments ago. In LEV, in order to pass a single repeal of a tax exemption, the majority needed to pass four additional tax exemptions to gain the support of enough legislators to reach the two-thirds threshold. As the LEV court noted, with a mandatory two-thirds requirement, the constitutional right of a majority to “maintain the effectiveness of their votes” is impaired if not “completely nullified.”

In sum, a two-thirds supermajority procedural requirement for ordinary legislation violates the constitution. It does not matter that the procedural hurdle precedes the vote on final passage. A rule requiring a supermajority procedural vote may constitutionally delay a majority for a reasonable time, as Senate Rules currently provide, but when the rule does not provide that majority with a valid means to pass measures in the form the majority intends, the President has no choice but to follow the dictates of the constitution, as he did in following the *Locke* decision, and as he does today.

Finally, the President has repeatedly stated that he does not rule on constitutional questions. This is generally true. Certainly, the President has avoided making such rulings, when the question is not related to a process mandated by the constitution. That reluctance does not apply when the body steps outside the limitations established by the constitution or Supreme Court, either through the adoption of rules or consideration of other legislation in a manner or form that allows the Senate itself to act unconstitutionally. The President has previously stated, “The Senate cannot pass a rule that violates the State Constitution.” Perhaps that statement should be clarified to read, “The Senate may adopt an unconstitutional rule, but the President will not enforce it.”

For these reasons, the provisions found in Senate Rules 62, 64, and 67, requiring a two-thirds affirmative vote prior to considering bills that create new taxes on final passage, violate Article 2, Section 22 of the Washington Constitution, the supermajority provisions regarding new taxes may not be used to prevent SSB 5987 from advancing to Third Reading, and Senator Hobbs’s point is well-taken.
(March 2, 2015)

CUTOFF

Bills Cannot Be Considered Beyond Cutoff Unless Excepted

POINT OF ORDER

Senator Wojahn: “A point of order, Mr. President. I do not believe that this bill is properly before us. It did not pass out of the House until after the cutoff. It is not needed to make up the budget. Therefore, I believe that it is improperly before the body.” (Page 1076–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator Wojahn, the President finds that the last paragraph of Senate Concurrent Resolution No. 8421 provides that no bills may be considered after the fifty-fourth day except with certain exceptions. Engrossed Substitute House Bill No. 3128 does not fall within those exceptions.

Therefore, the President finds that Engrossed Substitute House Bill No. 3128 does not fall within those exceptions and the point of order is well taken.” (Page 1076–2000).

Concurrent Resolution Not Subject to Cutoff

PARLIAMENTARY INQUIRY

Senator Spanel: “A point of parliamentary inquiry, Mr. President. I believe that you just stated that this bill could be moved to the calendar, but could not be acted on.” (Page 1506–1997).

REPLY BY THE PRESIDENT

President Owen: “I believe that I stated Engrossed House Bill No. 1128 would be that way, but this is a concurrent resolution that is not subject to cutoff.” (Page 1506–1997).

Exemption Clearing Both Houses

No - Senate

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry, Mr. President. I would like the President to rule on whether this concurrent

resolution be passed by both houses of the Legislature before one of the houses can act on the bills referenced in the resolution. I would like to give some reasons why I think that it has to be passed by both houses and acted on. The concurrent resolution would amend the cutoff resolution, a change which can take effect only upon passage by both houses. I would also ask that the President consider Joint Rule No. 11 in evaluating this issue.

“Joint Rule 11 provides that joint resolutions shall be subject to the rules governing the course of bills, ‘up to and including the signing thereof by the presiding officer of each house.’ Since bills are not ‘passed’ until approved by both houses and signed by their respective presiding officers, the same should be true with respect to concurrent resolutions.

“It is true that past practice has been inconsistent on this issue, but the body always has the ability to waive or suspend adherence to its rules. The question is whether, in the absence of such a waiver or suspension, a concurrent resolution must pass both houses before the Senate can act on a bill referred to in a resolution amending the cutoff. I know in the past we have sent a resolution just ahead of the measure that we have acted on, but I think if you could go back in history, we used to have the resolution passed by both houses and signed by the presiding officers of the respective houses before we took action on those measures that we had just passed.”

REMARKS BY SENATOR WEST

Senator West: “Thank you, Mr. President. I think that the practice in recent times has been to send the concurrent resolution with the legislation that is referenced. Recognizing that the Legislature is under time constraints, to adhere to a rule suggested by the good Senator from the

Nineteenth District—I could think of any number of examples where there may be a desire on the part of the Legislature to pass a bill on the last day of session, exempting from the cutoffs, and then because of timing not be able to. The majority of the Legislature would be frustrated in their desire to do that. I think the most recent practice and the most recent rulings by the Lieutenant Governor allowing this custom of the Senate should continue to stand.”

FURTHER REMARKS SENATOR SNYDER

Senator Snyder: “Thank you, Mr. President. Just to continue the argument, I think the rules of the Senate and the Joint Rules of the Senate and House should be the paramount consideration and it is not the way practices go. We do a lot of things around here that aren’t according to the rules—even little things like getting up and making speeches before you make a motion. I could have raised a point of order and said, ‘The person is out of order because they made a speech before they made a motion.’ Just because it isn’t challenged at the time doesn’t mean that the rule isn’t still in effect.”

RULING BY THE PRESIDENT

President Owen: “In ruling upon the parliamentary inquiry by Senator Snyder concerning whether both houses of the Legislature must first pass Senate Concurrent Resolution No. 8434 before the Senate may consider the measures listed therein, the President finds that it has been the tradition of the Senate and the practice of the last three Lieutenant Governors, including the President, to permit the Senate to pass a concurrent resolution exempting Senate Bills from cutoff dates and to then consider the bills listed therein prior to passage of the concurrent resolution by the House. If the

body would like to change the practice, the President suggests that it amend the rules accordingly.

“The President, therefore, finds that the Senate may consider the bills listed in Senate Concurrent Resolution No. 8434 following passage of the resolution by the Senate.” (Pages 521-522–2002).

Yes - House

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry, Mr. President. Will it be necessary for the resolution that we just passed to pass the House and have a message returned from the House of Representatives that they have passed the resolution before we can consider the underlying bill?” (Page 1080–2000).

REPLY BY THE PRESIDENT

President Owen: “The President finds that it has been the tradition pass a cutoff exemption resolution together with a Senate Bill. Whether the same is true of a House Bill is a case of first impression. The President finds that both bodies must first pass a cutoff exemption resolution before the Senate can pass a House measure that is not exempt. Otherwise, the Senate could pass the bill, it would go to the Governor and the cutoff resolution would be meaningless. The answer is ‘yes’.” (Page 1080–2000).

Matters of Difference between the House & Senate

PONT OF ORDER

Senator Thibaudeau: “A point of order, Mr. President. I would like to request a ruling on whether this bill is properly before

us. First, the bill did not pass the House prior to the cutoff for passage of Senate Bills. Second, the bill is not necessary to implement the budget and this is one of the criteria that the President has delineated earlier. Therefore, Mr. President, I urge you to determine that this bill is not properly before the Senate at this time.” (Page 1081–2000).

RULING BY THE PRESIDENT

President Owen: “Senator Thibaudeau, the President finds that the cutoff resolution clearly states that after the fifty-fourth day the Senate may take up messages between the Houses and matters of differences between the Houses. In considering the House amendment to Substitute Senate Bill No. 6525, we are considering a matter of difference between the Houses. The measure is, therefore, properly before us.” (Page 1081–2000).

Measures Necessary to Implement the Budget – Evolving Budgets/Test

In ruling upon the point of order raised by Senator Honeyford that Engrossed House Bill 2255 is not properly before the body because it is beyond the cutoff dates established by Senate Concurrent Resolution 8400, the President finds and rules as follows:

The plain language of the cutoff resolution clearly exempts budget-related measures from all of the cutoff dates set forth in the resolution. To determine if the measure before us relates to the budget, the President begins by looking at the plain language of the budgets under consideration by the Legislature to date. Where a measure has passed the Senate, the President will consider that version first and foremost as the budget to be utilized for this determination. The

President will take notice, however, of evolving budget negotiations within the Legislature as that budget is modified in the process, and can look beyond the exact version passed by this body where such an examination yields a more complete picture of the budget at issue.

Engrossed Substitute Senate Bill 6090, the budget passed by the Senate, contains a vague reference to House Bill 2255 in subsection (4) of Section 225. By itself, this reference is insufficient for the President to conclude that the measure is necessary for the budget. The President reminds the body that merely referencing a bill within the budget is not enough.

By contrast, the House version of the budget, proposed as a striking amendment to the Senate's budget, contains a more precise reference to the measure which enables the President to undertake a more complete analysis. Under this version, it is clear that specific appropriations are made to implement the mechanics and policies within House Bill 2255. The appropriations require that this measure be enacted in order to implement the policy limitations which are to govern this expenditure, including administration, reporting, and implementation of a major component of a program within the Employment Security Department.

For these reasons, the President finds that the bill is necessary to implement the budget, is exempt from cutoff, and is properly before this body for consideration. (Page 1278–2005).

Measures Necessary to Implement the Budget – Ruling Before the Budget is Passed

POINT OF ORDER

Senator Johnson: “A point of order, Mr. President. Senate Bill No. 6296 is not properly before the Senate and should be referred back on the Committee on Ways and Means for the following reasons: Senate Concurrent Resolution No. 8421 provides cutoff dates and provides that Senate Bills will not be considered—any bill will not be considered in the house of origin after February 15, 2000. This actually was voted out of committee well after that.

“The exception, of course, is bills that are necessary to implement the budget. There is no reference, whatsoever, in this bill to the budget, so there are no state general funds used in this. These are TANF funds and this bill simply describes the way the department is to distribute the funds in a way that they have not been doing so up to this time. There is no budget, of course, at this time, although there soon will be, but even when there is a budget, this does not include an appropriation. For those reasons and for those set out in the ruling yesterday on Senate Bill No. 5243, the bill should be referred back to Ways and Means, it is not properly before the Senate. (Page 820–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator Johnson that Senate Bill No. 6296 was reported by the Committee on Ways and Means beyond the cutoff established in Senate Concurrent Resolution No. 8421, the President finds that Senate Bill No. 6296 is a measure which expands the usage of TANF funds. Namely the measure would permit TANF funds to be used for participation in a newly created ‘independence though college for achievers in need program’—the ICAN program - and would define the parameters of the new program.

“In ruling upon the point of order raised on Senate Bill No. 5243 on March 2, the President stated that there may be instances in which he would rule without first seeing a budget that a measure is necessary to implement a budget; including a measure extending or expanding a program that was actually funded in prior budgets. If such a measure failed to pass, the President could reasonably anticipate that a budget appropriation funding the extension or expansion of the program would lapse.

“Federal TANF funds have been appropriated through the state general fund budget historically. The President can reasonably anticipate that the ICAN program is funded in the Senate budget. Senate Bill No. 6296 defines the ICAN program, and but for the measure’s passage, the President believes the appropriation for that program would lapse. As such, technically, the budget as written would not be implemented.

“In addressing Senator West’s argument, the President believes that while it may be good in theory to wait until the budget has passed to make determinations like this, it has been the practice of the previous Presidents to rule ahead of the passage of the budget. It has been done on many occasions.

“The President, therefore, finds that the point of order is not well taken.” (Page 831–2000).

Measures Necessary to Implement the Budget - Savings

POINT OF ORDER

Senator West: “A point of order, Mr. President. I researched the budget and I’ve looked to see if this bill is referenced. I didn’t find it. Maybe it is there, but I don’t believe it is there. This bill was not anticipated in the budget that this body passed. In the cutoff resolution that this body passed months ago,

it stipulated that no Senate Bills would be considered after the cutoff date that were not relevant to the budget or, I believe, transportation issues. Therefore, Mr. President, I do not believe that this bill is currently properly before us and would ask the President to so rule.” (Page 1054–2001).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator West that Second Substitute Senate Bill No. 5419 is beyond the cutoff to consider Senate Bills, the President finds as follows: (1) In the development of the budget, certain savings were assumed, including savings that would take place by reducing sentences for drug offenders under Second Substitute Senate Bill No. 5419; (2) The savings assumed under Second Substitute Senate Bill No. 5419 were used to balance the Senate budget by redirecting the savings to other programs.

“For these reasons, the President finds that the measure is ‘necessary to implement the budget,’ and not subject to the cutoff date set forth in Senate Concurrent Resolution No. 8401.” (Page 1081–2001).

Measures Necessary to Implement the Budget – Savings – Not necessary to reference

On April 3, 2015, in a quick ruling (not written up) the President ruled that SB 6088 was necessary to implement the budget. SB 6088 made significant changes to I-1351, but was not directly referenced in the budget and did not take effect until voted on by the people. Here is the ruling as transcribed:

“Senator. Liias, in order to keep things moving, the President is going to do a ruling without taking the time to write this out, so bear with me. The President believes that without this bill there would be a major

hole in the budget therefore it is necessary in order to implement this budget. Albeit delayed, but it is necessary. Should it not pass, then you would be back here to write a different budget. Therefore it is necessary to implement the budget.”

(April 3, 2015)

Measures Necessary to Implement the Budget – Test/Examples

POINT OF ORDER

Senator Johnson: “A point of order, Mr. President. The consideration of Senate Bill No. 5243 is not proper at this point. Senate Concurrent Resolution No. 8421, the cutoff resolution, specifically does not exempt this bill from that resolution. Consideration of Senate Bills was terminated on Tuesday, February 15, and at that time this bill was still presumably pending in committee. There is an exception in the cutoff resolution for bills necessary to implement the budget. This linked deposit program was implemented in 1993. It has never yet appeared in the budget, so it can hardly be said that it is necessary to implement the budget. There could be a reference in the budget, there hasn’t been for seven years. There could be now, but once again it wouldn’t be necessary to implement the budget. Therefore, consideration of this bill at this time is out of order.” (Page 648–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator Johnson that the Senate is beyond the cutoff date established in Senate Concurrent Resolution No. 8421 to consider Senate Bills on the floor and that consideration of Second Substitute Senate Bill No. 5243 is therefore not in order, the

President finds that the cutoff resolution exempts ‘matters necessary to implement budgets.’ The issue is whether Second Substitute Senate Bill No. 5243 is a measure necessary to implement a budget. Because there is confusion surrounding this issue as evidenced by prior rulings, the President begs the body’s patience as he speaks at some length in an attempt to provide some guidelines while responding to the point of order.

“Second Substitute Senate Bill No. 5243 is a measure which extends and expands the so-called linked deposit program. Under the linked deposit program, the state treasurer is directed to deposit an amount of short term surplus treasury funds with public depositories who agree to loan the amount deposited to qualifying loan applicants. The President notes that generally the treasurer is duty-bound under statute to maximize interest returns on short term surplus treasury funds. The linked deposit program directs the treasurer to discount interest otherwise received from public depositories participating in the loan program.

“The President reminds the body that he has not seen a budget this session. Therefore, the President is left to analyze the issue in this point of order in the abstract. For the following reasons, the President finds that although he may be prepared to rule without first seeing a budget that a measure is necessary to implement a budget, this is not an instance in which he would do so.

“On the floor yesterday, Senator Kline argued that because Second Substitute Senate Bill No. 5243 concerns state revenues in the form of earned interest, the measure therefore necessarily concerned the budget. The President finds that having an effect on revenue does not by itself make a measure necessary to implement a budget. The President can envision a situation where a measure that increases state revenues in the

face of a projected budget deficit could be a measure necessary to implement the budget. Second Substitute Senate Bill No. 5243 is not such a measure.

“Second Substitute Senate Bill No. 5243 would actually reduce state revenues otherwise available on deposited treasury funds. In prepared remarks, Senator Kline argues that this reduced revenue is, in essence, a subsidy to participating depositories and is therefore like a budgeted appropriation to those depositories. The President notes, however, that state budgets appropriate funds to state agencies, not to private individuals or entities directly. The President believes that Senator Johnson is correct when he argues that the linked deposit program came into existence in 1993, and has never been the subject of an appropriation in the budget. Under these circumstances, the President cannot rule in the abstract that Second Substitute Senate Bill No. 5243 is necessary to implement the budget, and Senator Johnson’s point of order is well taken.

“Again, there may be instances in which to expedite the business before the body, the President would take notice of certain facts and rule before first seeing a budget that a measure is necessary to implement a budget. These might include but not necessarily be limited to the following:

1. The instance noted above concerning a revenue increase measure in the fact of a projected budget deficit. This measure would be actually necessary to implement a budget. Others like those that follow might be technically necessary.

2. A measure extending or expanding a program that was actually funded in prior budgets. If such a measure failed to pass, the President could reasonably anticipate that a budget appropriation funding the extension or expansion of the program would lapse.

3. A measure creating a new program, which proposed program has received

publicity such that the President could reasonably anticipate that a budget appropriation would lapse but for the passage of the measure.

4. A measure shifting a program from one agency to another or dividing an agency, which proposed shift or division has received publicity such that the President could reasonably anticipate that a budget appropriation would lapse but for the passage of the shift or division.

“The President appreciates the body’s indulgence in this lengthy ruling. However, the President believes it is his responsibility to provide what guidance he can concerning the conduct of Senate Business.

“At this time, Second Substitute Senate Bill No. 5243 is not properly before the Senate.” (Page 668-669–2000).

Measures Necessary to Implement the Budget – Tradition

President Owen: “In ruling upon the point of order raised by Senator Betti Sheldon that Engrossed Second Substitute House Bill 2295 is not properly before the body because it is beyond the cutoff dates established by Senate Concurrent Resolution 8417, the President finds and rules as follows:

The plain language of the cutoff resolution clearly exempts budget-related measures from all of the committee and chamber of origin cutoff dates set forth in the first part of the resolution. What is not clear is whether or not budget bills are also exempted from the final cutoff date of March 5th set forth in the second part of the resolution. At best, this language is ambiguous, and susceptible to several interpretations. Standing alone, this section would appear to exempt from the March 5th cutoff essentially only those matters in dispute between the two chambers

or incidental to the internal business of the Legislature.

The President believes that one of the paramount duties of the presiding officer, and this is made clear time and time again in both Senate and Reed's Rule, as well as a considerable body of precedent, is to ensure that the body is able to order its own affairs and complete the business before it. The long-standing tradition of the Senate has been to allow the consideration of budget-related matters at any point right up until a final resolution or Sine Die. Departing from this tradition so late into the Session would impede the ability of the Senate to timely conclude its business. As a result, the President rules that measures relating to the budget may timely be considered by the Senate. In so ruling, however, the President would strongly suggest to the body that future cutoff resolutions be drafted in such a way as to remove any ambiguity and clearly set forth both the cutoff dates and any exceptions thereto.

Having so decided, the President now reaches the issue of whether or not the underlying bill is a matter necessary to implement the budget. The President has consistently set forth an analysis for making this determination in past rulings. Essentially, a different and stricter analysis will be employed in those situations where the budget is hypothetical as opposed to acted upon by the body. In this case, while there is uncertainty as to what budget might ultimately be enacted, there is no uncertainty as to the budget acted upon by the Senate to date. This budget was passed in Senate Bill 6187, clearly references charter schools, and makes at least three separate appropriations for this purpose. These appropriations will lapse if an underlying measure is not passed. For these reasons, the President finds that the bill is necessary to implement the budget, is

exempt from cutoff, and is properly before this body for consideration." (Page 1043-2004)

Measures Necessary to Implement the Budget – Two-Part Test

“In ruling upon the point of order raised by Senator Honeyford that Engrossed Second Substitute House Bill 2582 is not properly before the body because it is beyond the cutoff dates established by Senate Concurrent Resolution 8414, the President finds and rules as follows:

The plain language of the cutoff resolution clearly exempts budget-related measures from all of the cutoff dates set forth in the resolution. To determine if the measure before us is necessary to implement the budget, the President generally looks first to determine if the mechanics of the bill relate to the budget, and second, whether any budget references the measure itself.

The measure before us relates to high school completion programs. Although an argument can be made that this bill is related to the budget, its substance is in no way crucial to raising or spending money in such a way that it can truly be considered an integral and necessary part of the budget process. And, while it is possible that funding for the bill or its programs will be provided in the budget ultimately enacted, neither the House nor the Senate versions of the budget to date even reference this measure, let alone provide funding for its programs.

As a result, the President concludes that this measure is not presently necessary for the budget and is beyond the cutoff dates set forth in Senate Concurrent Resolution 8414. For this reason, Senator Honeyford's point is

well-taken, and the measure is not properly before the body for its consideration at this time.” (Page1115—2006)

Moving Bills from Committee to the Floor

RULING BY THE PRESIDENT

“In ruling on the point of order raised by Senator West the President finds and rules as follows:

A number of issues are presented by the floor action up to this point which need explanation. Consistent with past rulings on these issues, the President finds that all measures are subject to the cutoff resolution passed by both the House and the Senate this year, Senate Concurrent Resolution 8400. Pursuant to this cutoff resolution, April 4th was the last day to read in committee reports on House bills from all committees except fiscal committees, which could be read in no later than April 7th. The specific language within the cutoff resolution for these committee cutoff dates is very important because it relates only to reporting by committees, not to consideration of the measure by the full Senate. The only relevant date for consideration of a House bill by the full Senate is April 18. The ultimate say is and should be the will of the full body, which is reflected in Rule 48.⁴³

Rule 48 clearly and unambiguously allows this body to recall a bill from committee with a simple majority vote of the full membership, in other words, twenty-five

⁴³ Senate Rule 48 provides: “Any standing committee of the senate may be relieved of further consideration of any bill, regardless of prior action of the committee, by a majority vote of the senators elected or appointed. The senate may then make such orderly disposition of the bill as they may direct by a majority vote of the members of the senate.”

⁴⁴ Senate Rule 37(2) provides: “...On and after the tenth day prior to adjournment sine die of any session, as determined pursuant to Article 2, Section 12, or

votes. The cutoff resolution also clearly and unambiguously sets forth April 18 as the final day by which the Senate may consider a House Bill. Combining these two precepts, the President rules, therefore, that the body may properly relieve any committee of a House bill for consideration by the full Senate so long as it does so on or before 5:00 p.m. on April 18.

The President has reviewed previous rulings on this subject and recognizes that this ruling is a departure from an earlier ruling in 1997. The President believes, however, that today's ruling better harmonizes the interplay between Rule 48 and the cutoff resolution and is more consistent with the principles expressed by both the Senate Rules, the cutoff resolution, and Reed's Parliamentary Rules which are to be construed in such a way as to allow the body to complete its business.

Therefore, the President finds that Senator Sheahan's motion, as amended, is properly before the body.” (1077-2003)

Reconsideration at Cutoff⁴⁴

POINT OF ORDER

Senator Sheahan: “On the day of the cut-off, she can't give notice for reconsideration.” (Page 1048–2001).

REPLY BY THE PRESIDENT

concurrent resolution, or in the event that the measure is subject to a senate rule or resolution or a joint rule or concurrent resolution, which would preclude consideration on the next day of sitting a motion to reconsider shall only be in order on the same day upon which notice of reconsideration is given and may be made at any time that day. Motions to reconsider a vote upon amendments to any pending question may be made and decided at once.”

President Owen: "What is your question? Is it a point of order?"

Senator Sheahan: "A point of order."

President Owen: "A point of order and what is your point of order?"

Senator Sheahan: "Mr. President, on the day of a cut-off, it is not in order to give notice of reconsideration and you have to ask for immediate reconsideration and to immediately reconsider a bill, you have to go to the ninth order of business."

President Owen: "Senator Sheahan, I received a news flash just moments ago that the House did not pass the cutoff amendment, so the cutoff is not technically until tomorrow."

Senator Sheahan: "Do you still have to go to the ninth order of reconsider the bill?"

President Owen: "Based on the way, Senator Thibaudeau placed the motion, we would need to be in the ninth order of business."

Senator Sheahan: "Thank you, Mr. President." (Page 1048-2001).

Status of Bills not Exempt

PARLIAMENTARY INQUIRY

Senator Snyder: "A point of parliamentary inquiry, Mr. President. On Engrossed House Bill No. 1128, I would like to ask if that is exempt from our cutoff resolution that was passed at the beginning of the session? It was on the concurrent resolution that we have been considering and postponing the last two or three days. It was listed on there as one that we needed to take further action on before it could be exempt from our original cutoff resolution." (Page 1505-1997).

POINT OF INQUIRY

Senator Johnson: "Mr. President, I raise an inquiry as to whether Senator Snyder's objection is timely. The matter is not being presented for consideration at this time."

Senator Snyder: "Mr. President, could I speak to Senator Johnson's point of order?" (Page 1505-1997).

REPLY BY THE PRESIDENT

President Owen: "Senator Johnson's point of order is not well taken, since he did not raise a point of order. He had an inquiry as whether or not the bill was properly before us."

Senator Johnson: "I simply raised an inquiry as to whether-I guess it wasn't phrased-an objection-but rather an inquiry as to whether it was timely as this matter was not before the body for passage." (Page 1505-1997).

RULING BY THE PRESIDENT

President Owen: "Senator Snyder, the President believes that since Engrossed House Bill No. 1128 is not referenced in any concurrent resolution that the body may take and place it in committee or on second reading, but may not take action on it unless it is placed in a concurrent resolution and passed by the House and the Senate." (Page 1505-1997).

DEBATE⁴⁵

All Remarks Should Be Directed to the President⁴⁶

POINT OF INQUIRY

Senator Fraser: “Senator Patterson, could you please clarify the current content of this proposal?” (Page 1236–1998).

RULING BY THE PRESIDENT

President Owen: “That would be out of order, Senator Fraser. That would be yielding your time or asking a question for the purpose of allowing Senator Patterson to speak again.” (Page 1236–1998).

Cutting Off Debate

PARLIAMENTARY INQUIRY

Senator Bauer: “A point of parliamentary inquiry. The previous speaker

⁴⁵ Senate Rule 29 provides: “When any senator is about to speak in debate, or submit any matter to the senate, the senator shall rise, and standing in place, respectfully address the President, and when recognized shall, in a courteous manner, speak to the question under debate, avoiding personalities; provided that a senator may refer to another member using the title “Senator” and the surname of the other member. No senator shall impeach the motives of any other member or speak more than twice (except for explanation) during the consideration of any one question, on the same day or a second time without leave, when others who have not spoken desire the floor, but incidental and subsidiary questions arising during the debate shall not be considered the same question. A majority of the members present may further limit the number of times a member may speak on any question and may limit the length of time a member may speak but, unless a demand for the previous question has been sustained, a member shall not be denied the right to speak at least once on each question, nor shall a member be limited to less than

mentioned that this side of the aisle had cut off debate by asking for the previous question. It takes two-thirds vote to cut off debate, doesn’t it, Mr. President?” (Page 284–1997).

REPLY BY THE PRESIDENT

President Owen: “A simple majority, Senator Bauer.” (Page 284–1997).⁴⁷

Demanding the Previous Question Ends Debate⁴⁸

PARLIAMENTARY INQUIRY

Senator Benton: “I rise to a point of parliamentary inquiry, please. If we are going to close down debate on the budget, as apparently is the case, without giving the minority an opportunity to speak on these issues—we had one speech to my knowledge—are we operating under the three minute rule or the one speech per amendment rule at the present time?” (Page 1429–1999).

three minutes on each question. In any event, the senator who presents the motion may open and close debate on the question.” *See also Reed’s Rules* Chapter XIII, Rules 212-228.

⁴⁶ Reed’s Rule 212 provides, in pertinent part, “Among them [debate mandates] is the requirement that the member shall never address any one but the presiding officer.”

⁴⁷ *See* Rule 29. “

⁴⁸ *See* Rule 36.: “The previous question shall not be put unless demanded by three senators, and it shall then be in this form: “Shall the main question be now put?” When sustained by a majority of senators present it shall preclude all debate, except the senator who presents the motion may open and close debate on the question and the vote shall be immediately taken on the question or questions pending before the senate, and all incidental question or questions of order arising after the motion is made shall be decided whether on appeal or otherwise without debate.”

REPLY BY THE PRESIDENT

President Owen: “No, we are not, Senator Benton, but any member can demand the previous question.”

Senator Benton: “I understand that, Mr. President, so my further inquiry is this: When members of this body stand and repeatedly stand to speak on an amendment, it is obvious that we have several members that have a passion on a particular amendment—particularly this last one for me. Why is it then, when a member of the other side, particularly the majority leader stands and has not been standing, why is it that the President picks him to call for the question? I guess my question to you is what priority order is there in recognizing members who stand to speak—from the President and is there such an order?”

President Owen: “It is the President’s discretion.”

Senator Benton: “Well, thank you, Mr. President.” (Page 1429-30–1999)

Each Member May Speak No More Than Twice Without Leave⁴⁹

POINT OF ORDER

Senator Johnson: “A point of order, Mr. President. I think the Senator has spoken twice on this amendment, contrary to the rules.” (Page 418–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator Johnson, this is the striking amendment and that was the first time she spoke on the striking amendment.” (Page 418–1998).

⁴⁹ See Rule 29.

Each Side May Speak at President’s Discretion⁵⁰

POINT OF ORDER

Senator Goings: “Mr. President, a point of order. We now have before us Second Substitute Senate Bill No. 5243. In light of the adoption of the Senate operating budget yesterday afternoon, March 5, I ask the President to reconsider his decision on this issue on whether it is properly before the Senate at this time.” (Page 892–2000).

POINT OF ORDER

Senator Johnson: “A point of order. Mr. President, this bill is before us and the President ruled that it wasn’t properly before us, because of the cutoff resolution. I believe the pathway for it to be properly before us would be a motion and that would require that the mover of the motion goes to the ninth order of business.” (Page 892–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Johnson, try to walk through this carefully. In dealing with Second Substitute Senate Bill No. 5243, once the President made his ruling, Senator Betti Sheldon made the motion that the bill hold its place on the second reading calendar, which passed without objection. So, the issue now is—it is on the second reading calendar—the point that Senator Goings has raised is now can it be considered in light of the passage of the budget.

“The President believes that the bill can be brought up, but that it would have to be reviewed to determine whether or not it can be properly before us. We will now be dealing with Senator Goings’ point of order

⁵⁰ See Rule 29.

for the President to decide. He would allow arguments on either side if the members wish to do so.” (Page 892-93–2000).

PARLIAMENTARY INQUIRY

Senator West: “The last several days the President has ruled that he allows one on each side to speak. The Senator from the Twenty-fifth district has already spoken. Granted, he did not say much, but he spoke.” (Page 893–2000).

REPLY BY THE PRESIDENT

President Owen: “Two issues—one, Senator Goings did not argue for his position. He stated his point of order. Two, the President also ruled that the number of people presenting on each side is at the President’s discretion. However, we have only had an argument on one side. Senator Kline.” (Page 893–2000).

Maker of the Motion Can Open & Close Debate⁵¹

POINT OF ORDER

Senator Fraser: “A point of order, Mr. President. I believe the Senator has already spoken.” (Page 1282–1997).

REPLY BY THE PRESIDENT

President Owen: “I believe Senator Swecker is the maker of the motion and can open and close debate.” (Page 1282–1997).

⁵¹ See Rule 29. “...In any event, the senator who presents the motion may open and close debate on the question.”

Referencing the Underlying Bill when Speaking to an Amendment

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry, Mr. President. The Senator from the Forty-first District admonished the Senator from the Thirty-seventh District for speaking to the underlying bill. We are required to keep our comments germane to the subject, so how could the underlying bill, when you have an amendment to it, not be germane to the subject before us?” (Page 582—1997).

REPLY BY THE PRESIDENT

President Owen: “Senator Heavey, you can reference the underlying bill, but if your discussion is totally on the underlying bill, that would be inappropriate. (Page 582—1997).

Spreading Remarks Upon the Journal

REMARKS BY SENATOR JOHNSON

Senator Johnson: “I move that the remarks by the Senator from the Seventh District, including the reference—the letter from the Department of Ecology, be placed in the Journal.” (Page 1083–2000).

REMARKS BY THE PRESIDENT

President Owen: “Senator Johnson has moved that the remarks by Senator Morton be spread upon the Journal. If there are no objections—Senator Johnson has moved that the remarks by Senator Morton be

spread upon the Journal and the letter from the Department of Ecology be included, as well. All those in favor, will signify by saying 'aye.' Those opposed 'no.' The 'ayes' appear to have it—the 'ayes' have it, the motion carries." (Page 1083–2000).

MOTION BY SENATOR SNYDER

Senator Snyder: "Thank you, Mr. President. I feel to have the proper understanding of the debate that went on here today, I believe we should include all the debate and remarks made on this bill, so I would so move that all remarks on Substitute Senate Bill No. 6525 be spread upon the Journal." (Page 1084–2000).

REMARKS BY THE PRESIDENT

President Owen: "Senator Snyder has moved that all remarks on Substitute Senate

Bill No. 6525 be spread upon the Journal. If there are no objections, so ordered." (Page 1084–2000).

Three Minutes Allowed⁵²

POINT OF ORDER

Senator Schow: "A point of order, Mr. President. I believe the three minute rule is in effect and the Senator has already spoken." (Page 1322–1998).

REPLY BY THE PRESIDENT

President Owen: "Senator Jacobsen, I believe you have spoken once already." (Page 1322–1998).

DECORUM⁵³

Character & Integrity of Members

⁵² See Rule 29.

⁵³ See, generally, Rule 1: "...The president shall preserve order and decorum, and in case of any disturbance or disorderly conduct within the chamber, legislative area, legislative offices or buildings, and legislative hearing and meeting rooms, shall order the sergeant at arms to suppress the same, and may order the arrest of any person creating any disturbance within the senate chamber..." See also **Rule 7**: "**1.** Indecorous conduct, boisterous or unbecoming language will not be permitted in the senate at any time. **2.** In cases of breach of decorum or propriety, any senator, officer or other person shall be liable to such censure or punishment as the senate may deem proper, and if any senator be called to order for offensive or indecorous language or conduct, the person calling the senator to order shall report the language excepted to which shall be taken down or noted at the secretary's desk. No member shall be held to answer for any language used upon the floor of the senate if business has intervened before exception to the language was thus taken and noted. **3.** If any senator in speaking, or otherwise, transgresses the rules of the senate, the president shall, or any senator may, call that senator to order, and a senator so called to order shall resume the senator's seat and not proceed without leave of the senate, which leave, if granted,

shall be upon motion "that the senator be allowed to proceed in order," when, if carried, the senator shall speak to the question under consideration. **4.** No senator shall be absent from the senate without leave, except in case of accident or sickness, and if any senator or officer shall be absent the senator's per diem shall not be allowed or paid, and no senator or officer shall obtain leave of absence or be excused from attendance without the consent of a majority of the members present. **5.** In the event of a motion or resolution to censure or punish, or any procedural motion thereto involving a senator, that senator shall not vote thereon. The senator shall be allowed to answer to such motion or resolution. An election or vote by the senate on a motion to censure or punish a senator shall require the vote of a majority of all senators elected or appointed to the senate. A vote to expel a member shall require a two-thirds concurrence of all members elected or appointed to the senate. All votes shall be taken by yeas and nays and the votes shall be entered upon the journal. (See also Art. 2, Sec. 9, State Constitution.)" See also **Reed's Rules**: "**48. Rights of Members.**— The rights of each member are based upon the doctrine of his equality with every other member. He has therefore the right to present his propositions and to debate them fully. But as the right of each member leaves off where the rights of others

POINT OF ORDER

Senator Benton: “A point of order, Mr. President. I believe that my integrity has been impugned. I have always been a friend of teachers and consider myself so and always have considered myself so. I don’t appreciate the indication that myself or my colleagues have not been friends of teachers.” (Page 499–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator Kline, the President would appreciate it if you would be careful where you tread.” (Page 499—1999).

POINT OF ORDER

Senator Hargrove: “A point of order. Mr. President, I think I have been impugned under Rule 7 about saying I was ignorant. Could you admonish the Senator from West Seattle?” (Page 235–1999).

begin there must be much mutual forbearance between each member and the assembly. Each member has a right to demand that the assembly be in order, and may rise to demand the same. He may also interrupt a member not in order, but he must exercise his rights in such a manner as not to increase the disorder. **49. Duties of Members.**— The duties of each member are based upon the considerations which arise from his being a component part of the assembly, which desires to act together and which, in order to act together, must come to some agreement. The member must maintain order and refrain from conversation. He should not engage in any other business than that before the meeting. He should not walk between the member who has the floor and the presiding officer. He should not interrupt the member speaking except by his consent. It seems superfluous to say that he should not wear his hat, or put his feet on the desk, or smoke, for in all ways the member of an assembly should act properly. He should not use injurious expressions. He should not make use of even proper parliamentary motions to create discord or impede unreasonably the action of the assembly. In short, as the object and purpose of an

REPLY BY THE PRESIDENT

President Owen: “The President has a number of things you left wide open for him to say, Senator Hargrove, but Senator Heavey, would you please be careful about how you address the other distinguished members of this August body?” (Page 235–1999).

Conversation/Reading Papers⁵⁴

POINT OF ORDER

Senator Heavey: “A point of order, Mr. President. I believe that Reed’s Rules provide that no member may engage in conversation while another member is speaking and I am guilty of that very often, but I think we have a number of members that are guilty of that tonight.” (Page 1077–2000).

RULING BY THE PRESIDENT

assembly is to enable men to act together as a body, each member ought to so conduct himself as to facilitate the result, or at least so as not to hinder it. **50. Decorum.**— It will be seen that the rights and duties of members are somewhat difficult of enforcement, except by general comity. Yet they should always be borne in mind and insisted on; for the creation of healthy public sentiment in an assembly is as important for its success as the observance of the laws of politeness is necessary to the comfort and well-being of a community. Decorum is usually treated of in connection with debate, but is as necessary and as much required at other times as when discussion is going on.” *See also Reed’s Rules* Chapter XIII, Debate & Decorum, Rules 212-228.

⁵⁴ **Reed’s Rule 212:** “[T]he members who are not speaking must be silent, refrain from expressions of disrespect, or applause, must not read papers or pass between the member speaking and the presiding officer. They must not interrupt the member speaking without his consent. They must enter and leave the chamber properly and quietly...”

President Owen: “The fact is you are right. As we read, Reed’s Rules prohibits reading of papers, the talking while another member is talking, the moving around, the standing in front of, the walking in front of. Some of those rules have been violated a little bit this evening. The President would

appreciate if it we would be a little bit careful of those matters and stay a little bit closer to the rules, so that the people speaking can be heard and respected.” (Page 1077–2000).

Debate⁵⁵

⁵⁵ Reed’s Rules provide: “**221. Methods of Preserving Order.**— It is the duty of the presiding officer to maintain order, which he does by calling on the members as a body to be in order whenever he notices disorder. While he is so doing, the business before the assembly is suspended until order is restored. If this is not sufficient, and any member persists in disorderly action, he is specifically called to order, and if he does not cease, or if he raises any question as to whether he be in order or not, then the assembly determines what shall be done, on motion of a member. The action of calling to order may be taken by the presiding officer of his own motion, or at the suggestion of a member who rises in his place and raises a question of order. **222. Disorderly Words in Debate.**— Whenever unparliamentary words are used in debate, any member may call to order the member speaking, and ask to have the words taken down, provided he does so at once. Thereupon the member called to order sits down, and the assembly having heard read the words complained of, acts upon the case by motion or otherwise. The member may first be heard by way of explanation. Of course if the member denies having used the words the assembly must pass upon that question first, or the words may be incorporated by way of recital into the motion proposing punishment; **Rule 223. Time of Taking Down Words.**— Mr. Jefferson lays down the rule that the objectionable words should be taken down after the remarks of the member have been finished. The rule was also stated to be that they could not be taken down if any other member had spoken or any business had intervened. The modern rule, however, is that the words should be taken down at once, as soon as may be, after utterance. Thereupon at once action is to be had by the assembly. Such action proposed may be in the nature of punishment, in which case the member should withdraw. If the words are not deemed very serious, or explanations are made, then the usual motion is that the member be allowed to proceed in order, in which case it is not customary for the member to retire. Of course he does not participate in the action of the assembly, or in its debate, except to make such explanation as the assembly permits. Of course, also, there may be cases where it is obvious that the member should withdraw, and if he does not retire voluntarily,

the assembly can direct him so to do; **Rule 224. References to Another Legislative Branch.**— It is not permissible to allude to the action of the other house of the legislature, or to refer to a debate there. Such conduct might lead to misunderstanding and ill-will between two bodies which must cooperate in order to properly serve the people. So, also, the action of the other body should not be referred to to influence the body the member is addressing; **Rule 225. Duty of the Presiding Officer in Cases Where Debate and Parliamentary Motions Are Employed to Create Disorder and Impede Business.**— The presiding officer should pay close attention to the debates, so as to be ready at all times to interpose for the preservation of order. He should himself always be in order and act with the same evenness of temper which he requires from others. The presiding officer has great power over debate and decorum, because he represents the consolidated power of the assembly. It sometimes happens that in the forgetfulness of temper and of party feeling the very processes of the assembly created to transact business are so abused as to be in themselves disorder. In that event the presiding officer should disregard such proceedings, after he has become entirely satisfied of their nature, and put only such motions as will expedite the declaration of the will of the assembly.* Necessarily such a course is to be taken very rarely, and after the offense is clear to all. For such action a presiding officer is responsible to the assembly after the transaction is over. In 1881, before closure was incorporated into the rules, a small number, about thirty-three members, in the House of Commons, an assembly of about 670 members, by alternation of motions to adjourn and motions to adjourn debate, which are both debatable motions under the English practice, kept the House in session day and night for forty-three hours. At the end of that time the Speaker declined to permit any other motions, and, notwithstanding the demands of the thirty-three, declared he would recognize no one for further motion or debate, but would put the questions needful for a decision by the House, which he at once did. Some debate on the subject was had afterward, but nothing was done by the House, the action of the Speaker being universally approved.”

PERSONAL PRIVILEGE

Senator Snyder: "A point of personal privilege, please. I think that after this morning's session when we had some rather cross words in debate, if everybody would, between now and tomorrow's session, read Reed's Rules 221 and 224 and 225, it might help avoid the type of confrontation we had on the Senate floor this morning—Reed's 221 to 225." (Page 437–1999).

REPLY BY THE PRESIDENT

President Owen: "Point well taken."
(Page 437–1999).

Dress

PARLIAMENTARY INQUIRY

Senator West: "A parliamentary inquiry, Mr. President. I may be one of the greater offenders of this, but I want the President to clarify what the definition of what the bar of the House is—or the bar of the Senate is. Rule 39 requires that Senators be present, every Senator within the bar of the Senate shall vote. Does the bar include the area beyond the curtains or may the Senator's head be just outside the curtain are into the bar? Could you give us a clarification of that sir?"

REPLY BY THE PRESIDENT

President Owen: "It is kinda like in a football field, if you break the plane, you score. To some people, that would be the head and the stomach."

Senator West: "A further inquiry, I don't find it in the rules, but I know Senate custom requires the wearing—for gentlemen—of a tie and a suit jacket. Is it permissible to

protrude your head while not wearing a jacket?"

President Owen: "The President would prefer to not see the rest of the body without the jacket on. There is not a requirement that chairs of the Senate have suit jackets on. I notice that Senator McDonald has one on his chair, one that might fit that offending Senator that you were referring to." (Page 1584–1999).

PARLIAMENTARY INQUIRY

Senator Swecker: "A parliamentary inquiry, Mr. President. This noon hour as I strolled about the capital campus I realized that if I were home right now I would be wearing cutoffs. I am not sure what kind of images that places on people's minds, but it occurred to me to inquire of the President that if I wear cutoffs tomorrow and a coat and tie, would I be considered properly attired for the floor of the Senate?" (Page 1585–1999).

REPLY BY THE PRESIDENT

President Owen: "Possibly, if you included tights—possibly, but not likely."
(Page 1585–1999).

Flowers & Items on Desks

POINT OF ORDER

Senator Heavey: "A point of order. Thank you, Mr. President. I realize we don't have a rule against lap top computers during debate. We don't have a rule on bouquets of flowers that may be three feet in height and maybe we should, but I would submit, Mr. President, that those two elements—those two things—fall under indecorous conduct, which we do have rules prohibiting indecorous conduct. I would ask the President, at a later date, if he could make a ruling on whether

such conduct amounted to indecorous conduct. Thank you.” (Page 325–1999).

RULING BY THE PRESIDENT

President Owen: “I think the President is prepared to respond to that at this time. He certainly would do not want to impugn his own actions, when he was a distinguished member of this distinguished body, in the Senate, and operating a lap top computer at his desk. I have found that tradition has it that members have been allowed to use lap top computers during the session, and unless the body deems to pass a rule differently, would continue to allow that.

“Secondly, in case of the flowers, the President believes that a brief display of the flowers on the member’s desk is appropriate, but ongoing could interfere with the ability for the President to identify speakers behind jungles of flowers. Therefore, it might be wise to have them removed—and the President would encourage that they be removed—after a day or so.” (Page 325–1999).

POINT OF ORDER

Senator Heavey: “A point of order, Mr. President. We have a Senate Rule that says, ‘no liquids on the desk,’⁵⁶ I believe. I believe Lieutenant Governor Cherberg imposed that rule. So, I would suggest to the Lieutenant Governor that, as President of the Senate, that he could also impose such a rule as to flowers, lap tops, and that sort of thing.” (Page 335–1999).

REPLY BY THE PRESIDENT

⁵⁶Senate Rule 7 was amended on March 4, 2014 to include the following statement: “Food and drink are prohibited within the senate chamber during floor

President Owen: “Is it your suggestion, Senator Heavey, that because some of the lap tops have liquid crystals and the flowers have water in the—?” (Page 335–1999).

Senator Heavey: “Very similar, very similar.” (Page 335–1999).

RULING BY THE PRESIDENT

President Owen: “As has been stated now, for the third time, the President believes that—well first off—you are correct, I do follow the general rules of decorum, but I have already said that I believe that that falls within the decorum of the Senate and if the Senator would like to ask for a rule to be passed that would prohibit that sort of thing.”

Senator Heavey: “Mr. President, I ask for a rule to be passed that would prohibit flowers over twenty-four inches, and any lap top computer to be used during debate.”

President Owen: “That would have to go through the appropriate committee—the Rules Committee—some committee.” (Page 335–1999).

REMARKS BY THE PRESIDENT

(In response to the amendment to Senate Rule 7 including the following statement: “Food and drink are prohibited within the senate chamber during floor session, except that members may drink water at their floor desks.”)

President Owen: “The President would make a couple of comments relative to this because I have held to a long-time tradition of not allowing drinks on the floor, long before I became Lieutenant Governor. I did so because of your directions to me to enforce

session, except that members may drink water at their floor desks.”

decorum, protocol and dignity of this establishment. I did not want to see us fall into a situation where we had Pepsi cups and styrofoam cups, plastic bottles on the desks. So, I believe that the appearance is incredibly important because this institution is to me one of the most important and distinguished bodies in this state. Therefore, the Presidents, interpretation of this rule would be to, and we've talked to the Secretary of the Senate, They went out and found these beautiful mugs that we would ask that you use on your desk. That plastic bottle, Senator Hewitt, water bottles and styrofoam cups will not be, still not be, permitted on the floor, Pepsi cups, Coco Cola cups, etc. The President would appreciate it very much if you would honor that and use just these mugs and then we can maintain, what I believe what is incredibly important to the people of the State of Washington is, the dignity and the appearance of this great institution. Thank you very much for your tolerance.” (March 4, 2014).

PERSONAL PRIVILEGE

Senator Roach: “I rise to a point of personal privilege, Mr. President. I would like the attention of the members of the Senate, those in the galleries, security, everybody up at the desk and anybody who is going to listen. I came in here today and noticed that there was something that everybody knew, was very conspicuous on the corner of my desk. Everybody knows I had a very nice array of flowers here. But, my flowers were not on my desk when I came here today and nobody asked me if they could pick them up and move them. I asked around and nobody knows who moved them. We did find them; they are housed carefully over here

⁵⁷ Senate Rule 1 provides: “...The president shall preserve order and decorum, and in case of any

in a little cubby hole. But, I want to go on record, ‘I don’t want even a pencil moved on my desk.’ I certainly don’t want anything removed from my desk and I think every member of the Senate would feel the same way.

“Now, before the cutoff time—fight at the cutoff—when we had Senate Bills that we had finished passing over to the House, I came in here to get my personal notes on our DUI legislation, because I was keeping them as a history of what we were doing here in the state of Washington—and they were gone—missing from my desk, along with other things. It was so offensive to me that I had a little sign brought up and I put it on my desk. I am incensed that anyone would move or touch anything on a Senator’s desk and I want to find out who took my flowers and moved them and I intend to take action on whoever in the world would move something as personal and private as that. I did inquire—nobody had asked the President of the Senate to have them moved. It was just done. Thank you, Mr. President. That is why I rose.” (Page 863–1998).

REPLY BY THE PRESIDENT

President Owen: “Message received. I would note, Senator Roach, that there were considerable requests to the President about a policy on that, because of the magnitude and size of the arrangements and I think that we need to address that in the future. You are correct. Members should not interfere with other people’s personal property or anything on their desks. Message received.” (Page 864–1998).

Noise⁵⁷

POINT OF ORDER

disturbance or disorderly conduct within the chamber, legislative area, legislative offices or buildings, and

Senator Thibaudeau: “Madam President, a point of order. I can’t hear. It is very difficult to hear with so many people talking. I know that I do that sometimes, but is very difficult to hear at this time. I can’t even hear you.” (Page 858–2001).

REPLY BY THE PRESIDENT PRO
TEMPORE

President Pro Tempore Franklin: “Because of the situation outdoors it is very noisy, so I would ask all of you to keep your talking to a limit, so that we can all hear what is going on.” (Page 858–2001).

Reference to Other House

PARLIAMENTARY INQUIRY

Senator McCaslin: “A parliamentary inquiry, Mr. President. I didn’t hear any reference to the House that was derogatory and my question is where is the line in mentioning the other House or the sun dial or-?” (Page 1024–2001).

REPLY BY THE PRESIDENT

President Owen: “The last couple of days the members have been talking about the House members agreeing on this and the House member negotiating this, the House members doing this, the House doing that,

legislative hearing and meeting rooms, shall order the sergeant at arms to suppress the same, and may order the arrest of any person creating any disturbance within the senate chamber...” *See also Reed’s Rule 212*: “[T]he members who are not speaking must be silent, refrain from expressions of disrespect, or applause, must not read papers or pass between the member speaking and the presiding officer. They must not interrupt the member speaking without his consent. They must enter and leave the chamber properly and quietly...”

and my understanding of the rules that those processes and procedures that take place in the House are not necessarily to be discussed on the floor and debate of the Senate. So, it is a fine line, but it is a line that you have to be careful not to cross according to your rules.”

Senator McCaslin: “And have we crossed it, Mr. President?”

President Owen: “We have crossed it on occasion—just a warning.”

Senator McCaslin: “Thank you.” (Page 1024–2001).

PRESIDENT CITES REED’S RULE 224⁵⁸

President Owen: “Senator McCaslin and members, let me just—for your information—since it was brought up—and for your information, also. On a regular basis, the members come to me and say, ‘The rules are this—the rules are that; please adhere to the rules.’ Reed’s Rules 224, with reference to the other legislative branch states: ‘It is not permissible to allude to the action of the other house of a legislature or to refer to the debate there. Such conduct might lead to a misunderstanding and ill-will between the two bodies, which must cooperate in order to properly serve the people. So, also, the action of the other body should not be referred to influence the body the member is addressing.’ That is the rule. I understand that we need to allow some discretion in that area and I will do that, so you now know that is what the rule reads.” (Page 1025–2001).

⁵⁸See Reed’s Rule 224: “It is not permissible to allude to the action of the other house . . . Such conduct might lead to misunderstanding and ill-will between two bodies which must cooperate in order to serve the people. So, also, the action of the other body should not be referred to influence the body the member is addressing.”

PARLIAMENTARY INQUIRY

Senator McCaslin: “A parliamentary inquiry, Mr. President. I wish for you to tell me that I am reading Rule 224 correctly in Reed’s Rules? It states ‘It is not permissible to allude to the action of the other house of the legislature, or to refer to a debate there.’ I alluded to a House member or to people that came from the House. I did not allude to any action of the House and I want to make sure that I understand this rule properly versus the interpretation taken by those members of this body that have been members of the House.” (Page 533–2001).

REPLY BY THE PRESIDENT

President Owen: “Senator McCaslin, the President believes that this is a very difficult and fine line that we walk on this issue in referencing the other body. As you read, the purpose of that amendment is to prevent ill will between two bodies, which can also be created when you are referencing individual members, although it does not say specifically ‘individual member.’ We have traditionally held that. We try to avoid referencing individual members for the same purpose, although it is not specifically in

⁵⁹ Senate Rule 29 provides: “When any senator is about to speak in debate, or submit any matter to the senate, the senator shall rise, and standing in place, respectfully address the President, and when recognized shall, in a courteous manner, speak to the question under debate, avoiding personalities; provided that a senator may refer to another member using the title “Senator” and the surname of the other member...” See also **Reed’s Rule 212**: “...212. Object of Debate—Duties of Members.— The purpose of debate is to produce unity of sentiment in the assembly by such a comparison of views as will enable a majority to form a just judgment on the subject before them for action. As the interchange of views in debate necessarily involves criticism of the views presented, and as criticism of views is liable to

there. You are correct, the rule does refer specifically to the body, but the President will exercise some discretion if members are being carried away in their references to other members as well.”

Senator McCaslin: “Then my interpretation is correct and that it speaks and alludes to actions of the other body of the House, rather than in mentioning a former House member?”

President Owen: “That is correct.”

Senator McCaslin: “Thank you, Mr. President.”

President Owen: “Senator McCaslin, in just one slight clarification. If in fact, you are referencing the other members as to their debate, then the President would believe that that would be out of order, because it is of reference of debate in the other house as well.” (Page 533–2001).

Reference to Other Members/Use of Names⁵⁹

PARLIAMENTARY INQUIRY

Senator West: “Mr. President, a point of parliamentary inquiry. Reed’s Rules, which governs the Senate when we have no rules that speak specifically to a point. Reed’s

pass into criticism of the author, a debate may degenerate into a dispute, and the object of debate be entirely lost sight of. To avoid this, and to render discussion an appeal to reason and sentiment, and not an appeal to personal passions, there are many parliamentary devices. Among them is the requirement that the member shall never address any one but the presiding officer. He must not allude to any member by name, but by some descriptive expression, like “The gentleman who last addressed the assembly,” “the gentleman from Virginia,” “the noble and learned lord,” “the gallant gentleman, the member from Portsmouth.” Such expressions import respect, and are in themselves a great restraint. Members must not use harsh expressions about other members, must not impute motives, but must always attack arguments and not the men who make them...”

Rule 212 talks about object of debate and duties of members under debate and decorum. On the second paragraph of that rule, 212, is say, ‘members shall never address any one but the presiding officer. He (and we would have to infer today to also she) he/she must not allude to any member by name, but by some descriptive expression, like the gentleman (and in today’s world the gentle woman) who last addressed the assembly, the gentleman/woman from Virginia, the noble and learned lord, the gallant gentleman/gentle woman, the member from Portsmouth.’ Of course, this is all parliamentary.

The point being, Mr. President, that in today’s debate many members have referred to other members by name. I know that somewhat over the years we have become a little lax in this. Reed’s goes on to point out that the purpose for not referring to a member by debate or by name is to prevent an outbreak of violence on the floor. I think that as the session goes on and as times get tense, we ought to pay more attention to that, because it does cause us to stop and think and reflect before we lash out to another member. So, I bring that to the President’s attention and enforce that as we go along.” (Page 419–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator West, absent a Senate Rule to the contrary, you point is well taken. However, there has been some flexibility given to the President to allow some discretion in that area over time. As long as it has not been abused, Senator West.” (Page 420–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator West, your point is well taken. As a matter of fact, I have

noticed in the last couple of days that not only is there referencing of names, but first names. Heaven forbid! Please, if the members would be careful in referencing other members and how they go about doing that.” (Page 1031–1999).

PERSONAL PRIVILEGE

Senator McCaslin: “A point of personal privilege, Mr. President. I have talked to the majority leader about this rule. There is a rule—I haven’t looked it up yet—which is debatable. The gentlemen from the Sixth District and I don’t want to get into a big debate about it, but there is a rule that would allow us to address our Senators by name, which is much easier. Those folks in the gallery—how many of you up there know who the Sixth District’s Senator is?” (Page 1031–1999).

RULING BY THE PRESIDENT

President Owen: “Senator McCaslin, you are violating the rules by referencing people in the gallery.”

Senator McCaslin: “I know I can’t talk to the gallery. I was talking to the security man up there.”

President Owen: “Senator McCaslin, you are out of order.”

Senator McCaslin: “I agree with you, I am out of order, but I am most of the time. I really think this is more of a personal body than the other body and I think it is only right that we address each other by name as long as we are polite and we are not impugning any motives. It is the easiest thing to say, ‘Senator McDonald’ rather than the ‘Senator from the Twenty-eighth District.’ I just think it is a matter of getting the thing in motion and getting things done, rather than trying to remember what district anyone is from. I don’t even know—I’m from the fourth—I just remembered.

“Let’s be civil and let’s be fair and let’s run this body like friendship body which it is. I don’t think calling people by numbers—we might go to Social Security numbers—which would even be worse. Hopefully, the majority leader and the Republican leader would get together and change the rule, because they have that right in Reed’s Rules and in the Senate Rules. We hear this all the time about names and you are right, I shouldn’t call anybody by their first name. That is because I know them and I like them. The Senator from—I don’t know what district he is from—but he runs that caucus over there and this one here get together and get that rule changed.” (Page 1031–1999).

PERSONAL PRIVILEGE

Senator McCaslin: “A point of personal privilege, Mr. President. I move that the Senator from the Fifteenth District be excused.” (Page 674–1999).

REPLY BY THE PRESIDENT

President Owen: “You will have to help me out on that one a little bit.” (Page 674–1999).

Senator McCaslin: “Well, that is Senator Honeyford. I am trying to point out that we can’t carry these rules too far. We have everybody looking up districts and talking about districts instead of saying, ‘Senator Patterson or Senator Kline or Senator Hale.’ it is so much easier to say, ‘Senator Snyder or Senator Haugen.’ I think the leaders should get together and say, ‘We

can modify these rules and we can refer to names a long as we are being nice and kind and complimentary to each other. I like to say, Senator Johnson or Senator Finkbeiner’ instead of saying whatever his district is and is and looking around to see what it is. So, hopefully, Sid and McDonald will get together, so we can ease up on that.”⁶⁰ (Page 674–1999).

DIVIDING THE QUESTION⁶¹

Cannot Divide A Bill

In ruling upon the call by Senator Benton to divide the underlying measure into discrete parts for an individual vote, the President finds and rules as follows:

The President begins by observing that the actual question of Third Reading cannot be divided, as the single and only question presented is the final passage of the bill. The remaining issue is whether a bill, itself, may be divided into separate parts.

Senate Rule 31 clearly allows any member to divide any question before the Senate, but it comes with a very important limitation: the individual sections divided out must be substantively and procedurally able to function on their own, independent of each other and irrespective of how the whole matter is ultimately decided.

Division may therefore properly be used to break out the individual parts of a motion with multiple restrictions or purposes—for example, a motion to go to the Ninth Order

⁶⁰ In 2001, the Senate adopted a new version of Rule 29 which provides that “a senator may refer to another member using the title “Senator” and the surname of the other member. . . .”

⁶¹ Senator Rule 31 provides: “Any senator may call for a division of a question, which shall be divided if it

embraces subjects so distinct that one being taken away a substantive proposition shall remain for the decision of the senate; but a motion to strike out and insert shall not be divided.” See also **Reed’s Rules** 151-53 and 193.

for a particular purpose could be divided into a question to go to that order and another to limit the purpose once there. Each part of the question could stand on its own.

Similarly, division may properly be used to separate out discrete sections of amendments in some cases, because any parts ultimately adopted will be incorporated into a full bill at some point. Reed's Rules anticipate dividing amendments in sections 151 and 152, but there is no similar provision for dividing a bill in its entirety. The reason for this seems clear: unlike an amendment, a bill may not properly be divided, because it is not possible to achieve any reasonable division which would allow each part to function independent of the others. Indeed, Reed's section 151's last sentence anticipates the problem, stating, "A division between a clause and its proviso could not be had, for instance, because the proviso standing alone would mean nothing."

Every measure needs, for example, a title and an enacting clause. It is not reasonable or possible to divide these among the sections of a bill and still ensure that each division could separately function on its own. Moreover, there is the very real potential for great confusion to arise among the body and the public were bills to be allowed to be divided in this manner. The ensuing logistical chaos and uncertainty as to the ultimate disposition of a measure would be considerable. Avoiding the confusion that could result from such a division is of paramount importance, and thus the President ends with where he began by holding that the question contemplated for division in this case is the final passage of the bill, which—like the individual parts of a bill itself—cannot be divided.

For these reasons, Senator Benton's call is not in order, and the bill may not be divided

into separate parts for individual consideration." (Page 961—2010).

Editor's Note: *This exact same issue was again presented, in another motion by Senator Benton, on the final passage of SB 6150 on February 13, 2012 (final item of business that day). Senator Benton moved to divide the bill, and the President ruled again that a bill may not be divided, referring the body to his prior 2010 ruling (above) for his explanation and rationale.*

PARLIAMENTARY INQUIRY

Senator Frockt: "Finally Mr. President, is it possible under our rules to divide the question on final passage with one vote on the closure of the tax exemption and the second vote requiring a simple majority on the other parts of the bill that do not require the two-thirds vote?"

REPLY BY THE PRESIDENT

President Owen: "No. You may not divide the question on a bill."

DIVISION⁶²

Cannot Divide during Roll Call⁶³

PARLIAMENTARY INQUIRY

Senator Deccio: “A parliamentary inquiry, Mr. President. Is it too late to call for a division of the question?” (Page 459–2001).

REPLY BY THE PRESIDENT

President Owen: “We are on final passage of the bill.” (Page 459–2001).⁶⁴

EMERGENCY CLAUSES⁶⁵

Legal Question, Not Parliamentary Issue

“Senator Swecker, the President believes that whether or not to include an emergency clause in a measure is a policy choice made by the body. Ultimately, the issue presented is one of law, not parliamentary procedure, and the President does not make legal determinations.” (Page 1614 - 2007).

⁶² Senator Rule 31 provides: “Any senator may call for a division of a question, which shall be divided if it embraces subjects so distinct that one being taken away a substantive proposition shall remain for the decision of the senate; but a motion to strike out and insert shall not be divided.” See also **Reed’s Rules** 151-53 and 193.

⁶³ Rule 22 provides: “...When once begun the roll call may not be interrupted for any purpose other than to move a call of the senate...”

EMERGENCY RESERVE⁶⁶

Transfer Takes Two-Thirds Vote Unless Specifically Excepted

PARLIAMENTARY INQUIRY

Senator Snyder: “This is a bit unusual, but the House has passed Second Substitute Senate Bill No. 6404 with amendments and I would like to request a ruling on the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House. In the regular session, President Owen made a ruling on the votes necessary to pass Substitute Senate Bill No. 6404. He ruled that a simple majority vote was required to transfer money from the emergency fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account, but Section 907 also expressly amended RCW 43.135.045 was adopted as part of Initiative 601 and the ruling in the earlier inquiry concerned the number of votes necessary to amend Initiative 601. I would like a ruling on the votes needed to pass Second Substitute Senate Bill No. 6404, as amended by the House. (Page 1138–2000).

REPLY BY THE PRESIDENT PRO
TEMPORE

⁶⁴ See Senate Rule 39: “...When once begun the roll call may not be interrupted for any purpose other than to move a call of the senate”; **Reed’s Rule 232**: “...After the first name has been called the call can not be interrupted, even by the arrival of the hour appointed for the adjournment of the assembly...”

⁶⁵ Editor’s Note: See Washington Constitution Article II, § 1(b) and (c); and § 41.

⁶⁶ Editor’s Note: the bulk of authority on these issues is found under I-601.

President Pro Tempore Wojahn: “Senator Snyder, I am not prepared to make that ruling at the present time and would like to defer further consideration of Second Substitute Senate Bill No. 6404.” (Page 1138–2000).

**RULING BY THE PRESIDENT PRO
TEMPORE**

President Pro Tempore Wojahn: “In ruling on the point of inquiry raised by Senator Snyder on March 23, 2000, concerning the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House of Representatives, the President would first note that advisory rulings are not normally given by the President. For example, earlier this session, President Owen declined to rule on a point of order on whether a bill was properly before the Senate under Senate Rule 25, as long as that bill remained on Second Reading.

The President reasoned that until such time as a bill is on final passage, it may be changed by the body. Second Substitute Senate Bill No. 6404, as amended by the House, will be on third reading if a motion to concur is adopted. The House amendment cannot be changed by the Senate. For these reasons, the President finds that Senator Snyder’s point of inquiry is timely.

Section 501 of the House striking amendment to Second Substitute Senate Bill No. 6404 would allocate money from the emergency reserve fund to school districts to pay for increase fuel costs. Section 724 would transfer money from the emergency reserve fund to the multi modal transportation account for rail programs. RCW 43.135.045(2) provides that the Legislature appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the Legislature. The President,

therefore, finds that final passage of Second Substitute Senate Bill No. 6404, as amended by the House, would require a two-thirds vote of the Senate (thirty-three members).

The President would distinguish an earlier ruling on Substitute Senate Bill No. 6404 in which President Owen ruled that a simple majority vote was required to transfer money from the emergency reserve fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account. However, Section 907 also expressly amended RCW 43.135.045(2) to remove the statutory requirement for a two-thirds majority vote to make the transfer. RCW 43.135.045 was adopted as part of Initiative 601 and the point of inquiry in the earlier instance concerned the number of votes necessary to amend Initiative 601. President Owen ruled that only a simple majority was necessary to amend Initiative 601. (Page 1139–2000).

EXCUSING A MEMBER

Vote Needed

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry, Mr. President. When a member is moved to be excused, and that excuse is challenged is it merely a majority of those present to either approve the excused or oppose the excused—and if so, and if they are not excused, are they listed as absent?” (Page 1220–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Heavey, if a member is absent, it would take a majority of the members to excuse them. If they are on the floor, it would take a unanimous vote to

excuse them from the vote.” (Page 1220–2000).

GAMBLING⁶⁷

**Addition to List of Legal Wagers
Requires Sixty Percent Vote**

POINT OF ORDER

Senator Heavey: “A Point of Order, Mr. President. Does this vote require a sixty percent majority?” (Page 376–1997).

PRESIDENTS RULING

President Owen: “In ruling upon the Point of Order raised by Senator Heavey, the President finds that Senate Bill No. 5330 is a bill that would make an addition to the list of legal wagers on golfing events. The measure would permit the auctioning of players or teams in a golfing contest. The person placing the highest bid on the winning player or team would receive the proceeds from the auction. “The President, therefore, finds that the measure does expand gambling and does require a sixty percent majority under Article II, section 24 of the State Constitution.” (Page 376–1997).

Bingo Game

Locations

PARLIAMENTARY INQUIRY

⁶⁷ Washington Constitution Article II § 24 provides: “LOTTERIES AND DIVORCE. The legislature shall never grant any divorce. Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision

Senator Oke: “A point of parliamentary inquiry, Mr. President. In accordance with Article II, Section 24, does Senate Bill No. 5034 take an affirmative vote of sixty percent of the body?” (Page 2164–1997).

RULING BY THE PRESIDENT

President Owen: “Senator Oke, the President believes, because Section 2 removes the restriction on the locations of bingo games and expands the number of sites, that it would take sixty percent or thirty votes to pass the bill.”(Page 2164–1997).

POINT OF ORDER

Senator Heavey: “A point of order, Mr. President. Mr. President, Senator Oke’s question, as to the Constitution, doesn’t that go to whether it is a new form of gambling, as opposed to expansion? In fact, this is not even expansion or no new licensees. It is bingo and there is no new form of gambling. Would it be appropriate to ask you to reconsider your ruling on the sixty percent?” (Page 2164–1997).

RULING BY THE PRESIDENT

President Owen: “The President has reviewed the section with both attorneys and I believe that the President’s ruling is correct.” (Page 2164–1997).

Number of Times Per Week

of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon. [AMENDMENT 56, 1971 Senate Joint Resolution No. 5, p 1828. Approved November 7, 1972.]”

PARLIAMENTARY INQUIRY

Senator McDonald: “Mr. President, a point of parliamentary inquiry. Is this an expansion of gambling and, therefore, requiring a sixty percent vote?”

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of parliamentary inquiry by Senator McDonald concerning the number of votes necessary to pass Substitute Senate Bill No. 5429, the President finds that the measure would remove the restriction on the number of times per week that charitable organizations may conduct bingo games. Because the measure would permit increased occurrences of gambling, the President rules that a sixty percent majority (thirty votes) is required on final passage in accordance with Article II, Section 24 of the State Constitution.” (Pages 359; 366-367–2002).

Change vs. Expansion

PARLIAMENTARY INQUIRY

Senator McCaslin: “A parliamentary inquiry, Mr. President. In the State Constitution, Article 2, Section 24, Lotteries and Divorce, it says, ‘Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature.’ does this bill, in fact, require sixty percent?” (Page 652 - 1997).

RULING BY THE PRESIDENT

President Owen: “In responding to the parliamentary inquiry by Senator McCaslin, the President finds that Engrossed Substitute Senate Bill No. 5762 is a measure

which authorizes increases in the size of the pari-mutuel pools on simulcast races, but does not add statutory authority for new locations or additional forms of gambling.

Precedents on this issue have clearly stated that bills which add new forms of gambling or authorize added occurrences require a sixty percent vote. However, if the statutory authority is already available and the legislation directs added occurrences within that authority, there is no expansion and only a majority vote is required. This was clearly stated in previous rulings. In this case, RCW 67.16.190 authorizes wagering on in-state and out-of-state simulcast races without limit on the number of such races.

Precedents also hold that increases in dollar value alone, such as the price of raffle tickets, do not constitute an expansion or a new form of gambling and do not require a super majority.

The President, therefore, finds that Engrossed Substitute Senate Bill No. 5762 requires a majority (twenty-five votes) for final passage.” (Page 657–1997).

Factors viewed collectively may constitute an expansion

RULING BY THE PRESIDENT

President Owen: In ruling upon the point of parliamentary inquiry raised by Senator Frockt concerning the number of votes necessary to pass Substitute Senate Bill 5723, the President finds and rules as follows:

Substitute Senate Bill 5723 is a measure that permits enhanced raffles for a narrow group of nonprofits. While raffles are allowed under current law, the operations are quite limited. There are strict limits on the types of drawings that may be offered as well as restrictions on the method of sales and administration of raffles.

In contrast, the enhanced raffles authorized in Substitute Senate Bill 5723 would allow a non-profit to contract with other licensees to operate the enhanced raffles. Participants may purchase enhanced raffle tickets in a variety of different ways. Certain purchasers may participate in “early bird” raffles, and may be eligible to win additional prizes for referring other purchasers to the raffle organizers, (refer a friend drawings) or for buying multiple numbers of tickets (multiple ticket drawings).

Taken individually, each of these changes may not constitute an expansion of gambling. However, when viewed collectively, they work together to create a significantly different type of raffle. The President would like to caution the body that a procedural change or an operational change to a current form of gambling will not necessarily indicate an expansion of gambling.

In this case, the new games, new sales methods and changes in administration, taken collectively, so change the form of current raffles that the President finds that Substitute Senate Bill 5723 authorizes a new form of gambling. Therefore, the President rules that a sixty percent majority (thirty votes) is required on final passage in accordance with Article II, Section 24 of the State Constitution. (Page 362 - 2013).

Expanding the Class

President Owen: In ruling upon the point of order raised by Senator McCaslin that House Bill 1944 is an expansion of gambling that requires a sixty percent vote under Article II, Section 24 of the Washington Constitution, the President finds and rules as follows:

It seems clear that the main impetus of this measure is to clarify that state employee raffles for charitable purposes are permitted under the Ethics Act. Section 2 makes this clarification and, had the measure been limited to the Ethics Act, no question as to gambling expansion would arise. The first section, however, unequivocally adds state agencies to the list of nonprofit organizations which may hold charitable raffles. In so doing, it expands the class of people who may conduct gambling, and this is therefore an expansion of gambling, albeit for a limited and charitable cause. As a result, Senator McCaslin’s point is well-taken and a sixty percent vote of this body will be needed for final passage. (Page 953–2005).

Increasing Occurrences of Gambling Requires a Sixty Percent Vote

PARLIAMENTARY INQUIRY

Senator Hochstatter: “A parliamentary inquiry, Mr. President. Does this bill require a sixty percent vote to pass? Does it increase gambling?” (Page 420–2001).

RULING BY THE PRESIDENT

President Owen: “The President finds that Substitute Senate Bill No. 5573 would permit increased occurrences of gambling activity. Therefore, under Article II, Section 24 of the State Constitution, the President rules that a sixty percent vote (thirty votes) is required on final passage.” (Page 420–2001).

Multi-State Lottery

PARLIAMENTARY INQUIRY

Senator Sheahan: “A parliamentary inquiry, Mr. President. I would like the President to rule whether passage of this bill requires a sixty percent vote on final passage, since it is an expansion of gambling.”

RULING BY THE PRESIDENT

President Owen: “In ruling upon the parliamentary inquiry by Senator Sheahan, concerning the number of votes necessary to pass Engrossed Second Substitute Senate Bill No. 6560, the President finds that RCW 67.70.040 already authorizes the Lottery Commission to engage in multi-state lottery games with the prior approval of the Legislature, which this bill would provide. Engrossed Second Substitute Senate Bill No. 6560 is a measure which simply seeks prior approval into the multi-state lottery known as the ‘Big Game.’

“The measure, as amended by Senator Brown, does not broaden the existing authority of the Lottery Commission or otherwise remove any restrictions on gambling that would require a sixty percent vote under Article II, Section 24 of the State Constitution.

“Therefore, the President finds that prior legislative approval of the ‘Big Game’- hence, final passage of Engrossed Second Substitute Senate Bill No. 6560 requires a simple majority vote (25 votes).” (Page 789-2002).

Providing Themes to Lottery Games Takes Simple Majority Vote

PARLIAMENTARY INQUIRY

Senator Snyder: “A point of parliamentary inquiry, Mr. President. Under the Constitution, it takes sixty percent to pass a measure that expands gambling. If we have

added another lottery game in this bill, I think, absolutely, we are expanding gambling and this will take thirty votes on final passage.” (Page 1293–1998).

REPLY BY THE PRESIDENT

President Owen: “The President doesn’t believe that he is prepared to rule on this at this point. Senator West, I do remember that there was a ruling, but we do need a moment to check that out.” (Page 1293–1998).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Snyder concerning whether Engrossed Substitute Senate Bill No. 6108 is a measure that expands gambling and therefore requires a sixty percent vote on final passage, the President finds that Section 906 of the measure directs the Lottery Commission to conduct two to four scratch games with agriculture fair themes. The measure does not require that these be additional lotteries. Even if they are additional lotteries, the Lottery Commission already maintains authority under RCW 67.70.040 to determine the total number of drawings. The measure does not expand that authority. Therefore, the President rules that Engrossed Substitute Senate Bill No. 6108 requires only a simple majority vote on final passage.” (Page 1294–1998).

Racetrack Simulcasts

PARLIAMENTARY INQUIRY

Senator Fairley: “A parliamentary inquiry, Mr. President. When we’ve discussed gambling before, we’ve said that bills that add new forms of gambling or

authorized added appearances require a sixty percent vote. My inquiry is does this require a sixty percent vote on final passage? This bill allows race tracks to have more hours of simulcasting on race days. Right now, they can do only one card on a race day and this is eight to ten races, so this bill would allow almost unlimited simulcasting of races on race days and more opportunity for people to place bets and therefore more gambling. I would argue that adding occurrences of simulcasting under past precedents that we have had in this body, would be an expansion of gambling and therefore require a sixty percent vote.” (Page 424–2001).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of inquiry by Senator Fairley concerning the number of votes necessary to pass Substitute Senate Bill No. 5407, the President finds that the measure would remove restrictions on the number of simulcast races that may be imported by horse racing associations on live race days. Because the measure would permit increased occurrences of gambling, the President rules that a sixty percent vote (thirty votes) is required on final passage in accordance with Article II, Section 24 of the State Constitution.

“Senator West is correct that tracks already have the prior authority under the law to adjust their live and dark day race schedules to increase the number of simulcast races they may import. However, for purposes of this inquiry, the President’s analysis must start with the fact that tracks do not have the prior authority to offer unlimited simulcasts on a live race day.” (Page 428–2001).

Removing Restrictions Requires Sixty Percent Vote

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator Swecker that Substitute Senate Bill 6481 is an expansion of gambling which requires a sixty percent vote, the President finds and rules as follows:

Both Article II, Section 24 of the Washington Constitution and Senate precedent require that a sixty percent majority vote is necessary to expand incidences of gambling permitted by Washington law. Section 2 of the bill removes two significant restrictions on wagering on imported simulcast racing. First, the measure removes the restriction limiting such wagering to only fourteen hours per day; and second, the measure removes the limitation restricting such simulcasts to essentially one per day. Effectively, this expands the incidences of such wagering allowed and therefore constitutes an expansion of gambling requiring a sixty percent vote of this body on final passage in order to be enacted.

The President believes that so ruling on these points suffices to determine the votes needed for passage and therefore the President does not reach, and specifically reserves for future consideration as presented in other measures, whether or not issues raised by the remainder of the bill do or do not constitute an expansion of gambling requiring a super-majority vote.” (Page 349-2004)

PARLIAMENTARY INQUIRY

Senator Hochstatter: “A point of parliamentary inquiry, Mr. President.

Because this bill removes the provisions that say how often Class 1 Racing may be imported and simulcast, does this bill increase gambling in the state of Washington and require a sixty percent majority vote on final passage.” (Page 955–2001).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the parliamentary inquiry of Senator Hochstatter concerning the number of votes necessary to pass Engrossed Substitute House Bill No. 1517, as amended by the Senate, the President finds that the measure would remove restrictions on the number of simulcast races that may be imported by horse racing associates on live race days. Because the measure would permit increased occurrences of gambling, the President rules that a sixty percent vote is required on final passage in accordance with Article II, Section 24 of the State Constitution.

“Senator West is correct that tracks already have the prior authority under the law to adjust their live and dark day race schedules to increase the number of simulcast races they may import. However, for purposes of this inquiry, the President’s analysis must start with the fact that tracks do not have prior authority to offer unlimited simulcasts on a give live race day.” (Page 955–2001).

Removing Sunset Clause Requires Sixty Percent Vote

RULING BY THE PRESIDENT

“In ruling upon the inquiry raised by Senator Fairley as to whether or not House Bill 1291 is an expansion of gambling that requires a sixty percent vote under Article II, Section 24 of the Washington Constitution, the President finds and rules as follows:

In 2004, the Legislature enacted provisions of law relating to advance deposit wagering. Regardless of whether a point of order was requested on this bill at the time or not, such an action was clearly an expansion of gambling which would take a sixty percent vote. This law included a sunset clause, under which the act would end as of October 1, 2007.

The measure before us is very simple, as it contains only one line of substantive law, and this line deletes the sunset clause. In effect, this changes what was an authorization for advance deposit wagering for a limited time into an authorization of unlimited, or at least indeterminate, duration. Were the act to expire as present law requires, and were the body to then come back with a bill reinstating these provisions, such an act would undoubtedly take—as did the original measure passed in 2004—a sixty percent vote. It is axiomatic, then, that a measure which removes the sunset clause expands gambling from a limited period of time to an unlimited period of time likewise takes a sixty percent vote.

For these reasons, the President responds to Senator Fairley’s inquiry by ruling that a sixty percent vote of this body, 30 votes, will be needed for final passage.” (Page 1204 - 2007).

Using Statutory Scheme Already In Place

“In ruling upon the point of order raised by Senator Hargrove as to whether Senate Bill 5806 is an expansion of gambling which would take a sixty percent vote under the Constitution, the President finds and rules as follows:

Senator Hargrove is correct that Article II, section 24 of the Washington Constitution provides that an expansion of gambling requires a sixty percent vote of the legislature. Not every bill dealing with this topic, however, requires a super-majority vote. For example, there is ample precedent in this body, as well as other legal authority, to differentiate an expansion of gambling from the designation of new games or themes to take place under a pre-existing statutory scheme.

Such is the case with this bill. The President believes that this measure does not expand gambling, but instead makes use of existing authority under RCW 67.70.040 and adopted WACs. Under current law, the Lottery Commission may already conduct raffles, and it has done so in the past. This measure simply makes use of this existing framework to dedicate a raffle to veterans, specify the date of the drawing, and direct the sale proceeds.

For these reasons, the President believes this measure will take only a simple majority vote on final passage.” (Page 937 - 2011).

In ruling upon the point of order raised by Senator Stevens that House Bill 1379 is an expansion of gambling that requires a sixty percent vote under Article II, Section 24 of the Washington Constitution, the President finds and rules as follows:

This measure would allow some Sunday sales in certain liquor stores and permit in-store liquor merchandising. Senator Stevens’

⁶⁸ Article II § 1(c) provides: “...No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: Provided, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote

argument essentially is that, because some of these stores may sell lottery tickets, allowing sales of liquor on Sunday at these stores would expand gambling. The President is not persuaded by this argument for two reasons.

First, many of the contract stores are already open on Sundays, able to sell all merchandise—including lottery tickets—except liquor. Adding liquor sales to Sunday for these stores therefore has no impact on the sales of lottery tickets in these stores.

Second, the statutory scheme authorizing lottery sales already allows for the regulation of times, types, and locations of lottery outlets. Thus, the question as to limitations on the time and place of lottery sales has already been set by law, and the bill before us does nothing to change this. For these reasons, Senator Stevens’ point is not well-taken and the bill takes only a simple majority for final passage. (Page 896–2005).

INITIATIVE & REFERENDUM

Amending a Referendum: Substance vs. Form

POINT OF ORDER

Senator West: “Mr. President I rise to a point of order. Under Article II, Section 1 of the Constitution,⁶⁸ it says that Initiatives passed by the people are subject to a two-thirds vote of the Legislature to amend or repeal within a two year period after the vote.

of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.”

I would contend that this bill clearly amends Referendum 49 which was passed in the last general election and I would ask the President to rule on the amount of votes required to pass this bill.” (Page 675–1999).

RULING BY THE PRESIDENT

President Owen: “For purposes of ruling on the point of order by Senator West concerning the number of votes necessary to pass Substitute Senate Bill No. 5929, the President finds that Referendum 49 did two things primarily; First, it lowered the motor vehicle excise tax payable by motor vehicles owners; and Second, it shifted motor vehicle excise tax revenues from the general fund to the motor vehicle fund for transportation purposes.

“Substitute Senate Bill No. 5929 does not increase the amount of motor vehicle excise tax payable by motor vehicle owners. Section one of the measure authorizes municipalities to collect a higher percentage of motor vehicle excise tax, but this amount would be offset by a reduction in the amount collected by the state.

“Substitute Senate Bill No. 5929 does not shift motor vehicle excise tax revenues away from the motor vehicle fund or away from transportation purposes. The measure simply redistributes a share of local motor tax revenues among local transit agencies, the public transportation capital account and the transportation fund.

“The President, therefore, finds under Article II, Section 1(c) of the State Constitution, that Substitute Senate Bill No. 5929 does not amend Referendum 49 and requires only a simple majority vote on final passage.” (Page 678–1999).

PARLIAMENTARY INQUIRY

Senator West: “A parliamentary inquiry, Mr. President. On your ruling on

Substitute Senate Bill No. 5929, which I do not challenge, Sir, I wonder if you might further enlighten the body and elucidate on that opinion. Within the language of the bill, it clearly states, ‘RCW’ 35.58.273 and 1998 Chapter 321, Section 25, Referendum Bill No. 49 are each amended to read as follows,’ and it is based on that language that I brought the inquiry asking the determination to be made. Mr. President, if you would further enlighten us as to how that particular language could be ignored in your ruling, I would appreciate it.” (Page 679–1999).

FURTHER RULING BY THE PRESIDENT ON SUBSTITUTE SENATE BILL NO. 5929

President Owen: “In responding to Senator West’s point of parliamentary inquiry, the President notes that although Substitute Senate Bill No. 5929 does address sections that were part of Referendum 49, the substantive law made in Referendum 49 was not itself amended. The President would like the members to know that he will look to substance rather than form in ruling on whether a measure amends an initiative or referendum, just as the President looks to the substance of a bill rather than its title in ruling on scope and object.” (Page 679–1999).

Amending an Initiative: Initiative’s Purpose and Function

In ruling on the Point of Order raised by Senator Darneille as to whether SB 5396 amends Initiative 1183 so as to require a 2/3 vote on final passage, the President finds and rules as follows:

SB 5396 allows certain vendors of alcoholic spirits to provide limited sampling of those spirits. The vendors affected are those participating in the “responsible vendors

program.” The responsible vendor program participants must provide ongoing training to employees, accept only certain forms of identification for alcohol sales, adopt policies on alcohol sales and checking identification, post specific signs in the business, and keep records verifying compliance with the program's requirements. Two additional factors are most significant: the program itself was created in Initiative 1183, and participants in the program do not have the legal authority to provide spirits sampling without this bill.

SB 5396 does not directly alter any of the language found in I-1183, and only refers to the initiative's provisions by reference. However, the President has previously acknowledged that a 2/3 vote may be required even without a direct change to an initiative, and that he will look to the substance of the bill, rather than its form, in determining whether a bill amends an initiative. (SSB 5929, 1999.)

In this instance, although in its form the bill does not directly amend the words found in the initiative, the bill has only one effect: it grants sampling authority to participants in the responsible vendor program, a program that exists only because of the initiative. The inescapable conclusion is that a program established by initiative less than two years ago would be altered by this bill. Had a limited spirits sampling program been established independent of the responsible vendor program, the initiative would not be impacted.

For these reasons, the President finds that SB 5396 would amend Initiative 1183, and will require a two-thirds constitutional supermajority for final passage as required by Article II, Section 1 of the Washington state constitution. Senator Darneille's point is well-taken. (Page 535 - 2013).

Changes to a Section Changed in an Initiative Needs 2/3 Vote

In ruling upon the point of inquiry raised by Senator Jacobsen that Amendment 45 takes a two-thirds vote because it amends sections enacted by Initiative Number 872, the President finds and rules as follows:

Although the main purpose of I-872 was not to affect the date of the primary, it should be noted that Section 8 of I-872, which is now codified at RCW 29A.04.310, actually does amend the primary dates. Specifically, I-872 breaks out and numbers the primary dates which were previously incorporated into one sentence. While the purpose of the drafters in so doing can be debated, the effect for purposes of this ruling cannot: these dates were differently set forth in the initiative as voted upon at the general election. As a result, amending this section will take a two-thirds vote of this body and Senator Jacobsen's point is well taken. (Page 377–2005).

Amendments to a Statute Previously Amended by an Initiative

In ruling on the Point of Inquiry raised by Senator Darneille as to whether HB 1149 amends Initiative 1183 so as to require a 2/3 vote on final passage, the President finds and rules as follows:

Initiative 1183 privatized the sale of spirits, allowing certain private retailers to sell the product. The initiative amends RCW 66.24.145, the same statute that would be amended in HB 1149. That statute limits sales of spirits by craft distilleries to two liters

per person per day. The bill would amend a portion of RCW 66.24.145 that the initiative did not directly amend, by changing the limit to three liters per day.

In this specific instance, the initiative maintained preexisting limits on the amount of spirits that one person could buy: two liters per person per day. The sponsors altered the statute slightly to make it consistent with the privatization process, while making no explicit change to the daily limit.

The President may not determine the precise intent of the sponsors of Initiative 1183. However, the limit on individual sales of spirits was contained in the statute that the sponsors wrote, it was placed before the voters with the limitation intact, and was passed by those same voters. Perhaps most importantly, the limitation on individual sales of spirits is consistent with the broad purpose of the initiative to provide for private sales of spirits within the framework of a heavily regulated commercial environment.

If the President were to conclude that the passage of HB 1149 did not contradict Initiative 1183, he would have to speculate about the sponsors' intent, in a manner that is beyond his powers. Instead, he must evaluate the question by considering the initiative's purpose and its function: to allow sales of spirits by private commercial businesses, but within a limited and regulated environment. Restricting the daily sales of spirits is part of that limited and regulated environment, and HB 1149 would change a small part of that environment.

For these reasons, the President finds that HB 1149 would amend Initiative 1183, and will require a two-thirds Constitutional supermajority vote on final passage. (Page 911 - 2013).

Changes to a Section Merely Referenced by an Initiative Needs Simple Majority Vote

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order by Senator Benton that the House Amendment to Engrossed Substitute Senate Bill 5659 is improperly before the body because it amends Initiative 747 without the necessary 2/3 vote of the House, the President finds as follows:

Initiative 747 changed the amount a taxing district could increase its property taxes from 6% down to 1% without a vote of the people. The amendment does not change any language amended or set forth in the original initiative. Initiative 747 merely changed the rate and allowed taxes to increase above that rate upon a vote of the people.

A vote of the people is still required to increase taxes above that rate under this amendment. As such, the amendment violates neither the intent nor the spirit of Initiative 747. It is true that the House amendment does make changes to a section referenced within Initiative 747; however, the only change made by the House amendment is to the methodology by which a vote may take place and similarly does not violate the intent of the initiative.

Senator Benton's point is not well taken, and the President finds that Engrossed Substitute Senate Bill 5659 is properly before the body." (Page 1559-2003)

Court Action

In ruling upon the point of inquiry raised by Senator Sheldon that this measure takes a two-thirds vote for final passage because it amends sections enacted by Initiative Number 872, the President finds and rules as follows:

Last Session, the President did rule that a similar measure required a two-thirds vote for final passage because it amended sections of the law enacted by I-872. Since that time, this has been a high-profile issue that is being litigated in the courts. The President begins by reminding the body that its presiding officers have a long tradition of ruling on parliamentary issues, not legal or constitutional matters. The President's rulings do not, however, take place in a vacuum. When appropriate, the President must, as a matter of comity and parliamentary necessity, take notice of actions undertaken by other branches of government which have a practical impact on parliamentary issues.

On July 15, 2005, a federal judge issued an order declaring, among other things, I-872 to be unconstitutional, and the judge's ruling is relevant to the analysis on this point of order. It is important to note the precise language used by the judge in the case because it bears directly on the state of the law before us. The judge wrote on page 38 of his Order:

In this case, the Court's holding that Initiative 872 is unconstitutional renders it a nullity, including any provisions within it purporting to repeal sections of the Revised Code of Washington. Therefore, the law as it existed before the passage of Initiative 872, including the Montana primary system, stands as if Initiative 872 had never been approved.

It is hard to imagine the Court being clearer in its statement that the law is returned to its former status as if I-872 had never been approved. Since this is the case, it necessarily

follows that any change to the law proposed by this body takes only a simple majority vote because there is no initiative left to amend.

It may well be that the federal judge's ruling will not be the final word on this matter. The President is aware that the matter is being appealed and further litigated in the courts, and it is uncertain when or how further court action might change the trial court's decision. It may be prudent for proponents of this measure to seek a two-thirds vote as a means of removing all doubt and risk which may flow from subsequent and different court action. It is precisely because of this uncertainty, however, that the President cannot engage in speculative analysis, but must instead confine himself to the state of the law as it exists at the time of his ruling. Presently, a duly-constituted Court has declared I-872 unconstitutional and returned the law to its pre-I-872 status. In appropriate deference to this Order, the President finds and rules that the measure before us takes only a simple majority vote for final passage. (Pages 161-162—2006).

Use of funds from a preexisting account referenced in an initiative not an amendment to the Initiative

In response to Senator Padden's parliamentary inquiry regarding the number of votes required to pass HB 2798, the President finds and rules as follows:

Initiative 502 provided that a certain percent of the excise taxes be placed into the Basic Health Plan Stabilization Account, along with other funds already in the account.

The bill allows an expanded use of funds in the account. Merely because the initiative directs some funds into an existing account, does not make alteration of the purposes for

which the account can be used an amendment of the initiative.

For these reasons the President finds that HB 2798 requires only a constitutional majority of 25 votes on final passage. (March 12, 2014).

Votes Needed: Amendment to Initiative v. Amendment to the Bill Itself

PARLIAMENTARY INQUIRY

Senator Sheahan: "A parliamentary inquiry, Mr. President. How many votes does it take to pass the amendment and how many votes on final passage?"

RULING BY THE PRESIDENT

President Owen: "Senator, the question arises because this is an amendment to an initiative and it is within two years of the passage of this initiative. Therefore, the passage of the bill will take a two-thirds vote. To amend the bill takes a simple majority."

Senator Sheahan: "Thank you." (Page 456–2002).

Votes Needed: Amend Initiative referred to voters

In ruling upon the point of order raised by Senator Liias asking the number of votes required to pass SSB 6088, the President finds and rules as follows:

⁶⁹ Editor's Note: Consider that this ruling would result in House having the ability to make the Senate's vote irrelevant, but never the reverse. Should the actual

Initiative 1351 passed in November of 2014 and generally directs that lower class sizes be funded in all grades. SSB 6088 amends the initiative in a number of ways, subject to approval by the voters. The President believes that there is no dispute as to this point.

The question is the number of votes required to amend an initiative within two years of its enactment. Article II, Section 41 and Article II, Section 1(c) of the state constitution provides two options for amending a recently enacted initiative:

1. The Legislature may amend an initiative "by a vote of two-thirds of all the members elected to each house. . . ." or
2. The initiative "may be amended or repealed at any general regular or special election by direct vote of the people thereon."

The President believes that the term "direct vote" encompasses both the scenario where the people file an initiative and where the Legislature refers a proposal to the voters in the form of a referendum. As there is no requirement for a supermajority vote to refer a bill to the people, the President finds that this action requires only a majority vote. (April 6, 2015)

JOINT SESSION

Votes Needed⁶⁹

[At a joint session, the underlying motion dealt with deferring the certification of the office of Governor]

Senator Esser: "Mr. Speaker, point of inquiry. Would you please tell the body how

minimum majority be a combined 75—that is, a majority of each chamber (50 Representatives + 25 Senators)."

many votes from each chamber—the Senate and the House—are needed for this motion to carry?”

Speaker Frank Chopp: “Neither the Joint Rules adopted by the House and Senate, nor Reed’s Rules, which the House and Senate separately rely upon for guidance in answering parliamentary questions, address the issue of voting in a joint session.

The Speaker has therefore turned to several sources for guidance in deciding the standards that will govern the conduct of our joint session today.

These include Mason’s Manual of Legislative Procedure, Article 3, Section 4 of our state constitution, records of a previous vote in joint session in 1941, and parliamentary common law.

Mason’s, the parliamentary manual of the 49 other state legislatures, specifies the following in section 782:

‘When the two houses meet in a joint session, they, in effect, merge into one house where the quorum is a majority of the members of both houses, where the votes of members of each house have equal weight, and where special rules can be adopted to govern joint sessions or they can be governed by the parliamentary common law.’

Article 3, section 4⁷⁰ of our state constitution provides that when two or more persons for election to a state constitutional office receive the highest and equal number of votes, one of them shall be chosen by the joint vote of both houses.

The only instance of a recorded roll call vote in joint session in our state’s history occurred in 1941. In that case, a motion to refer an election protest to a special committee was defeated by a vote of 15 to 30 by members of the Senate and a vote of 30 to 68 by members of the House. The journal then states that the motion “having failed to receive the constitutional majority in both the Senate and the House, was declared lost.”

One could interpret this as dicta, a simple statement of fact, or as a requirement that the votes necessary for passage of a motion in joint session are a constitutional majority of the members of the Senate plus a constitutional majority of the members of the House.

The Speaker rejects the last interpretation. It would be untenable to find that when sitting in joint session the vote of the members of one house could serve to make the vote of the members of the other house irrelevant.

The Speaker therefore finds and rules that the vote necessary to decide any question presented to the body in joint session is a

⁷⁰ Article III § 4 provides. “The returns of every election for the officers named in the first section of this article shall be sealed up and transmitted to the seat of government by the returning officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be

given to such person, signed by the presiding officers of both houses; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for such officers shall be decided by the legislature in such manner as shall be determined by law. The terms of all officers named in section one of this article shall commence on the second Monday in January after their election until otherwise provided by law.”

majority of the combined membership of the House and Senate.” (Page 34–2005).

EDITOR’S NOTE:

Note that this was the Speaker’s ruling, not the Lt. Governor’s.

LEGAL MATTERS

Better Left to the Courts

In ruling upon the points of inquiry raised by Senator Honeyford and Senator Benton that House Bill 1397 is not properly before us for various legal, constitutional, and format reasons, the President finds and rules as follows:

The President begins by reminding the body that he does not make legal or constitutional interpretations as to the substantive law within a measure; instead, the President rules on parliamentary matters and those Constitutional or legal mandates affecting the vote on a particular matter. While there may be legal challenges that can be raised as to the substantive law in a bill, those challenges are better left to the courts for decision. Moreover, with respect to the challenge that this measure should have been placed within a Joint Resolution because it amends the Constitution, the President finds that nowhere within the express text of the bill does it amend any language found within the Washington Constitution. If the body believes a Constitutional amendment is necessary, it would need, of course, to make such an amendment in the form of a Joint Resolution, but this does not preclude the body from taking up the language in this bill. For these reasons, the points are not well-taken and this measure is properly before the body for its consideration. (Page 1154–2005).

Constitution v. Statute/Initiative

“In ruling upon the inquiry raised by Senator Sheldon as to the application of Initiative Number 960 to Senate Bill 6931, as well as the point raised by Senator Brown as to the Constitutional duties of this body, the President finds and rules as follows.

The President begins by addressing the argument raised by Senator Brown as to a possible conflict between the Constitution and I-960 with respect to the number of votes required to pass a measure. The Constitution is the preeminent law of our state, and all other laws and rules applicable to this body are unquestionably subordinate to the Constitution. Nonetheless, the President has taken an oath to uphold all of the laws of our state and nation, including both Constitutional and statutory law. Whatever the merits of Senator Brown’s legal argument—and the President is inclined to agree with her arguments—it is not for him to decide legal matters. Under our Constitutional framework of separation of powers, the authority for determining a legal conflict between the Constitution and a statute is clearly vested with the courts. It is for this reason that the President has a long-standing tradition of refraining from making legal determinations, and he does so, again, in this case. Senator Brown’s arguments are cogent and persuasive, but the proper venue for these legal arguments is in the courts, not in a parliamentary body. For these reasons, the President believes he lacks any discretion to make such a ruling, and he explicitly rejects making any determination as to the Constitutionality of I-960 and instead is compelled to give its provisions the full force and effect he would give any other law.

Turning now to the issue raised by Senator Sheldon as to whether or not the surcharge imposed by this measure is a tax or a fee, the President takes note of his prior rulings and

the plain language of I-960 in making this determination. In so doing, it is worth noting that I-960 includes a very broad definition of tax, covering ‘any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account.’ The President still believes that there is a distinction between a ‘tax’ and a ‘fee,’ just as there was under Initiative Number 601—indeed, I-960, itself, speaks of both taxes and fees. As a result, the President’s earlier body of precedent for determining fees and taxes under I-601 is still instructive, albeit working within this tighter definition of ‘tax’ set forth in I-960.

Harmonizing these past rulings with the specific language of I-960, the President believes that there must be a very close nexus between those paying a fee and the purpose for which that fee is being used; absent this tight connection, a revenue action is more properly characterized as a general tax, not a specific fee.

Applying this analysis to the measure before us, the President does find a connection between collecting a charge on liquor and spending the proceeds on increased drunk driving patrols and drug treatment, but he believes the nexus is not sufficiently direct under the tighter definition of I-960—that is, the connection between those paying the surcharge and the purposes for which it may be used is not narrow. The purposes are very noble and desirable, but they are not directly connected to those paying the surcharge: Many who pay the surcharge will benefit from increased patrols, but so will the general populace; likewise, almost all who pay the surcharge will not need drug treatment programs. Because the purposes for which the surcharge’s proceeds will be spent are not specifically connected with those who will pay the surcharge, it should more properly be characterized as a tax, not a fee. For this

reason, a supermajority vote of this body—that is, 33 votes—is needed for final passage, and Senator Sheldon’s point is well-taken.” (Pages 654-55—2008).

Court Action

In ruling upon the point of inquiry raised by Senator Sheldon that this measure takes a two-thirds vote for final passage because it amends sections enacted by Initiative Number 872, the President finds and rules as follows:

Last Session, the President did rule that a similar measure required a two-thirds vote for final passage because it amended sections of the law enacted by I-872. Since that time, this has been a high-profile issue that is being litigated in the courts. The President begins by reminding the body that its presiding officers have a long tradition of ruling on parliamentary issues, not legal or constitutional matters. The President’s rulings do not, however, take place in a vacuum. When appropriate, the President must, as a matter of comity and parliamentary necessity, take notice of actions undertaken by other branches of government which have a practical impact on parliamentary issues.

On July 15, 2005, a federal judge issued an order declaring, among other things, I-872 to be unconstitutional, and the judge’s ruling is relevant to the analysis on this point of order. It is important to note the precise language used by the judge in the case because it bears directly on the state of the law before us. The judge wrote on page 38 of his Order:

In this case, the Court’s holding that Initiative 872 is unconstitutional renders it a nullity, including any provisions within it purporting to repeal sections of the Revised Code of Washington. Therefore, the law as it existed before the passage of Initiative 872, including

the Montana primary system, stands as if Initiative 872 had never been approved.

It is hard to imagine the Court being clearer in its statement that the law is returned to its former status as if I-872 had never been approved. Since this is the case, it necessarily follows that any change to the law proposed by this body takes only a simple majority vote because there is no initiative left to amend.

It may well be that the federal judge's ruling will not be the final word on this matter. The President is aware that the matter is being appealed and further litigated in the courts, and it is uncertain when or how further court action might change the trial court's decision. It may be prudent for proponents of this measure to seek a two-thirds vote as a means of removing all doubt and risk which may flow from subsequent and different court action. It is precisely because of this uncertainty, however, that the President cannot engage in speculative analysis, but must instead confine himself to the state of the law as it exists at the time of his ruling. Presently, a duly-constituted Court has declared I-872 unconstitutional and returned the law to its pre-I-872 status. In appropriate deference to this Order, the President finds and rules that the measure before us takes only a simple majority vote for final passage. (Pages 161-162—2006).

Deference to Executive Branch

In ruling on the inquiry raised by Senator Schoesler as to the application of Initiative Number 960 to Engrossed Substitute Senate Bill 5261, the President finds and rules as follows.

I-960 contains many provisions, but, for purposes of my analysis, its major sections may be properly segregated as conferring

obligations on two branches of government: First, the Office of Financial Management, as part of the executive branch, is charged with providing certain fiscal analysis and public notice when a bill imposes a tax or a fee. Second, I-960 imposes certain obligations upon the Legislature, requiring supermajority votes on and referral to the voters of particular measures under certain circumstances relating to the imposition of tax increases. In this particular case, Senator Schoesler is challenging OFM's determination that this measure is neither a tax nor a fee, and therefore those provisions of I-960 which require OFM to perform fiscal analysis and provide public notice are not triggered.

The President reminds the body that he provides parliamentary rulings, not legal advice. While the President can properly rule on those provisions of I-960 which affect this body and the votes required for a particular measure under consideration, he has no authority to decide the propriety of actions taken by coordinate branches of government. The President renders no opinion as to whether OFM should have applied the mandates of I-960 to this particular bill; instead, under long-established precedent with respect to comity, he defers to OFM's judgment that it has complied with its obligations under I-960. It is not the role of the presiding officer to second-guess the legal judgments of another branch of government.

The President wishes to make clear that he is deferring to OFM's judgment only with respect to its determination of its own duties under I-960; he reserves the right to independently determine whether a measure is a tax or fee for purposes of the ultimate vote needed in this chamber, and need not defer to OFM's prior opinion on this subject with respect to such a ruling. In such a case,

his judgment will be independent from that of OFM, and he will analyze each measure on its own merits, irrespective of prior OFM action.

In this particular case, Senator Schoesler's inquiry related to whether or not OFM should have provided fiscal analysis and public notice under I-960. Because it is not the President's role to make a determination as to the legal obligations of a coordinate branch of government, the President finds that this measure is properly before the body for consideration, and Senator Schoesler's point is not well-taken. (Pages 149-50—2008).

Future Legal Implications

In ruling upon the point of inquiry raised by Senator Johnson as to whether Senate Bill 6096 takes a simple majority or a two-thirds vote on final passage, the President finds and rules as follows:

Senator Johnson essentially argues that statutes enacted by Initiative No. 601 are still in force and effect notwithstanding the enactment, earlier this Session, of modifications to these statutes under Senate Bill 6078. He reasons that, because a referendum has been filed on Senate Bill 6078, its provisions are stayed from taking effect until the referendum is voted upon. For the sake of argument, the President takes notice of the fact that an Affidavit for Proposed Referendum Measure was filed with the Secretary of State today on Senate Bill 6078.

The President also notes, however, that Senate Bill 6078 contained, at Section 7, what is commonly referred to as an emergency clause that calls for the major provisions of the act at issue to take effect immediately. The Governor signed this act

into law yesterday, and those provisions went into effect immediately. It may be that those seeking the referendum may prevail in their legal arguments to have the emergency clause set aside, and it may also be that the act, for this or other legal reasons, may be found unconstitutional in a court of law. These are matters, however, to be decided by a court, not by the President.

The President reminds the body that he rules on parliamentary, and not legal, issues; it is up to the body to decide the policies and language to enact, and it is up to the courts to rule as to the various legal limitations or invalidities of such language. The body undoubtedly accepts some risk that a court decision could disaffirm all or parts of Senate Bill 6078, and such a ruling could also jeopardize any subsequent measures enacted pursuant to its mandates. Unless and until there is such a ruling, however, the President has no recourse other than to interpret those provisions of law enacted by Senate Bill 6078 to be in full force and effect. For these reasons, only a simple majority vote of this body is needed for final passage of this measure. (Page 1556—2005).

President Does Not Rule Upon

“In ruling upon the point of order raised by Senator Fraser that Substitute Senate Bill 5053 violates Article II, Section 37 of the Washington Constitution and Senate Rule 57, the President finds and rules as follows:

The President begins by affirming his past practice of ruling on parliamentary, and not legal, matters. For this reason, a decision on the Constitutional argument is better left to the courts.

As to the next point, it is instructive to keep in mind the President's past ruling as to the timely raising of parliamentary issues before the body has taken action upon a question. Reed's Rule 112 provides in part, "[O]bjections to present action must be presented before consideration has been entered upon. After debate has begun or other action has been taken it is too late."

Applying this rationale to the matters before us, the time for raising such an objection was prior to the passage of this measure by the full Senate previously. Once the measure left this body with the language in question, that objection was waived.

For these reasons, Senator Fraser's point is not well-taken and Substitute Senate Bill 5053 is properly before this body for consideration." (Page 481-2004)

RULING BY THE PRESIDENT

President Owen: " In ruling upon the point of order by Senator Roach that the House Amendment to Engrossed Substitute Senate Bill 5659 is improperly before the body because it violates Constitutional and Senate rule provisions limiting a bill to a single subject, the President finds as follows:

Both the Washington State Constitution and Senate Rule 25 mandate that "[n]o bill shall embrace more than one subject and that shall be expressed in the title." The President has consistently ruled that issues relating to the legality of particular measures are better left to the courts, and that rulings will therefore address only parliamentary, not legal, inquiries. It is the duty of the President, however, to give full force and effect to the parliamentary rules and practices of this body

It is instructive to keep in mind that the purpose of parliamentary procedure is to provide clear processes that ensure the rights of all members are observed and the will of the body, as expressed through a majority of its members, may be done.

Reed's Rule 49, under the duties of members, makes clear that members have both duties and responsibilities to the body:

"[T]he object and purpose of an assembly is to enable [members] to act together as a body, [and] each member ought to so conduct him- [or her-] self as to facilitate the result, or at least so as not to hinder it."

Part of this conduct includes timely raising of parliamentary issues before the body has taken action upon a question. Reed's Rule 112 provides in part, "[O]bjections to present action must be presented before consideration has been entered upon. After debate has begun or other action has been taken it is too late."

The purpose of this rule is clear: there must be some point at which the body may be assured that questions upon which it has expressed its will, most commonly by a vote of its majority, are properly concluded and may not be revisited time and time again. Any other result would allow for any member to hold the body hostage by raising procedural questions which should have been earlier debated and decided. As the rules make clear, a member has a duty to raise such issues as soon as possible or the right to object is deemed waived. The President reserves for future consideration the issue of timeliness with respect to other parliamentary inquiries.

Applying this rationale to the matters before us, the amendments to the bill which added

modifications to the Growth Management Act may or may not violate the "single subject" rule, but the time for raising such an objection was prior to the passage of that amendment in the Senate. Once the measure left this body with that language, that objection was waived along with the final passage.

With respect to the performance audit language added by the House, however, the first opportunity which any member of this body had to raise a "single subject" objection was when the measure came back for concurrence or dispute. In this case, Senator Roach's point is timely, and the President finds that performance audits of cities and counties constitute an entirely new policy which is well outside of the original title, which relates to local funding. This language is not limited to the tax increase, but would appear to apply to all aspects of the city or county government, and this is clearly another subject from local funding. For this reason, the House Amendment includes a second subject in violation of Rule 25, and Senator Roach's point is well-taken. The House amendment is out of order." (1564-2003)

LUNCH & DINNER

Ninety Minutes Provided Unless Suspended⁷¹

PARLIAMENTARY INQUIRY

Senator Snyder: "Mr. President, under the provisions of Rule 15, we are supposed to have ninety minutes for lunch

⁷¹ Dinner and Lunch may be provided. See Rule 15: "The senate shall convene at 10:00 a.m. each working day, unless adjourned to a different hour. The senate shall adjourn not later than 10:00 p.m. of each working day. The senate shall recess ninety minutes for lunch

and so I think I probably should make a motion to recess for lunch until 1:53 p.m." (Page 1551-1997).

REPLY BY THE PRESIDENT

President Owen: "Senator Snyder, was that a motion? You said 'should.'"

Senator Snyder: "Well, I guess I will."

President Owen: "Senator Snyder--"

Senator Snyder: "Under the circumstances, I think it would cause a greater melt-down than we already have--if we go to lunch--so I would move to suspend Rule 15."

President Owen: "Senator Snyder had moved to suspend Rule 15. If there are no objections, so ordered." (Page 1551-1997).

POINT OF ORDER

Senator West: "A point of order, Mr. President. I understand that the Senate Rules require a ninety minute lunch break and the good Senator from the Twenty-third District has only offered us a sixty minute break and I would request that that motion be out of order, Sir, without changing the rules, so I would request that we get our ninety minute break as provided in the rules." (Page 642-1999).

RULING BY THE PRESIDENT

President Owen: "Senator West is correct. Without suspending the rules, the motion would not be appropriate." (Page 642-1999).

each working day. When reconvening on the same day the senate shall recess ninety minutes for dinner each working evening. This rule may be suspended by a majority."

MOTIONS

First In Time When of Equal Rank

MOTION

Senator Betti Sheldon moved that the Senate advance to the fifth order of business. (Page 1534–2001).

MOTION

Senator Tim Sheldon moved that the Senate to the fourth order of business. (Page 1534–2001).

REPLY BY THE PRESIDENT

President Owen: “It is the same situation as before, the motions are of equal rank. Therefore, we will vote on the first motion by Senator Betti Sheldon to advance to the fifth order of business.

The motion by Senator Betti Sheldon to advance to the fifth order of business failed on a rising vote.

⁷² Rule 21 provides: “Rule 21. When a motion has been made and stated by the chair the following motions are in order, in the rank named:

PRIVILEGED MOTIONS

- Adjourn or recess
- Reconsider
- Demand for call of the senate
- Demand for roll call
- Demand for division
- Question of privilege
- Orders of the day

INCIDENTAL MOTIONS

- Points of order and appeal
- Method of consideration
- Suspend the rules
- Reading papers
- Withdraw a motion

The President declared the question before the Senate to be the motion by Senator Tim Sheldon to advance to the fourth order of business. The motion by Senator Tim Sheldon to advance to the fourth order of business carried on a rising vote, the President voting ‘aye.’” (Page 1535–2001).

Order of Motions⁷²

MOTION

Senator Sheahan moved that the Senate revert to the sixth order of business and the Senate immediately consider Engrossed Substitute House Bill No. 1832.

The President declared the question before the Senate to be the motion by Senator Sheahan to revert to the sixth order of business.

MOTION

Division of a question

SUBSIDIARY MOTIONS

- 1st Rank: To lay on the table
- 2nd Rank: For the previous question
- 3rd Rank: To postpone to a day certain
- To commit or recommit
- To postpone indefinitely
- 4th Rank: To amend

No motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall again be allowed on the same day and at the same stage of the proceedings, and when a question has been postponed indefinitely it shall not again be introduced during the session. A motion to lay an amendment on the table shall not carry the main question with it unless so specified in the motion to table. At no time shall the senate entertain a Question of Consideration.”

Senator Snyder moved that Engrossed Substitute House Bill No. 1832 be referred to the Committee on Ways and Means.

REPLY BY THE PRESIDENT

President Owen: “A very interesting question. Senator Sheahan’s motion to return to the sixth order of business is a privileged motion and would have a higher rank. His motion to immediately consider the bill, as well as Senator Snyder’s motion to refer the bill to Ways and Means are of equal rank. The privileged motion, obviously, is the one we have to deal with first—the motion to revert to the sixth order of business, which carries with it also the motion, unless divided, to immediately consider Engrossed Substitute House Bill No. 1832.” (Page 1138–2001).

NINTH ORDER

Cannot Limit Purpose

In a series of informal rulings—for example, on February 18, 2008—the Lieutenant Governor has ruled that, regardless of any limiting language purportedly placed upon the motion in going to the 9th—such as, “For the sole purpose of...” no limitation on what business can be conducted by the body once in the Ninth Order. Put another way, once in the Ninth, all actions that may be appropriately undertaken in the Ninth may be considered, regardless of limiting language place in the motion to go to the Ninth Order.

Relieving a Committee of a Bill

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry, Mr. President. Senator Tim Sheldon made a motion to go to the ninth order of

business and relieve a bill from the State and Local Government Committee and I asked for a roll call on the motion to go to the ninth order of business. I think the motion before the Senate now is the motion to go to the ninth order of business; a roll call has been demanded and that is the question before the Senate?” (Page 1480–2001).

**REPLY BY THE PRESIDENT PRO
TEMPORE**

Vice President Pro Tempore Shin: “The question before the Senate is whether to go to the ninth order to relieve the State and Local Government Committee of Senate Bill No. 5859.”

Senator Snyder: “Well, I believe that is two motions, Mr. President. I will ask that the motion be divided and we vote separately on the motion to advance to the ninth order of business.”

Vice President Pro Tempore Shin: “Yes, that is fine.”

Senator Snyder: “For further clarification, the motion we are about to vote on is the motion to advance to the ninth order of business. Is that correct?”

Vice President Pro Tempore Shin: “Yes, that is correct.”

Senator Snyder: “Thank you.” (Page 1480–2001).

Votes Needed

MOTION

Senator Sheahan moved that the Senate advance to the ninth order of business.

PARLIAMENTARY INQUIRY

Senator Kastama: “A parliamentary inquiry, Mr. President. I just need to know,

Mr. President, whether this will require a vote of twenty-five or a simple majority of those present?"

REPLY BY THE PRESIDENT

President Owen: "A majority of those present, Senator."

Senator Kastama: "Thank you, Mr. President." (Page 298–2002).

PRESIDENTIAL RULINGS

President Generally Does Not Issue Advisory Opinions

PARLIAMENTARY INQUIRY

Senator McCaslin: "Mr. President, a point of parliamentary inquiry. Senate Rule 45 (1)⁷³ requires committees to either provide or vote to waive five days' notice before hearing a measure. Mr. President, I ask, assuming the first and only time a committee considers a measure is during executive session, does the five day notice rule apply? If not, I am concerned that committees could pass bills without any public notice whatsoever." (Page 417–2001).

RULING BY THE PRESIDENT

President Owen: "In ruling on the point of parliamentary inquiry raised by Senator McCaslin concerning whether the five day notice requirement in Senate Rule 45

⁷³ Rule 45 provides: "1. At least five days notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing. By a majority vote of the committee members present at any committee meeting such notice may be dispensed with. The reason for such

(1) applies to bills in committee considered for the first time in executive session. It is not the President's practice to issue advisory opinions of hypothetical facts. Each point of order must be judged on its individual merits. Although the President will wait for a point of order on actual facts to issue a binding opinion on this issue, the President might suggest that the safest course for committee chairs is to adhere to the five day rule—either give or waive five days' notice as the case may be—for bills considered for the first time in executive session." (Page 417–2001).

President May Make Ruling Without A Motion Being Made⁷⁴

POINT OF ORDER

Senator Heavey: "Mr. President, a point of order. With all due respect to the President, I would submit that the President making his own motion, in effect, is out of order. We have all sorts of constitutional provisions which were also passed by the Legislature and the citizens of the state, including the Constitution. For example, 'no amendment may be adopted that is outside the scope and object—' I certainly hope of the original bill. Another one might be that 'each bill shall have one title. That is another constitutional amendment. I hope we don't start down a line of the President making his own motions, with all due respect, Mr. President.'" (Page 1289–1999).

REMARKS BY SENATOR KLINE

action shall be set forth in a written statement preserved in the records of the meeting..."

⁷⁴ See, generally, Mason's Rule 575(h): "To inform the body, when necessary, or when any question is raised, on any point of order or practice pertinent to the pending business." See also **Mason's Rule 575(l)**: "To enforce all laws and regulations applicable to the body."

Senator Kline: “Again, with all due respect, Mr. President, I hope that in the event, in future years, that the President does take it upon himself to move spontaneously and that it be done with equal bipartisan, without regard as to which is the majority party. Thank you.” (Page 1289–1999).

REPLY BY THE PRESIDENT

President Owen: “The President feels a responsibility to respond. If there was a constitutional amendment on this floor, the President wouldn’t have to wait for a person to raise a point of order on how many votes it takes to pass. I did not pass Initiative 601, nor did I support it. It is now the law and I swore to uphold the law. The law says that it takes two-thirds vote to pass a bill that shifts taxes within the state of Washington. Therefore, the President should not wait for someone to raise the point of order, but shall declare what the vote is when the vote is taken and what that vote should be. That is the law and the President and each member of the Senate is sworn to uphold the law.” (Page 1289–1999).

PERSONAL PRIVILEGE

Comment on Policy Not Personal Privilege

PERSONAL PRIVILEGE

Senator Roach: “A point of personal privilege. At this point, I would just like to inform the members of the Senate that in

⁷⁵ See Rule 36: “The previous question shall not be put unless demanded by three senators, and it shall then be in this form: "Shall the main question be now put?" When sustained by a majority of senators present it shall preclude all debate, except the senator who presents the motion may open and close debate on the question and the vote shall be immediately taken on

King County they are now getting a surface water management tax almost the amount of their property tax—“ (Page 1124–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Roach, that is not a point of personal privilege.”

Senator Roach: “It is a matter of—“ (Page 1124–2000).

RULING BY THE PRESIDENT

President Owen: “Senator Roach, it is not a point of personal privilege.” (Page 1124–2000).

PREVAILING SIDE

“No” Prevails in Tie Vote

PARLIAMENTARY INQUIRY

Senator Heavey: “Thank you, Mr. President, a point of parliamentary inquiry. If the vote is twenty-four to twenty-four, is there a prevailing side?” (Page 1062–1999).

REPLY BY THE PRESIDENT

President Owen: “The prevailing side is ‘no’ Senator.” (Page 1062–1999).

PREVIOUS QUESTION⁷⁵

Simple Majority of Those Present

the question or questions pending before the senate, and all incidental question or questions of order arising after the motion is made shall be decided whether on appeal or otherwise without debate.” **Reed’s Rule 193** provides that a question may still be divided, if appropriate, notwithstanding the call for the previous question.

PARLIAMENTARY INQUIRY

Senator Heavey: “Mr. President, a point of parliamentary inquiry. Isn’t the demand for the previous question subject to, at least at this point, a majority vote?” (Page 591–1998).

REPLY BY THE VICE PRESIDENT PRO TEMPORE

Vice President Pro Tempore Morton: “Senator Heavey, it is my understanding that we needed two members to support the motion that was made. We had more than that. I had asked for one-sixth and we had more than the two. All right? Now it is a simple majority—of those that are present, incidentally. All right?” (Page 591–1998).

Demanding the Previous Question Ends Debate⁷⁶

PARLIAMENTARY INQUIRY

Senator Benton: “I rise to a point of parliamentary inquiry, please. If we are going to close down debate on the budget, as apparently is the case, without giving the minority an opportunity to speak on these issues—we had one speech to my knowledge—are we operating under the three minute rule or the one speech per amendment rule at the present time?” (Page 1429–1999).

REPLY BY THE PRESIDENT

⁷⁶ See Rule 36: “The previous question shall not be put unless demanded by three senators, and it shall then be in this form: “Shall the main question be now put?” When sustained by a majority of senators present it shall preclude all debate, except the senator who presents the motion may open and close debate on the question and the vote shall be immediately taken on

President Owen: “No, we are not, Senator Benton, but any member can demand the previous question.”

Senator Benton: “I understand that, Mr. President, so my further inquiry is this: When members of this body stand and repeatedly stand to speak on an amendment, it is obvious that we have several members that have a passion on a particular amendment—particularly this last one for me. Why is it then, when a member of the other side, particularly the majority leader stands and has not been standing, why is it that the President picks him to call for the question? I guess my question to you is what priority order is there in recognizing members who stand to speak—from the President and is there such an order?”

President Owen: “It is the President’s discretion.”

Senator Benton: “Well, thank you, Mr. President.” (Page 1429-30–1999)

PULLING BILLS TO THE FLOOR

25 Votes Needed

RULING BY THE PRESIDENT

“In ruling on the point of order raised by Senator West the President finds and rules as follows:

A number of issues are presented by the floor action up to this point which need explanation. Consistent with past rulings on these issues, the President finds that all measures are subject to the cutoff resolution passed by both the House and the Senate this

the question or questions pending before the senate, and all incidental question or questions of order arising after the motion is made shall be decided whether on appeal or otherwise without debate.” **Reed’s Rule 193** provides that a question may still be divided, if appropriate, notwithstanding the call for the previous question.

year, Senate Concurrent Resolution 8400. Pursuant to this cutoff resolution, April 4th was the last day to read in committee reports on House bills from all committees except fiscal committees, which could be read in no later than April 7th. The specific language within the cutoff resolution for these committee cutoff dates is very important because it relates only to reporting by committees, not to consideration of the measure by the full Senate. The only relevant date for consideration of a House bill by the full Senate is April 18. The ultimate say is and should be the will of the full body, which is reflected in Rule 48.⁷⁷

Rule 48 clearly and unambiguously allows this body to recall a bill from committee with a simple majority vote of the full membership, in other words, twenty-five votes. The cutoff resolution also clearly and unambiguously sets forth April 18 as the final day by which the Senate may consider a House Bill. Combining these two precepts, the President rules, therefore, that the body may properly relieve any committee of a House bill for consideration by the full Senate so long as it does so on or before 5:00 p.m. on April 18.

The President has reviewed previous rulings on this subject and recognizes that this ruling is a departure from an earlier ruling in 1997. The President believes, however, that today's ruling better harmonizes the interplay between Rule 48 and the cutoff resolution and is more consistent with the principles expressed by both the Senate Rules, the cutoff resolution, and Reed's Parliamentary Rules which are to

⁷⁷ Senate Rule 48 provides: "Any standing committee of the senate may be relieved of further consideration of any bill, regardless of prior action of the committee, by a majority vote of the senators elected or appointed. The senate may then make such orderly disposition of the bill as they may direct by a majority vote of the members of the senate."

be construed in such a way as to allow the body to complete its business.

Therefore, the President finds that Senator Sheahan's motion, as amended, is properly before the body." (1077-2003)

QUORUM

Quorum Assumed Unless Challenged⁷⁸

POINT OF ORDER

Senator Heavey: "A Point of Order, Mr. President. Can the Senate conduct business without a quorum?" (Page 155-1997).

REPLY BY THE PRESIDENT

President Owen: "A quorum is assumed unless challenged, Senator Heavey." (Page 155-1997).

READING

Suspending Rules on Second Reading

PARLIAMENTARY INQUIRY

Senator Heavey: "Before I begin on what the bill is all about, I have a point of parliamentary inquiry. I believe that the rules require that each bill be read three times and if we advance the bill to third reading and we consider the second reading to be the third,

⁷⁸ See Rule 16 (a majority of members elected or appointed constitutes a quorum); **Reed's Rule 19** ("A quorum is presumed to be present . . . if no member raises the questions.")

did we really have a second reading.” (Page 528–1999).

REPLY BY THE PRESIDENT

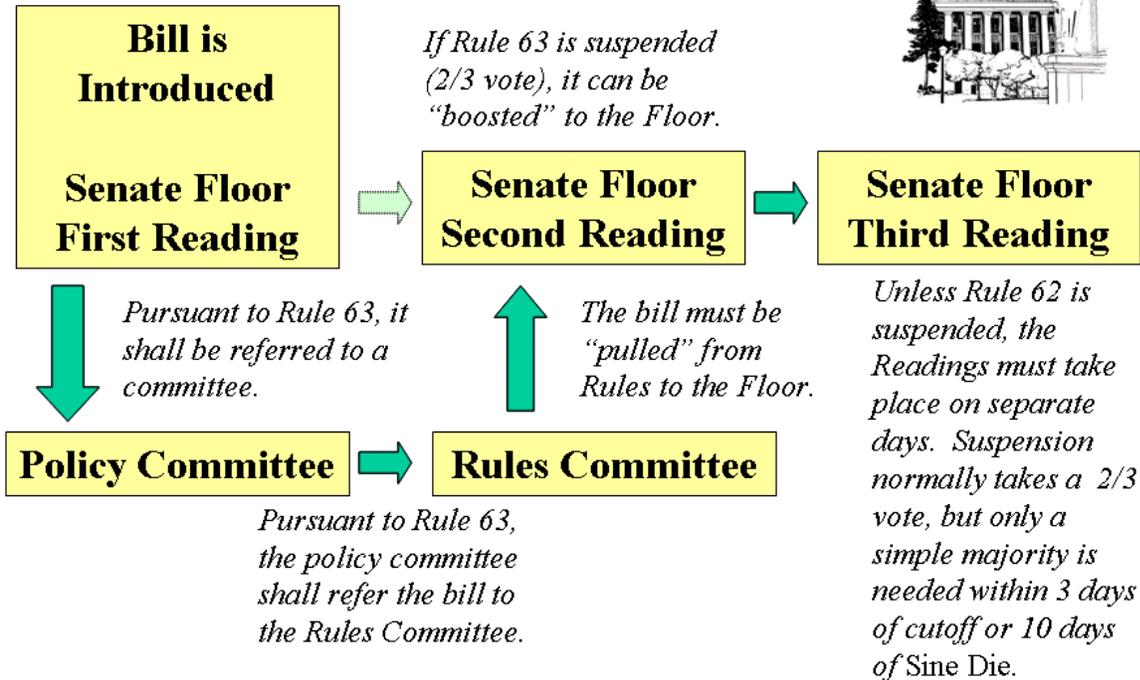
President Owen: “Senator Heavey, you suspended the rules and by the suspension of the rules you have been able to take care of that little problem.”

Senator Heavey: “Thank you for clarifying that, Mr. President.” (Page 528–1999).

“Boost”/”Bump”

Bill Referrals/Readings Process

The two rules at play are Senate Rule 62 (Reading of Bills) and Rule 63 (First Reading)



Rule 62: “Every bill shall be read on three separate days unless the senate deems it expedient to suspend this rule. On and after the tenth day preceding adjournment sine die of any session, or three days prior to any cut-off date for consideration of bills, as determined pursuant to Article 2, Section 12 of the Constitution or concurrent resolution, this rule may be suspended by a majority vote. (See also Rule 59).” (Rule 59 allows Concurrent Resolutions to be passed the same day introduced without separate readings).

Rule 63 provides in pertinent part, “After the first reading, bills shall be referred to an appropriate committee pursuant to Rule 61.”

RECOGNIZING MEMBERS

President's Discretion⁷⁹

PARLIAMENTARY INQUIRY

Senator Benton: "I rise to a point of parliamentary inquiry, please. If we are going to close down debate on the budget, as apparently is the case, without giving the minority an opportunity to speak on these issues—we had one speech to my knowledge—are we operating under the three minute rule or the one speech per amendment rule at the present time?" (Page 1429–1999).

REPLY BY THE PRESIDENT

President Owen: "No, we are not, Senator Benton, but any member can demand the previous question."

Senator Benton: "I understand that, Mr. President, so my further inquiry is this: When members of this body stand and

⁷⁹ See Rule 30: "When two or more senators rise at the same time to address the chair, the president shall name the one who shall speak first, giving preference, when practicable, to the mover or introducer of the subject under consideration." See also **Reed's Rule 214**: "Rules Guiding the Presiding Officer in Recognitions. — If two or more rise, the presiding officer determines, but in determining he should be governed by certain rules. He ought to recognize first the mover of the proposition; not as of right, but because it seems most natural that the mover of the question should first explain it. Then if other members rise to debate, he should call upon a member opposed, and so alternate the debate. In general the presiding officer should call upon members to speak in such a way as will cause all sides of the question to be discussed. It may be proper here to remark, that in this and all other things the first duty of the presiding officer should always be to do what the assembly wishes, having always in mind those permanent wishes embodied in the special rules and in parliamentary law. For example, if there be a question

repeatedly stand to speak on an amendment, it is obvious that we have several members that have a passion on a particular amendment—particularly this last one for me. Why is it then, when a member of the other side, particularly the majority leader stands and has not been standing, why is it that the President picks him to call for the question? I guess my question to you is what priority order is there in recognizing members who stand to speak—from the President and is there such an order?"

President Owen: "It is the President's discretion."

Senator Benton: "Well, thank you, Mr. President." (Page 1429-30–1999).

RECONSIDERATION⁸⁰

Changing the Rules to Allow

POINT OF ORDER

Senator Snyder: "Thank you, Mr. President, a point of order. I very reluctantly ask the President for a ruling on whether

of recognition between members who desire to make motions not privileged, the presiding officer should be governed in all proper cases by what he thinks the wish of the assembly."

⁸⁰ Editor's note: On April 17, 1997, the Senate adopted the conference committee report on SSB 6062 – the operating budget. On final passage, the bill failed by a vote of 24-24. The bill was reconsidered the same day and failed again. According to Reeds Rule 204, "A question can be reconsidered but once. . . ." On April 18, notice of a rule change was given and on April 19 the following was adopted as an addition to Senate Rule 37:

"3. A majority of those members elected or appointed may order that a vote on final passage of a budget bill be reconsidered more than once, and neither notice of reconsideration nor the motion to reconsider need be made on the same day of the vote on final passage. This rule, 37.3, shall expire at the conclusion (Sine Die) of the regular session of the 1997 Legislature."

Senate Rule 37.3 can apply to Substitute Senate Bill No. 6062 because the Rule 37.3 was not in effect at the time that the Senate, on the second occasion, failed to pass Substitute Senate Bill 6062, as recommended by the conference committee.” (Page 1713–1997).

RULING BY THE PRESIDENT

President Owen: “The President believes the Senate Rules have been changed in a manner which allows the reconsideration of Substitute Senate Bill No. 6062. The prior rules prevented that reconsideration, but if the rules are changed to allow reconsideration on multiple times and days, the President is bound to observe the new rules.

“The President would like to emphasize that this ruling is made with deep regret and extreme disappointment that the available rules and procedures were not followed that would maintain the integrity of the process and still have accomplished the same end. The rules of the Senate provide the integrity and trust needed to make the institution function properly. The changes accomplished here today attack the fundamental integrity by changing a basic understanding of parliamentary procedure which the President relied on yesterday in ruling on Substitute Senate Bill No. 6062. The wisdom of a rule which prohibits endless reconsideration was clearly explained by Thomas Reed more than one-hundred years ago. The President fears that this change will have long standing repercussions which will stay with this body throughout this session, and for many sessions to come.” (Page 1713–1997).

⁸¹ Rule 45(7) provides: “Any measure which does not receive a majority vote of the members present may be reconsidered at that meeting and may again be considered upon motion of any committee member if

Committee Reconsideration

RULING BY THE PRESIDENT

In ruling upon the point of order raised by Senator McCaslin, the President finds and rules as follows:

The President believes a brief recitation of the facts is appropriate to explain how this measure came before the body. The bill was originally moved by the committee upon a motion to recommend a substitute bill be adopted and passed. In fact, the underlying measure is a House bill, and the Senate cannot adopt a substitute to a House bill. Instead, the proper way to change language in the underlying bill is with an amendment. Realizing the mistake, the committee later moved to report the bill out with a "do pass" recommendation as amended by the committee. This was the proper motion. Because the previous motion to substitute the bill was never proper, it could not properly be reported out. Put another way, the bill was never actually reported out until the motion was correctly put to adopt a striking amendment-- not a substitute. Therefore, the measure, as amended by the committee, is properly reported out and before this body for consideration.

Senator McCaslin is correct that Senate Rule 45(7)⁸¹ provides a mechanism by which a committee may reconsider a measure that has failed to receive a majority vote by providing one day's notice. This is not, however, the exclusive authority by which a question may be reconsidered. The President believes that motions to reconsider achieve two primary purposes. First, they allow for the question to be decided by a true majority of the body or committee by providing an

one day's notice of said motion is provided to all committee members.”

opportunity for a measure to pass that has failed because of a member's absence or a mistake. Likewise, they allow for a member to change his or her mind. Second, a motion to reconsider can serve as a means by which the body or committee can change mistakes made in the text of a bill, presentation of a motion, or in procedure. In this regard, the main thrust of reconsideration is to ensure that the will of the body is done and done correctly, whether the reconsideration be for a question that has failed or passed. Reed's Rule 202⁸² makes this clear. It states:

Even after a measure has passed the ordeal of consideration, of debate and amendment, and of final passage by the assembly, it has not yet, in American assemblies, reached an end. It is subject to a motion to reconsider...

Reed's Rules, along with Senate Rule 37⁸³, provide additional means of reconsideration which are supplemented, not excluded, by Rule 45(7). The need for Rule 45(7) to specifically state a mechanism for

reconsideration of a failed measure in committee is clear: once a measure has failed in committee, it will generally not be presented on the floor for full consideration, and there may be no other practical opportunity to consider any other aspect—procedural or substantive— of the measure. By contrast, a measure which has passed will, as a practical matter, generally provide more opportunities to be revisited to correct procedural or substantive mistakes. Rule 45(7) clearly provides a process by which a measure which fails in committee may be reconsidered by that committee, but Senate Rules and Reed's Rules likewise provide a means by which that committee may reconsider measures which have not failed. The President therefore finds that a committee may reconsider any question still pending or within its control, regardless of whether that question was previously positively or negatively decided by that committee. Any other interpretation would leave a committee without reasonable means to correct substantive or procedural mistakes.

With respect to the ability of a chair to hold a committee report or exercise a

⁸² Reed's Rule 202 provides: "Reconsideration. — Even after a measure has passed the ordeal of consideration, of debate and amendment, and of final passage by the assembly, it has not yet, in American assemblies, reached an end. It is subject to a motion to reconsider. In England the motion to reconsider is not known. If any error has been committed, it is rectified by another act. So far is the doctrine that a member knows what he intends the first time carried there, that members who go by mistake into the wrong lobby are counted where they are, and not where they ought to be. If he is with the ayes, he is counted aye, and not allowed to correct his error."

⁸³ Senate Rule 37 provides: "1. After the final vote on any measure, before the adjournment of that day's session, any member who voted with the prevailing side may give notice of reconsideration unless a motion to immediately transmit the measure to the house has been decided in the affirmative and the measure is no longer in possession of the senate. Such motion to reconsider shall be in order only under the

order of motions of the day immediately following the day upon which such notice of reconsideration is given, and may be made by any member who voted with the prevailing side. 2. A motion to reconsider shall have precedence over every other motion, except a motion to adjourn; and when the senate adjourns while a motion to reconsider is pending or before passing the order of motions, the right to move a reconsideration shall continue to the next day of sitting. On and after the tenth day prior to adjournment sine die of any session, as determined pursuant to Article 2, Section 12, or concurrent resolution, or in the event that the measure is subject to a senate rule or resolution or a joint rule or concurrent resolution, which would preclude consideration on the next day of sitting a motion to reconsider shall only be in order on the same day upon which notice of reconsideration is given and may be made at any time that day. Motions to reconsider a vote upon amendments to any pending question may be made and decided at once."

"pocket veto" under Senate Rule 63⁸⁴, the President finds that a committee has a reasonable time to transmit a committee report to the Secretary of the Senate to be read in to the full body as part of the First Order of Business. If a member believes that a chair is not acting in good faith, that member has several options. First, he or she may move, in committee, that the report be immediately transmitted to the Secretary of the Senate to be read in to the full body as part of the First Order of Business. Second, he or she may move, on the floor of the Senate, that the report be read in during First Order. Third, under Rule 48, a bill may be recalled from committee by a majority vote of the membership. These are not necessarily the only remedies available, but should provide some guidance as to how a member may protest a perceived pocket veto.

Therefore, the President finds that Substitute House Bill 1734, and the amendment by the Committee on Land Use Planning, are properly before this body for consideration. The President thanks Senator McCaslin for an opportunity to elaborate on these important issues.⁸⁵" (1241-2003)

⁸⁴ Please see Rule 63, which provides in pertinent part: "No committee chair shall exercise a pocket veto of any bill."

⁸⁵ Senate Rule 45(7) was subsequently amended to read as follows:
 "7. Any measure, appointment, substitute bill, or amendment still within a committee's possession before it has been reported out to the full senate may be reconsidered to correct an error, change language, or otherwise accurately reflect the will of the committee in its majority and minority reports to the full senate. Any such reconsideration may be made at any time, by any member of the committee, provided that the committee has not yet reported the measure, appointment, substitute bill, or amendment out to the full senate. Any such reconsideration made after a vote has been taken or signatures obtained will require a new vote and signature sheet. Any measure which does not receive a majority vote of the members present may be reconsidered at that meeting

Effect of Transmittal of Bills to the House⁸⁶

PARLIAMENTARY INQUIRY

Senator Benton: "A point of parliamentary inquiry, Mr. President. Yesterday morning, I inadvertently voted in favor of Substitute Senate Bill No. 5401 (PUD Commissioners pay increases). Yesterday evening, having voted on the prevailing side, I gave notice of reconsideration of final passage of Substitute Senate Bill No. 5401, under Senate Rule 37. "Prior to my giving notice, and unbeknown to me, Substitute Senate Bill No. 5401 had already been transmitted to the House of Representatives, read in there, and referred to a House committee. Senate Rule 37 permits Senators to give notice of reconsideration on the day of final passage, unless there has been a motion to immediately transmit the measure and the measure is in the possession of the House. My question is under the above circumstances, do I still maintain the ability to properly move for reconsideration on the final passage of Substitute Senate Bill No. 5401?" (Page 634—1997).

and may again be considered upon motion of any committee member if one day's notice of said motion is provided to all committee members. For purposes of this rule, a committee is deemed to have reported a measure, appointment, substitute bill, or amendment out when it has delivered its majority and minority reports to the senate workroom. After such delivery, the committee no longer has possession of the measure, appointment, substitute bill, or amendment and no further committee action, including reconsideration, may be taken."

⁸⁶ See Senate Rule 37: "After the final vote on any measure, before the adjournment of that day's session, any member who voted with the prevailing side may give notice of reconsideration unless a motion to immediately transmit the measure to the house has been decided in the affirmative and the measure is no longer in possession of the senate."

RULING BY THE PRESIDENT

President Owen: “Senate Rules 37 is as you say. At the same time, there is no requirement that the Senate hold a bill for any period of time. Substitute Senate Bill No. 5401 was moved to the House on a regular order of business and action was taken on it in the House prior to when your notice for reconsideration was given. The Senate cannot then take further action on the bill. “The President would, therefore, not be able to recognize your motion to reconsider. “The Secretary, has taken steps to see that bills are no longer transmitted to the House until the Senate adjourns for the day in order to preserve a member’s right to reconsider a vote.” (Page 634—1997).

Immediate Reconsideration

Need Two-Thirds Vote to Suspend the Rules⁸⁷

MOTION

Senator Hargrove moved to immediately reconsider the vote by which Second Engrossed Substitute Senate Bill No. 6151 passed the Senate.” (Page 1478–2001).

RULING BY THE PRESIDENT PRO
TEMPORE

⁸⁷ Senate Rule 35 provides: “2. A permanent rule or order may be temporarily suspended for a special purpose by a vote of two-thirds of the members present unless otherwise specified herein. When the suspension of a rule is called, and after due notice from the president no objection is offered, the president may announce the rule suspended, and the senate may proceed accordingly. Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.” See also **Rule 64**: “...[A P]ermanent rule or

President Pro Tempore Shin: “Under Rule 37, a motion to reconsider is not in order until the day following the notice of reconsideration. A motion to reconsider today will require a two-thirds vote to suspend the rules.” (Page 1478–2001).

Reconsideration Still Pending if Immediate Reconsideration Fails

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry, Mr. President. I need a point of clarification. Are we voting on immediate reconsideration or are we voting on reconsideration and if we vote ‘no’ and the ‘no’ vote carries, that means that the vote that we took before in a favorable way, the bill will stand as passed?” (Page 1416–1998).

REPLY BY THE PRESIDENT

President Owen: “Because, Senator Deccio made the motion to immediately reconsider, if in fact, that motion failed, it still is eligible for reconsideration as we stated previously—in previous rulings.”

Senator Snyder: “Then, in reality, we have a two vote process—one to immediately reconsider—if that carries, then we will vote on whether to vote ‘no’ or ‘yes’ on reconsideration?” (Page 1416–1998).

order may be temporarily suspended for a special purpose by a vote of two-thirds of the members present unless otherwise specified herein. When the suspension of a rule is called, and after due notice from the president no objection is offered, the president may announce the rule suspended, and the senate may proceed accordingly. Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.”

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, because Senator Deccio said, ‘immediate reconsideration’ the vote, if it carries, you would have a vote on the bill right now. If it fails, the bill is where it was and still you have the opportunity to reconsider.” (Page 1416–1998).

Two-Part Motion

PARLIAMENTARY INQUIRY

Senator Snyder: “Mr. President, would you explain the vote? If we vote, ‘aye’ does that mean then that we take another vote—if the motion to immediately reconsider prevails, then we take another vote?” (Page 1117–1998).

REPLY BY THE PRESIDENT

President Owen: “That would be correct. The motion is to whether or not you are going to take another vote on passage of the bill.” (Page 1117–1998).

PARLIAMENTARY INQUIRY

Senator Johnson: “Mr. President, by way of a parliamentary inquiry. Senator Snyder asked the question, the vote now is to whether to immediately reconsider, not whether to reconsider at all. Is that correct? So, if this motion were to fail, this matter could be reconsidered under the rules, at some later time?” (Page 1118–1998).

REPLY BY THE PRESIDENT

President Owen: “That is correct. If, in fact, the motion by Senator Snyder passes, we would then immediately reconsider the

vote. If his motion fails, then the vote could be reconsidered at another time.”

Senator Johnson: “I’m not sure I understood that, but if this vote fails—the motion that is before us now—pursuant to the rules, it can be considered at a later time?”

President Owen: “Senator Winsley’s notice would still be in effect—the notice for reconsideration.” (Page 1118–1998).

Immediate Transmittal v. Notice of Reconsideration

[The Lt. Governor ruled that, where a motion to immediately transmit had been made but not decided, and another member gave notice of reconsideration while that motion was pending, the notice was timely and the motion to immediately transmit was superseded. This was based on the newly-changed Rule 37, which provides that notice may be given “unless a motion to immediately transmit the measure to the house has been decided in the affirmative.” (Pages 1567-68–2005).]

Notice

NOTICE FOR RECONSIDERATION

Senator Roach served notice that she would move to reconsider the vote by which Engrossed Substitute Senate Bill No. 5329 passed the Senate earlier today.

Debate ensued.

PARLIAMENTARY INQUIRY

Senator Poulsen: “Mr. President, a point of parliamentary inquiry. It is my understanding that the motion to adjourn takes precedence over the motion by Senator Roach. Isn’t the motion to adjourn what we should be considering right now?”

REPLY BY THE PRESIDENT

President Owen: “Senator Roach—it was a notice, not a motion. Your question is exactly what we are trying to sort out.”

Senator Poulsen: “Thank you.”

RULING BY THE PRESIDENT

President Owen: “The President, in looking at the rules--Rule 37 says ‘that after the final vote on any measure before the adjournment of that day’s session, any member who voted with the prevailing side may give notice of reconsideration unless a motion to immediately transmit the measure to the house has been decided in the affirmative and the measure is no longer in possession of the senate.’ The President, in allowing Senator Roach to give notice prior to taking the vote and dropping the gavel, believes that her notice is in order. Message received.” (Pages 320–2002).

Prevailing Side

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry, Mr. President. The prevailing side was the one with the most votes, which was twenty-four, although the bill did fail, the prevailing side was twenty-four. Senator Winsley was not among the twenty-four.” (Page 1117–1998).

REPLY BY THE PRESIDENT

President Owen: “The prevailing side failed and Senator Winsley was on the prevailing side, Senator Heavey. (Page 1117–1998).

Timeliness

MOTION

Senator Fain, having voted on the prevailing side moved that the vote by which the amendment by Senator Honeyford on page 22, after line 18 to Substitute Senate Bill No. 6020 was not adopted by the Senate be immediately reconsidered.

POINT OF ORDER

Senator Rolfes: “I believe that the good Senator’s motion is out of order.”

REPLY BY THE PRESIDENT

President Owen: “And Senator, for what reason Senator?”

POINT OF ORDER

Senator Rolfes: “It’s not timed appropriately. It’s not timely because we’ve moved forward.”

REPLY BY THE PRESIDENT

President Owen: “Senator Rolfes, you would be correct if in fact someone had moved adoption of the next amendment but in fact nobody had moved adoption because we were just reading it, therefore his motion is timely.” (February 28, 2014).

REFERRAL OF BILLS

Referral of Bills to Rules

POINT OF ORDER

Senator Johnson: “A point of order, Mr. President. I would like a ruling from the President. I think this bill ought to be referred to the Committee on Rules. It has twice been ruled by the President that it is not properly before the Senate. The Second Reading Calendar is before the Senate. This should be referred to the Rules Committee.” (Page 971–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Johnson, it has been the practice to refer a bill to Rules⁸⁸ under such circumstances, but there is no rule that requires that to happen. Therefore, where the bill languishes is up to the body and so Senator Sheldon’s motion would be in order.”

Senator Johnson: “I think if there is an objection, there will be a vote on that motion.”

President Owen: “That would be absolutely correct.” (Page 971–2000).

RESOLUTIONS

Policy as Content

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry. Mr. President, is it

⁸⁸ See Rule 49. All bills reported by a committee to the senate shall then be referred to the committee on rules for second reading without action on the report unless otherwise ordered by the senate. (See also Rules 63 and 64.)” Rule 63: “Upon being reported back by committee, all bills shall be referred to the committee on rules for second reading, unless otherwise ordered by the senate.” Rule 64: Rule 64. Upon second reading, the bill shall be read section by section, in full, and be subject to amendment...When no further amendments shall be offered, the president shall declare the bill has passed its second reading, and shall be referred to the committee on rules for third reading.”

proper for a Senate Resolution to express political comment, express criticism of the current state of the military, to express what the military should be or shouldn’t be? Isn’t that more appropriate for a concurrent resolution?” (Page 224–1997).

REPLY BY THE PRESIDENT (Pro Tempore)

President Pro Tempore Newhouse: “The President thinks that the resolution is merely a statement of principle and thought and does not suggest any particular action and, therefore, would not be out of order.” (Page 224–1997).⁸⁹

Determination by Will of the Body⁹⁰

POINT OF ORDER

Senator Heavey: “A point of order, Mr. President. Is it appropriate, in a Senate Resolution, to order a state agency—as to policy? The resolution before us says, ‘The Horse Racing Commission shall ensure that live Thoroughbred and Arabian horse racing is scheduled at Play fair Race Course during seasons with weather conditions.’ is that an appropriate thing to put in a resolution?” (Page 2120–1997).

REPLY BY THE PRESIDENT

⁸⁹Editor’s Note: Senate counsel has consistently advised on behalf of the majority floor leader that floor resolutions should not contain statements of policy; that policy is a matter for the entire legislature. See Wash. Const., Art. II, sec. 1 (“The legislative authority of the state of Washington shall be vested in the legislature, which shall consist of the senate and house of representatives.”); Joint Rule 11 (governing joint resolutions, concurrent resolutions and joint memorials).

⁹⁰ See previous footnote.

President Owen: “The President believes that if it is the will of the body, then it should be in the resolution.” (Page 2120–1997).

“ROLLING BACK” TO SECOND READING FOR PURPOSES OF AMENDMENT

[Please see this same subject under “AMENDMENTS”.]

RULES⁹¹

Changes to the Rules⁹²

Must Be In Writing, Listing Change, & With One Day’s Notice

NOTICE FOR PROPOSED RULE CHANGE

Under Rule 35 of the Senate, Senator Hargrove gave one day’s notice of a proposed change in Rule 43. (Page 1294–1998).

⁹¹ Senate Rule 35 provides: “1. The permanent senate rules adopted at the first regular session during a legislative biennium shall govern any session subsequently convened during the same legislative biennium. Adoption of permanent rules may be by majority of the senate without notice and a majority of the senate may change a permanent rule without notice at the beginning of any session, as determined pursuant to Article 2, Section 12 of the State Constitution. No permanent rule or order of the senate shall be rescinded or changed without a majority vote of the members, and one day’s notice of the motion. 2. A permanent rule or order may be temporarily suspended for a special purpose by a vote of two-thirds of the members present unless otherwise specified herein. When the suspension of a rule is called, and after due notice from the president no objection is offered, the president may announce the rule

REPLY BY THE PRESIDENT

President Owen: “Message received. Senator Hargrove, there is one little additional issue here. You have to provide the rule change to us.”

Senator Hargrove: “Mr. President, my reading of Rule 35, says that I have to provide one day’s notice of the motion, not of the change. Am I correct?”

President Owen: “Senator Hargrove, in reviewing the rule, Rule 35, the President believes that the purpose of the rule is so that the members may have a day to review the motion that you are going to make for the change in the rule. Therefore, the rule change that you are proposing needs to be with your notice.”

Senator Hargrove: “Thank you, Mr. President. Can I do that orally?”

President Owen: “With the permission of the Senate.”

Senator Hargrove: “Well, I would like to change the words ‘Rules Committee’ to Standing Committee’ for subpoena powers under Rule 43. It is a pretty simple change.” (Page 1295–1998).

REMARKS BY SENATOR HARGROVE

suspended, and the senate may proceed accordingly. Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.”

⁹² See Rule 35: “The permanent senate rules adopted at the first regular session during a legislative biennium shall govern any session subsequently convened during the same legislative biennium. Adoption of permanent rules may be by majority of the senate without notice and a majority of the senate may change a permanent rule without notice at the beginning of any session, as determined pursuant to Article 2, Section 12 of the State Constitution. No permanent rule or order of the senate shall be rescinded or changed without a majority vote of the members, and one day’s notice of the motion.”

Senator Hargrove: “Mr. President, I am giving notice of a motion, not making a motion. Can you defer a motion that has not been made?” (Page 1295–1998).

REPLY BY THE PRESIDENT

President Owen: “The President believes you are correct, Senator Hargrove.” (Page 1295–1998).

OBJECTION TO NOTICE ORAL RULE CHANGE

Senator McDonald objected to the oral notice for the change of rules and asked that the change be in written form. (Page 1295–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator Hargrove, your motion must be in written form.” (Page 1295–1998).

Debate When Suspending Rules

POINT OF INQUIRY

Senator Snyder: “Will the President allow one speech on each side of the motion to suspend the rules?” (Page 1220–2000).

REPLY BY THE PRESIDENT

⁹³ See Rule 64: “... Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.”

⁹⁴ Editor’s note: On April 17, 1997, the Senate adopted the conference committee report on SSB 6062 – the operating budget. On final passage, the bill failed by a vote of 24-24. The bill was reconsidered the same day and failed again. According to Reeds Rule 204, “A question can be reconsidered but once. . . .” On

President Owen: “Yes, that has been the custom, Senator.” (Page 1220–2000).⁹³

President Bound to Enforce Rules In Force At Present Time⁹⁴

MOTION BY SENATOR SNYDER

Senator Snyder: “I was going to raise a point of order, but first I’ll move to the ninth order of business. I believe Senator West made his motion to reconsider, and we were not under the ninth order of business. I believe that’s the proper order of business. I’ll move to the ninth order of business.” (Page 1713–1997).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, the President believes that your point is well taken, that we would have to advance to the ninth order of business.” (Page 1723–1997).

POINT OF ORDER

Senator Snyder: “Thank you, Mr. President, a point of order. I very reluctantly ask the President for a ruling on whether Senate Rule 37.3 can apply to Substitute Senate Bill No. 6062 because the Rule 37.3 was not in effect at the time that the Senate, on the second occasion, failed to pass Substitute Senate Bill 6062, as recommended

April 18, notice of a rule change was given and on April 19 the following was adopted as an addition to Senate Rule 37:

“3. A majority of those members elected or appointed may order that a vote on final passage of a budget bill be reconsidered more than once, and neither notice of reconsideration nor the motion to reconsider need be made on the same day of the vote on final passage. This rule, 37.3, shall expire at the conclusion (Sine Die) of the regular session of the 1997 Legislature.”

by the conference committee.” (Page 1713–1997).

RULING BY THE PRESIDENT

President Owen: “The President believes the Senate Rules have been changed in a manner which allows the reconsideration of Substitute Senate Bill No. 6062. The prior rules prevented that reconsideration, but if the rules are changed to allow reconsideration on multiple times and days, the President is bound to observe the new rules.

“The President would like to emphasize that this ruling is made with deep regret and extreme disappointment that the available rules and procedures were not followed that would maintain the integrity of the process and still have accomplished the same end. The rules of the Senate provide the integrity and trust needed to make the institution function properly. The changes accomplished here today attack the fundamental integrity by changing a basic understanding of parliamentary procedure which the President relied on yesterday in ruling on Substitute Senate Bill No. 6062. The wisdom of a rule which prohibits endless reconsideration was clearly explained by Thomas Reed more than one-hundred years ago. The President fears that this change will

⁹⁵ Senate Rule 35 provides: “2. A permanent rule or order may be temporarily suspended for a special purpose by a vote of two-thirds of the members present unless otherwise specified herein. When the suspension of a rule is called, and after due notice from the president no objection is offered, the president may announce the rule suspended, and the senate may proceed accordingly. Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.” **See also Rule 64:** “...[A P]ermanent rule or order may be temporarily suspended for a special purpose by a vote of two-thirds of the members present unless otherwise specified herein. When the suspension of a rule is called, and after due notice from

have long standing repercussions which will stay with this body throughout this session, and for many sessions to come.” (Page 1713–1997).

Suspension of Rules⁹⁵

Suspending Reading Within Ten Days of Sine Die Takes Simple Majority⁹⁶

PARLIAMENTARY INQUIRY

Senator Hargrove: “Mr. President, may I ask how many votes it takes for this suspension of the rules?” (Page 1080–2000).

RULING BY THE PRESIDENT

President Owen: “Senator Hargrove, within ten days of SINE DIE, it takes a simple majority.” (Page 1080–2000).

Two-Thirds Vote Necessary to Advance

POINT OF ORDER

Senator Snyder: “I believe this is a motion to suspend the rules and in the past, it has been customary to just have one

the president no objection is offered, the president may announce the rule suspended, and the senate may proceed accordingly. Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.”

⁹⁶ *See* Rule 62: “Every bill shall be read on three separate days unless the senate deems it expedient to suspend this rule. On and after the tenth day preceding adjournment sine die of any session, or three days prior to any cut-off date for consideration of bills, as determined pursuant to Article 2, Section 12 of the Constitution or concurrent resolution, this rule may be suspended by a majority vote. (See also Rule 59)”

speech on each side of the motion.” (Page 230–2001).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, the interesting point here is that Senator Sheahan made a motion to amend Senator Sheldon’s motion so it is a two step process. First, we have to amend the motion and then suspend the rules to advance it to second reading.”⁹⁷ (Page 230–2001).

PARLIAMENTARY INQUIRY

Senator Snyder: “A point of inquiry, Mr. President. What is the status of Senate Bill No. 5959? Will it be on the second reading calendar and does that need a two-thirds vote to get it to second reading?” (Page 231–2001).

REPLY BY THE PRESIDENT

President Owen: “We just amended the motion by Senator Sheldon. Now, you have to pass the motion, which would take a two-thirds vote, because the rules have to be suspended to advance it to second reading.”

Senator Snyder: “Thank you.” (Page 231–2001).

Senate Operates Under General Parliamentary Rules Until Senate Rules Adopted

PARLIAMENTARY INQUIRY

⁹⁷ See Rule 64: “...[A P]ermanent rule or order may be temporarily suspended for a special purpose by a vote of two-thirds of the members present unless otherwise specified herein. When the suspension of a rule is called, and after due notice from the president no objection is offered, the president may announce the

Senator Sheahan: “A parliamentary inquiry, Mr. President. I am wondering what rules we are operating under at this moment.” (Page 21–2001).

REPLY BY THE PRESIDENT

President Owen: “Presently, the Senate has not adopted Senate Rules, so without the adoption of the Senate Rules, the Senate operates under, what would be considered, general parliamentary rules.” (Page 21–2001).

RULES COMMITTEE

Package Pulls

President Owen: “In addressing the parliamentary inquiry raised by Senator Brown as to the practice of the Committee on Rules, the President finds and advises as follows:

The Committee on Rules is generally subject to the same rules and traditions as other standing committees of the Senate, but its practices are further modified by traditions unique to it by its very nature of acting as the final arbiter of which measures are actually considered by the full Senate. Past practice, the sheer volume of bills, the need to conduct orderly and timely business, and the current general inconvenience imposed upon the body by its temporary quarters while the Legislative Building is renovated all militate in favor of conducting some Rules Committee meetings in abbreviated sessions within the Lieutenant Governor's offices,

rule suspended, and the senate may proceed accordingly. Motion for suspension of the rules shall not be debatable, except, the mover of the motion may briefly explain the purpose of the motion and at the discretion of the president a rebuttal may be allowed.”

where packages of bills are moved around as deemed advisable by the members.

These factors must be balanced, however, against very strong interests in allowing as much openness to the public and as much notice to the membership as is reasonably possible. Senate Rule 50⁹⁸ provides that the floor calendar is to be placed upon the member's desks and list the bills which will be considered on the following day. There is a major exception to this mandate, however, which is found in the plain language of this same rule. This exception allows the body, in "emergent situations," at the discretion of the committee, to prepare the calendar and report for consideration those measures which it deems necessary or advisable for consideration at a time it deems necessary or advisable. The President will assume that a particular situation is sufficiently emergent unless the point is challenged by a member and then determined by the committee upon a majority vote— just as is the case with other matters before other committees. Likewise, as with other committee decisions, members who object to a committee determination or action always have the right, pursuant to Senate Rules and practice, to raise a point of order or make an appropriate motion at the appropriate time to object to the adoption of a committee report, the disposition or status of a bill, or the consideration of a particular

⁹⁸ Rule 50 provides: "The lieutenant governor shall be a voting member and the chair of the committee on rules. The committee on rules shall have charge of the daily second and third reading calendar of the senate and shall direct the secretary of the senate the order in which the bills shall be considered by the senate and the committee on rules shall have the authority to directly refer any bill before them to any other standing committee. Such referral shall be reported out to the senate on the next day's business.

The senate may change the order of consideration of bills on the second or third reading calendar.

measure, which would then be decided by an appropriate vote of the full Senate.

In so advising, the President would also add that, while the committee meetings to date have been within the rules of the Senate, the President urges the members to reasonably and fairly balance all of the competing needs and principals at stake to allow as much openness, participation, and notice as to the meetings and the floor calendar as is possible." (Page 182-2004)

SCOPE & OBJECT

Please see this same topic under the category of "Amendments," above.

SINGLE SUBJECT⁹⁹

Presumptions

POINT OF ORDER

Senator Snyder: "I rise to a point of order, Mr. President. Senate Rule 25 says that no measure shall include more than one subject and that is based on Article II, Section 19 of the Constitution. Now, this measure has appropriations, it has taxes, it has a reaffirm

The calendar, except in emergent situations, as determined by the committee on rules, shall be on the desks and in the offices of the senators each day and shall cover the bills for consideration on the next following day."

⁹⁹ See Rule 25: "No bill shall embrace more than one subject and that shall be expressed in the title. (See also Art. 2, Sec. 19, State Constitution)." Article II, § 19 of the Washington Constitution provides: "BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title."

of 601, it has a bond sale, and I could go on and on.

“Now, I want to refer you to 1951—the Senate Journal—the Eighth Day. A conference committee reported back a budget bill and in that budget bill, it included a tax measure, when the point of order was raised, Victor Aloysius Meyers, the President of the Senate at that time, agreed with the Senator that challenged and said that there were two subjects in that bill, but, the Senate appealed his ruling and they overrode his ruling. They did not sustain his ruling and went on and passed that legislation. One of the aggrieved people went to the Supreme Court of the state of Washington. The Supreme Court said, ‘Yes, Victor Aloysius Meyers, you were correct.’ the budget that they passed with a tax measure was thrown out. The state was broke. There was a special session within four days to right the wrong that was done at that time.

“So, I maintain that there are several subjects in this measure and, therefore, we cannot and should not vote on it.” (Page 754–1998).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order raised by Senator Snyder under Senate Rule 25, concerning whether Engrossed House Bill No. 2894, as amended by the Senate, contains two subjects. The President finds that this rule is taken verbatim from Article II, Section 19 of the State Constitution.

“The President does not normally respond to constitutional questions. However, the President cannot avoid interpreting a Senate Rule. The President would note that the two subject rule has been invoked only rarely. The precedent raised by Senator Snyder appears to be the only other time the rule has been raised in the past fifty years.

“In interpreting Senate Rule 25, the President believes it appropriate to rely on decisions by the Supreme Court interpreting Article II, Section 19. In interpreting the two subject rule, the Supreme Court maintains several premises, including; (1) That the statute is presumed to be constitutional; (2) that the challenger of the statute maintains a heavy burden to overcome the presumption; (3) That the constitutional requirement is to be liberally construed so as not to impose hampering restrictions upon the Legislature; and (4) That all that is required is that there be some ‘rational unity’ between the general subject and the incidental subdivisions. The President believes that he should not be more restrictive in interpreting Senate Rule 25 than is the Supreme Court in interpreting Article II, Section 19.

“Engrossed House Bill No. 2894, as amended by the Senate, is an Act relating to the reallocation of motor vehicle excise tax and general fund resources for the purpose of providing transportation funding, local criminal justice funding and tax reduction. The bill contains several incidental subjects, including authorizing bonds for highway construction, and making changes to Initiative 601 to accommodate the reallocation of MVET funds. The President cannot find under the existing Supreme Court precedents that any of these incidental subjects is wholly unrelated or without rational unity to the general subject of the measure.

“The President, therefore, finds that the measure does not violate Senate Rule 25, and that the point of order is not well taken.” (Page 776–1998).

Rational Unity Test

“In ruling on the Point of Order raised by Senator Carrell as to whether the Senate committee amendment to Engrossed House Bill 2561 would violate the single subject

limitation found in Senate Rule 25, the President finds and rules as follows:

The Senate has developed a body of parliamentary precedent on this issue, precedent which is based in large part upon Supreme Court rulings on this same topic. While the President does not make legal rulings, the Supreme Court's guidance is appropriate, because Senate Rule 25 contains the same single subject language found in our Constitution in Article II, Section 19.

Very generally, this precedent requires that the various sections and effects of a measure be rationally related to that measure's overarching common purpose or subject. It is true that this measure contains multiple provisions, but these are all harmonized under one common policy choice—or subject—of the bill, which is to issue bonds for a particular purpose and include revenue which might fund those bonds and facilitate that purpose. The varied and detailed sections of the bill in this case are simply policy choices made by the drafters to implement that purpose. Others may prefer different choices or different purposes altogether, but those are policy choices to be made by this body, not a violation of Senate Rule 25.

For these reasons, the President finds that the proposed committee amendment does not violate the provisions of Senate Rule 25, and Senator Carrell's point is not well-taken." (Page 1593—2010).

POINT OF ORDER

Senator Snyder: "Thank you, Mr. President. A couple of weeks ago, I raised a

¹⁰⁰ See Rule 25: "No bill shall embrace more than one subject and that shall be expressed in the title. (See also Art. 2, Sec. 19, State Constitution)." Article II, § 19 of the Washington Constitution provides: "BILL

point of order if there could be more than one subject in a bill and I think we have been referring to this lottery-I won't use the word expansion—additional lottery as a tax in an appropriations bill and I would raise my point and give the same arguments that I did a couple of weeks ago, that there is more than one subject in the bill and, therefore, if is not properly before the Senate, according to the Constitution and the Senate Rules." ¹⁰⁰ (Page 1294–1998).

RULING BY THE PRESIDENT

President Owen: "The President believes that in looking at his prior ruling on the same matter, it was stated that all that is required is that there be some rational unity between the general subject and the incidental subdivisions, as are in the case in this bill, it would not be a violation of the Constitution or the Senate Rules and the point of order is not well taken." (Page 1294–1998).

Substantive Law in Budget Bill

Please see this same topic under "Budget," above. Includes Legislature v. Locke case/test.

Taxes & Fees in Budget Bill

"In ruling upon the point of order raised by Senator West that the House striking amendment to ESSB 6153 violates Senate Rule 25, the President finds that four of the fees cited by Senator West were previously authorized in statute to cover the cost of pre-existing statutory programs:

TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title."

The board of accountancy fee in Section 145 is authorized in RCW 18.04.065

The labor and industries elevator fee in Section 217 is authorized in RCW 70.87.030

The department of health licensing fee in Section 220 is authorized in RCW 43.70.110

The department of licensing business license fee in Section 401 is authorized in RCW 43.24.086

Additionally, the tuition and fee increases set forth in Sections 601 and 603 are specifically authorized to occur in a budget bill in RCW 28B.15.067(3).

The President would distinguish the pre-existing fees in this budget bill from the child care co-pay provision addressed in *Legislature v. Locke*. In *Locke*, the court determined specifically that the “intent and effect of the copayment provision here is to restrict access to public assistance eligibility, [therefore] its inclusion by the Legislature in a budget bill violates art. II, Sec. 19.” The President does not find that the pre-existing administrative fees at issue in this budget are substantive provisions prohibited in a budget under Senate Rule 25.¹⁰¹ The President believes there is a distinction between a tax created or increased in a budget bill, for example, and the pre-existing administrative fees addressed in the budget. For the distinction between a “fee” and a “tax”, the President would refer the members to the President’s rulings on the subject under I-601.

In short, the President finds that the pre-existing fees at issue are rationally related to the appropriations sections in question, and

¹⁰¹ Senate Rule 25 provides: “ONE SUBJECT IN BILL - No bill shall embrace more than one subject

that Senator West’s point of order is not well-taken..” (Pages 1872-73—2001).

Timeliness

RULING BY THE PRESIDENT

President Owen: “ In ruling upon the point of order by Senator Roach that the House Amendment to Engrossed Substitute Senate Bill 5659 is improperly before the body because it violates Constitutional and Senate rule provisions limiting a bill to a single subject, the President finds as follows:

Both the Washington State Constitution and Senate Rule 25 mandate that “[n]o bill shall embrace more than one subject and that shall be expressed in the title.” The President has consistently ruled that issues relating to the legality of particular measures are better left to the courts, and that rulings will therefore address only parliamentary, not legal, inquiries. It is the duty of the President, however, to give full force and effect to the parliamentary rules and practices of this body

It is instructive to keep in mind that the purpose of parliamentary procedure is to provide clear processes that ensure the rights of all members are observed and the will of the body, as expressed through a majority of its members, may be done.

Reed's Rule 49, under the duties of members, makes clear that members have both duties and responsibilities to the body:

“[T]he object and purpose of an assembly is to enable [members] to act together as a body, [and] each member ought to so conduct him- [or her-] self as to

and that shall be expressed in the title. (See also Art. 2, Sec. 19, State Constitution.)”

facilitate the result, or at least so as not to hinder it."

Part of this conduct includes timely raising of parliamentary issues before the body has taken action upon a question. Reed's Rule 112 provides in part, "[O]bjections to present action must be presented before consideration has been entered upon. After debate has begun or other action has been taken it is too late."

The purpose of this rule is clear: there must be some point at which the body may be assured that questions upon which it has expressed its will, most commonly by a vote of its majority, are properly concluded and may not be revisited time and time again. Any other result would allow for any member to hold the body hostage by raising procedural questions which should have been earlier debated and decided. As the rules make clear, a member has a duty to raise such issues as soon as possible or the right to object is deemed waived. The President reserves for future consideration the issue of timeliness with respect to other parliamentary inquiries.

Applying this rationale to the matters before us, the amendments to the bill which added modifications to the Growth Management Act may or may not violate the "single subject" rule, but the time for raising such an objection was prior to the passage of that amendment in the Senate. Once the measure left this body with that language, that objection was waived along with the final passage.

¹⁰² Rule 25 provides: "Rule 25. No bill shall embrace more than one subject and that shall be expressed in the title. (See also Art. 2, Sec. 19, State Constitution.)" Article II, § 19 of the Washington Constitution provides: "SECTION 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title." The

With respect to the performance audit language added by the House, however, the first opportunity which any member of this body had to raise a "single subject" objection was when the measure came back for concurrence or dispute. In this case, Senator Roach's point is timely, and the President finds that performance audits of cities and counties constitute an entirely new policy which is well outside of the original title, which relates to local funding. This language is not limited to the tax increase, but would appear to apply to all aspects of the city or county government, and this is clearly another subject from local funding. For this reason, the House Amendment includes a second subject in violation of Rule 25, and Senator Roach's point is well-taken. The House amendment is out of order." (1564-2003)

Title¹⁰²

"In ruling upon the point of order raised by Senator Zarelli that Substitute Senate Bill 6896 is not properly before the body for its consideration because its title does not correctly reflect the bill's subject, the President finds and rules as follows:

This is an issue of first impression, insofar as no President has made a ruling on the title limitation found in Rule 25. Because of this, the President believes some explanation is necessary and asks for the members' patience as he provides this analysis. Washington's Constitution contains single subject and title limitations at Article II, § 19. Senate Rule 25

Supreme Court has held, that, at a minimum, the title of a bill must "give such notice as should reasonably lead to an inquiry into the body of the act itself, or indicates, to an inquiring mind, the scope and purpose of the law." (*State ex rel. Washington Toll Bridge Authority v. Yelle*, 32 Wn.2d 13 (1948)).

mirrors this language, providing, “No bill shall embrace more than one subject and that shall be expressed in the title.” While the President will properly defer to the courts on the constitutional provisions, he is charged with giving full force and effect to each of this body’s rules.

The President begins by noting the purpose of the title requirement, which is to provide some form of notice to the members and the public as to the subject matter of each bill. The volume of legislation introduced each Session is significant, and the sheer number of bills makes it challenging for anyone to read each measure in full. The title provides a shorthand method for a reader to quickly discern the issues and law being affected by a bill to determine if the measure concerns policy of interest to the reader. In this way, someone interested in liquor licenses, for example, could be assured that a measure entitled, “An Act relating to vehicle licensing subagents” does not modify alcohol statutes. It is important, therefore, that the title be accurate as well as concise. It is not required that the title be perfectly precise, but it should adequately describe the scope and purpose of the law being changed so as to cause a reader following a particular issue to determine if further inquiry into the text of the bill is necessary.

Often, there are many options available for titles to a particular measure, and the President is mindful that there are legal, policy, and even political reasons for preferring one set of language to another. The President will give great deference to the title chosen by a member or the body for a bill. The challenge for the President is to adequately recognize the title protection afforded by Rule 25 while refraining from simply substituting his judgment for that of the drafters. Nonetheless, the title limitation adopted by this body must be enforced to the

same degree as the other rules, and it is appropriate for the President to examine a title to determine not its legal import, but whether or not it sufficiently describes the subject of the bill itself.

In this case, the President believes that the title of Substitute Senate Bill 6896 does not sufficiently describe the subject matter of the bill. The title, “An Act relating to state funding stabilization” provides no reasonable implication that the bill contains within it policy changes to the state expenditure limit—changes which have application beyond the accounts being referenced in the bill itself. The President makes no ruling as to the appropriateness of the measure itself, and there is every reason to believe that the expenditure limit change is rationally related to the accounts created, but the title, itself, is incomplete. In so holding, the President expressly invites the drafters to amend the title in a manner consistent with this ruling, because it is his belief that any number of titles could adequately reflect the subject matter of this bill.

Finally, the President believes it is appropriate to caution the body that this ruling is a very narrow application of Rule 25 to a specific bill. This ruling should not be viewed as inviting the members to make wholesale challenges to every bill with a title not to a member’s liking. So long as a title sufficiently provides notice as to the subject of a bill, drafters have great latitude as to the language they choose. The President will enforce the body’s rules, but he will be at great pains to avoid second-guessing their choice of language for a title.

For these reasons, Senator Zarelli’s point is well-taken: The title of Substitute Senate Bill 6896, as presently drafted, is incomplete, and the measure is ineligible for final passage in its present form.” (Pages 454-455—2006).

SPECIAL ORDER OF BUSINESS¹⁰³

Return To Bill That Was Interrupted By Special Order

POINT OF ORDER

Senator Snyder: “A point of order, Mr. President. I believe the time is 4:45 p.m. and we have a Special Order of Business on Senate Bill No. 6566 at this time.” (Page 494-2000).

PARLIAMENTARY INQUIRY

Senator Snyder: “A parliamentary inquiry, Mr. President. I would like to know the disposition of Substitute Senate Bill No. 6231, the one we were working on when we went to the Special Order of Business.” (Page 494--2000).

REPLY BY THE PRESIDENT

President Owen: “The position that it was on? Senator, is that your question?”

Senator Snyder: “Mr. President, my question is, can we continue working on Substitute Senate Bill No. 6231 after we finish Senate Bill No. 6566?” (Page 494–2000).

RULING BY THE PRESIDENT

President Owen: “Based on previous rulings by the President, when you go to a

¹⁰³ Senate Rule 18 provides: “The president shall call the senate to order at the hour fixed for the consideration of a special order, and announce that the special order is before the senate, which shall then be considered unless it is postponed by a majority vote of the members present, and any business before the senate at the time of the announcement of the special order shall take its regular position in the order of business, except that if a cutoff established by

Special Order of Business, you may return to the bill that you were working on once you have completed the Special Order of Business.” (Page 494–2000).

PARLIAMENTARY INQUIRY

Senator Johnson: “Mr. President, I rise to a point of parliamentary inquiry. Based upon precedent, would it be the Lieutenant Governor’s opinion that if the Senate has made a measure a special order of business shortly before 5:00 p.m. today, and is considering another measure at the time of the special order, that the Senators after having dealt with the special order, might return to one measure previously, notwithstanding the 5:00 p.m. cutoff?” (Page 834–1998).

REPLY BY THE PRESIDENT

President Owen: “The President believes that has been the practice of the Senate over the last several years. However, the President also believes that it would be appropriate that prior to the next session a rule be drafted that would explain that clearly, so as to not have to respond to that question in the future.”

Senator Johnson: “The Point is well taken, Mr. President.” (Page 834–1998).

Return to Matter Before the Senate

REMARKS BY SENATOR WEST

concurrent resolution occurs during the special order, the senate may complete the measure that was before the senate when consideration of the special order was commenced.” *See also Rule 19*, which provides: “The unfinished business at the preceding adjournment shall have preference over all other matters, excepting special orders, and no motion or any other business shall be received without special leave of the senate until the former is disposed of.”

Senator West: "Mr. President, I would like to ask the Senate to immediately consider Senate Bill No. 5489. 5489 is the vehicle wash services/tax. It is the tax that we have considered for several years here. We actually passed it once through the Legislature and it arrived on the Governor's desk. In the form that it was in at that time, the Governor vetoed it. This is a significantly different bill. It makes several accommodations for environmental quality—I think in the year of the salmon, it is an important bill. I think that the Senate should immediately consider this bill and not allow it to die on the calendar today." (Page 740–1999).

REPLY BY THE PRESIDENT

President Owen: "Senator Snyder, it is 4:55 and you have a special order of business at 4:55." (Page 740–1999).

PARLIAMENTARY INQUIRY

Senator Snyder: "A point of parliamentary inquiry, Mr. President. We were presently on Substitute Senate Bill No. 5583. After we finish our special order of business at 5:00, will we be permitted to go back and finish the debate and roll call on Substitute Senate Bill No. 5583?" (Page 740–1999).

REPLY BY THE PRESIDENT

President Owen: "Senator Snyder, we will have to take a moment to take a look at this." (Page 740–1999).

REMARKS BY SENATOR WEST

Senator West: "Mr. President, I believe that we were in the midst of a debate on Senate Bill No. 5489, as to whether we

would consider that. That would be the order of business that we were debating at the time that you declared it was 4:55." (Page 740–1999).

REPLY BY THE PRESIDENT

President Owen: "Senator West, that is what we are researching." (Page 740–1999).

RULING BY THE PRESIDENT

President Owen: "Senator Snyder, in response to your inquiry, in looking at Rule 18, as it has been rewritten, it says, 'That if a cutoff established by concurrent resolution occurs during the special order, the senate may complete the order of business that was before the senate when consideration of the special order was commence.' It says 'the senate may complete the order of business that was before the senate.' Excuse me, just one second.

"The President is going to read Rule 18: The president shall call the senate to order at the hour fixed for the consideration of a special order,' which I did, 'and announce that the special order is before the senate, which shall then be considered unless it is postponed by a majority vote of the members present, and any business before the Senate at the time of the announcement of the special order shall take its regular position in the order of business, except that if a cutoff established by concurrent resolution occurs during the special order, the senate may complete the order of business'—was the motion by Senator West to immediately consider Senate Bill No. 5489.

Therefore, the President rules that we may go back to the consideration of Senator West's motion, following the special order of business and go back to his motion only." (Page 740–1999).

REMARKS BY SENATOR SNYDER

Senator Snyder: “Well, thank you, Mr. President. Maybe it isn’t timely, but I would—a point of parliamentary inquiry.” (Page 740–1999).

President Owen: “State your parliamentary inquiry.”

Senator Snyder: “Not having a copy of the new rules in front of us, and I know that was an amendment we made at your request, but when you say ‘return to the item that we were considering, ‘I think the item we were considering was the bill. I believe that probably Senator West’s motion was out of order, because I don’t think he can make a motion that he made, to consider that bill, at the time when we are considering a bill. He would have to do it after the completion of that bill.” (Page 741–1999).

REPLY BY THE PRESIDENT

President Owen: “We are looking—“

REMARKS BY SENATOR WEST

Senator West: “Mr. President, as I understand it, Senator Snyder has raised a point of parliamentary inquiry suggesting that we cannot make a motion to immediately consider a bill while another bill is pending. The good Senator from the Nineteenth District has made that motion himself many times over the years that he has been in the Senate—while other bills have been pending. So, I think you will find if you studied the Journal—you would find several times that that motion has been made and accepted by the Senate. I don’t think there is anything in the rules that prohibits the making of such a motion—either our rules or Reed’s Rules.” (Page 741–1999).

RULING BY THE PRESIDENT

President Owen: “In response to the various inquiries, the President believes that the passage of Senator West’s motion would allow consideration of Senate Bill No. 5489 only following the special order of business. If the motion is defeated, the President believes that following the special order of business—if the motion is defeated—the President believes that the spirit of the rule was intended to allow the main question pending before his motion was made—that the main question pending would be considered, which is Substitute Senate Bill No 5583.

The President would so rule.

“The President would ask that the Senator’s provide, prior to the end of the session, possibly, a further clarification that the main question before the body be able to be taken up following the special order of business—not incidental motions.” (Page 741–1999).

TABLE

Effect of Motion to Lay on the Table

PARLIAMENTARY INQUIRY

Senator Sheahan: “A parliamentary inquiry, Mr. President. What will happen if this vote passes—the motion to lay on the table passes?” (Page 1038–2001).

PRESIDENT REPLIES TO SENATOR SHEAHAN INQUIRY

President Owen: “In responding to the parliamentary inquiry by Senator Sheahan, the action of laying the motion on the table is that the bill will be out of order until a motion is made and passed to take it off the table. So, if the motion passes to lay

the bill on the table; it is out of order until another motion is made to consider it.”¹⁰⁴

Senator Sheahan: “May I continue, Mr. President? If the motion fails, then we would be on third reading—“

President Owen: “We would be on third reading and final passage. That is correct.”

Senator Sheahan: “Thank you, Mr. President.” (Page 1038–2001).

TIME

Clock Used

PARLIAMENTARY INQUIRY

Senator Deccio: “A parliamentary inquiry, Mr. President. Is this the official time clock that we are using?” (Page 1691–1999).

REPLY BY THE PRESIDENT

President Owen: “The official time clock is in front of me.”

Senator Deccio: “Can I inquire as to what time it is right now?”

President Owen: “It is twenty-three hundred hours, fifty-eight minutes, and twenty-nine seconds, thirty seconds, thirty-one seconds—“

Senator Deccio: “I think Senator Roach said 11:59. Are we passed that point?”

¹⁰⁴ Reed’s Rule 201 provides that a motion to lay on the table is “[n]ot debatable, not amendable. Takes precedence of all other motions except the privileged motions and motion to suspend rules. Renewable after an amendment.” Senate Rule 21 lists a motion to lay on the table as the highest-ranked subsidiary motion, but also provides that a “motion to lay an amendment on the table shall not carry the main question with it unless so specified in the motion to table.” This is inconsistent with (but supersedes) Reed’s Rule 114, which has a motion to table an amendment carry with it the main question. Reed’s Rule 116 allows a motion to table to be renewed, and Reed’s Rule 117

President Owen: “No. We have not, but it is irrelevant. The motion was out of order.”

Senator Deccio: “Thank you.” (Page 1691–1999).

POINT OF ORDER

Senator Snyder: “A point of order, Mr. President. I believe the time is 4:55 and we have a special order of business at this time.” (Page 740–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, according to our clock here, it is 4:53 and 46 seconds, 47, 48 seconds. We have the clock right here that we go by.”

Senator Snyder: “We have two here that both say, `4:55.`” (Page 740–1999).

Meeting Past 10:00 pm

POINT OF ORDER

Senator West: “A point of order, Madam President. Rule 15¹⁰⁵ states not to meet past 10 p.m. It is now 10:05 p.m.” (Page 573–2001).

REMARKS BY SENATOR SNYDER

provides that the motion “is not debatable. It takes precedence of all other subsidiary motions except the question of consideration, but yields to privileged questions. This motion can not be amended.”

¹⁰⁵ Senate Rule 15 provides: “The senate shall convene at 10:00 a.m. each working day, unless adjourned to a different hour. The senate shall adjourn not later than 10:00 p.m. of each working day. The senate shall recess ninety minutes for lunch each working day. When reconvening on the same day the senate shall recess ninety minutes for dinner each working evening. This rule may be suspended by a majority.”

Senator Snyder: “Yesterday, I moved that Rule 15 be suspended through Wednesday.” (Page 573–2001).

REPLY BY THE PRESIDENT PRO
TEMPORE

President Pro Tempore Franklin: “You are correct, Senator.” (Page 573–2001).

Midnight

PARLIAMENTARY INQUIRY

Senator Snyder: “A point of parliamentary inquiry, please. It is now after midnight and I want to inquire whether House and Senate Concurrent Resolutions are still alive?” (Page 1692–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, the President believes that on previous rulings by both Lieutenant Governor Cherberg and Lieutenant Governor Pritchard that we are still within the one hundred-fifth day and we may complete the business that we were on.” (Page 1692–1999).

TIMELINESS

Waiver: Generally

“In ruling upon the point of order raised by Senator Fraser that Substitute Senate Bill 5053 violates Article II, Section 37 of the Washington Constitution and Senate Rule 57, the President finds and rules as follows:

The President begins by affirming his past practice of ruling on parliamentary, and not legal, matters. For this reason, a decision on the Constitutional argument is better left to the courts.

As to the next point, it is instructive to keep in mind the President’s past ruling as to the timely raising of parliamentary issues before the body has taken action upon a question. Reed's Rule 112 provides in part, “[O]bjections to present action must be presented before consideration has been entered upon. After debate has begun or other action has been taken it is too late.”

Applying this rationale to the matters before us, the time for raising such an objection was prior to the passage of this measure by the full Senate previously. Once the measure left this body with the language in question, that objection was waived.

For these reasons, Senator Fraser’s point is not well-taken and Substitute Senate Bill 5053 is properly before this body for consideration.” (Page 481-2004)

Waiver: Concurrence, Scope & Object

“In ruling upon the point of order raised by Senator Eide as to her scope and object inquiry, and to Senator McCaslin’s objection that Senator Eide’s point is not timely, the President finds and rules as follows:

Senator McCaslin is correct that points of order must be timely raised, and the President has so ruled in the past. The purpose of this rule is clear: the body must have certainty that matters are properly before it for consideration, and that matters relating to an earlier part of the process will not work to stop the matter later in the process. The question then becomes whether

or not Senator Eide was required to raise her point of order as to scope and object when the bill, with the House amendment, was first before the body for concurrence.

The President is cognizant that on-going negotiations between the chambers of the Legislature can be delicate, and it is for this reason that there are so many options set forth from which the bodies may choose in officially addressing the actions of the other body. Among them, a body may ask the other to recede, it may concur, or it may itself recede, to name but a few of these options. Also available are the various parliamentary and procedural mechanisms which operate to provide a process under which the bodies may conduct their business and ensure that appropriate rules are observed. Elevating process above the substance of the negotiations, however, was never the intention of the rules.

It is true that Senator Eide could have raised her scope and object argument earlier in the process, but this was but one point and one option before her. She was also free, as she ultimately chose, to let the negotiations continue and see if the matter might be resolved in that fashion. In so doing, this became a question of strategy and relations between the houses. Her choice should not, and does not, operate to stop her from raising the point at a later time in the proceedings when the amendment is before the body for finalization on full concurrence. For these reasons, Senator Eide's objection as to scope and object is timely and properly before this body.

Having so ruled, the underlying question becomes whether or not the House amendment is beyond the scope and object of the underlying bill. Substitute Senate Bill 6208 is a measure that provides water-sewer districts a specific, limited alternative to

permanent facilities by allowing a property owner to connect to the district's system by means of a temporary facility. The legislation amends the basic "powers" provisions in chapter 57.08 for water-sewer districts to provide this authority."

By contrast, the House amendment, in Section 2, incorporates an entirely new and different subject, establishing detailed procedures that certain cities must follow when seeking to assume the assets and operations of certain water-sewer districts. The House amendment also amends an entirely different title of the statute in this change—Title 35, which relates to the powers of cities.

While both the underlying bill and the amendment deal with some aspect of water-sewer districts it is clear that the amendment would change the scope and object of the bill and Senator Eide's point of order is well-taken." (Page 1098-2004)

Waiver: Duties & Responsibilities

RULING BY THE PRESIDENT

President Owen: " In ruling upon the point of order by Senator Roach that the House Amendment to Engrossed Substitute Senate Bill 5659 is improperly before the body because it violates Constitutional and Senate rule provisions limiting a bill to a single subject, the President finds as follows:

Both the Washington State Constitution and Senate Rule 25 mandate that "[n]o bill shall embrace more than one subject and that shall be expressed in the title." The President has consistently ruled that issues relating to the legality of particular measures are better left to the courts, and that rulings will therefore address only parliamentary, not legal,

inquiries. It is the duty of the President, however, to give full force and effect to the parliamentary rules and practices of this body

It is instructive to keep in mind that the purpose of parliamentary procedure is to provide clear processes that ensure the rights of all members are observed and the will of the body, as expressed through a majority of its members, may be done.

Reed's Rule 49, under the duties of members, makes clear that members have both duties and responsibilities to the body:

"[T]he object and purpose of an assembly is to enable [members] to act together as a body, [and] each member ought to so conduct him- [or her-] self as to facilitate the result, or at least so as not to hinder it."

Part of this conduct includes timely raising of parliamentary issues before the body has taken action upon a question. Reed's Rule 112 provides in part, "[O]bjections to present action must be presented before consideration has been entered upon. After debate has begun or other action has been taken it is too late."

The purpose of this rule is clear: there must be some point at which the body may be assured that questions upon which it has expressed its will, most commonly by a vote of its majority, are properly concluded and may not be revisited time and time again. Any other result would allow for any member to hold the body hostage by raising procedural questions which should have been earlier debated and decided. As the rules make clear, a member has a duty to raise such issues as soon as possible or the right to

¹⁰⁶ Rule 25 provides: "Rule 25. No bill shall embrace more than one subject and that shall be expressed in the title. (See also Art. 2, Sec. 19, State Constitution.)"

object is deemed waived. The President reserves for future consideration the issue of timeliness with respect to other parliamentary inquiries.

Applying this rationale to the matters before us, the amendments to the bill which added modifications to the Growth Management Act may or may not violate the "single subject" rule, but the time for raising such an objection was prior to the passage of that amendment in the Senate. Once the measure left this body with that language, that objection was waived along with the final passage.

With respect to the performance audit language added by the House, however, the first opportunity which any member of this body had to raise a "single subject" objection was when the measure came back for concurrence or dispute. In this case, Senator Roach's point is timely, and the President finds that performance audits of cities and counties constitute an entirely new policy which is well outside of the original title, which relates to local funding. This language is not limited to the tax increase, but would appear to apply to all aspects of the city or county government, and this is clearly another subject from local funding. For this reason, the House Amendment includes a second subject in violation of Rule 25, and Senator Roach's point is well-taken. The House amendment is out of order." (1564-2003)

TITLE¹⁰⁶

Amending House Titles

"Senator Honeyford has raised two related

Article II, § 19 of the Washington Constitution provides: "SECTION 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one

questions on the striking amendment to House Bill 1187: First, he asks whether it is appropriate for the Senate to substantively amend the title of a House Bill; and second, he asks whether the proposed amendment is beyond the scope and object of the underlying bill.

As to the first question, the President takes note of the fact that House rules and practice differ from those of the Senate with respect to title amendments, and it is probably fair to characterize the House's rules as stricter with respect to such amendments. That said, in the interest of comity and promoting good relations between the chambers, the President generally does not rule on matters of procedure within the House. Our rules allow for title amendments, and this body may make such amendments if it chooses. The body may be well-advised, of course, to take note of House practice and traditions in making such choices, but these are matters of negotiation and policy, not Senate procedure.

On the second question, relating to whether the striking amendment goes beyond the scope and object of the underlying bill, the President begins by taking a look at the measure in the form in which it originally came over from the House. In this case, the measure can be fairly characterized as a purely technical recodification of affordable housing statutes. There are no substantive provisions of law changed or enacted beyond this. By contrast, the striking amendment includes very substantive law allowing local governments to set up relocation assistance programs. It includes monetary amounts, notice provisions, language on condominium moratoriums, lease termination provisions, and limitations on interior construction. This

subject, and that shall be expressed in the title." The Supreme Court has held, that, at a minimum, the title of a bill must "give such notice as should reasonably lead to an inquiry into the body of the act itself, or

language goes well beyond recodifying affordable housing statutes and is clearly outside the subject matter of the underlying bill as it came over from the House

For these reasons, Senator Honeyford's second point is well-taken, and the amendment is beyond the scope and object of the underlying bill." (April 9, 2007, Journal Pages 1357-58).

Policy Choices as to Title

"In ruling upon the point of order raised by Senator Brandland as to whether the House amendment to Second Engrossed Substitute Senate Bill 6508 violates Senate Rule 25 by including a subject not reflected in the bill's title, the President finds and rules as follows:

This is the second title challenge to this particular bill this Session. In the previous ruling issued on March 9th, the President noted that the bill as passed by the Senate defined the rights and liabilities of various parties with respect to the wrongful death of an adult child. The Senate version included a joint and several liability provision to limit claims against the state and local governments. This was in keeping with the title of the bill, which provides:

AN ACT Relating to wrongful death or survival actions by changing the class of persons entitled to recoveries and by limiting the liability of state and local agencies or political subdivisions in those recoveries...

The House amendment removes the joint and several liability limitation altogether, but replaces it with new language which states that such liability:

indicates, to an inquiring mind, the scope and purpose of the law." (*State ex rel. Washington Toll Bridge Authority v. Yelle*, 32 Wn.2d 13 (1948)).

[I]s limited to situations where the governmental entity's acts or omissions are negligent and are a proximate cause of the death of the claimant, and where the governmental entity is not otherwise immune or where the governmental entity's liability is not otherwise limited by statute or case law.

Senator Brandland argues that this language does not, in fact, limit liability, but instead does nothing more than restate the present case law standard. Whatever the merits of this argument may be, it is not for the President to make such a legal determination. Perhaps more importantly, there are many possible ways to address the question of the limits of liability, and it is not appropriate for the President to substitute his judgment for that of the body on what is clearly a policy choice. Rather, the President's role is simply to determine whether this particular policy choice is correctly reflected in the title of the bill.

Because this House amendment—like the underlying bill as passed by the Senate—assigns and limits the rights and liabilities of various private and governmental parties, it fits within the title of the bill.

For these reasons, the President finds that the House amendment is properly before this body for concurrence, and Senator Brandland's point is not well-taken." (Page 1277—2010.

Purpose: Conform To Bill's Provisions

Editor's Note & Ruling: *On February 9, 2010 (Page 213—2010), in a quick ruling that was not written up in advance, the President quoted from his 2006 ruling (2006 Senate Journal pages 454-455) to hold that Senate Bill 6843 (the so-called I-960 suspension*

bill) was not properly titled because the title did not fit the bill as amended.

Specifically, the title read:

AN ACT Relating to preserving essential public services by temporarily suspending the two-thirds vote requirement for tax increases and permanently modifying provisions of Initiative Measure No. 960 for improved efficiency and consistency with state budgeting; amending RCW 43.135.031, 43.135.035, 29A.32.031, 29A.32.070, 29A.72.040, 29A.72.250, and 29A.72.290; repealing RCW 43.135.041, 29A.72.283, and 29A.72.285; and declaring an emergency.

By the time of final passage, however, the bill had been amended to delete all of the "permanently modifying provisions..." language that was in the original bill. The President believed that the word "permanently," in particular, was misleading, as it conflicted with the language in the bill stating "it is the intent of the legislature to provide a temporary means to stabilize revenue collections" (emphasis added) and therefore did not properly express the bill's subject in its title (Rule 25). Ultimately, the practical remedy was to return the bill to second reading and do a title amendment. Here is the ruling, as transcribed from the official voice recording:

"In ruling upon the point of order raised by Senator Schoesler, the President—in order to expedite this process, we'll do this without having the attorneys write it up so please bear with me.

The President looks at a previous ruling that he has had, brought by Senator Zarelli in the past, and I'm going to read what was said:

It is not required that the title be perfectly precise, but it should adequately describe the scope and purpose of the law being changed as to cause a reader following a particular issue determined if further inquiry into the text of the bill is necessary.

If—except for one, one small part of the title, this would—the title, the President believes the title will conform. But, in the majority's own words, in their own words they over and over again emphasize that nothing in this legislation was permanent. The title says differently, so it would be impossible for any person inquiring into the content of this bill through the title to find that part which is permanent. Therefore, Senator Schoesler's point is well-taken and the bill does not comply with the rule.” (Page 213—2010).

Purpose: Inquiry Notice

“In ruling upon the point of order raised by Senator Zarelli that Substitute Senate Bill 6896 is not properly before the body for its consideration because its title does not correctly reflect the bill's subject, the President finds and rules as follows:

This is an issue of first impression, insofar as no President has made a ruling on the title limitation found in Rule 25. Because of this, the President believes some explanation is necessary and asks for the members' patience as he provides this analysis. Washington's Constitution contains single subject and title limitations at Article II, § 19. Senate Rule 25 mirrors this language, providing, “No bill shall embrace more than one subject and that

shall be expressed in the title.” While the President will properly defer to the courts on the constitutional provisions, he is charged with giving full force and effect to each of this body's rules.

The President begins by noting the purpose of the title requirement, which is to provide some form of notice to the members and the public as to the subject matter of each bill. The volume of legislation introduced each Session is significant, and the sheer number of bills makes it challenging for anyone to read each measure in full. The title provides a shorthand method for a reader to quickly discern the issues and law being affected by a bill to determine if the measure concerns policy of interest to the reader. In this way, someone interested in liquor licenses, for example, could be assured that a measure entitled, “An Act relating to vehicle licensing subagents” does not modify alcohol statutes. It is important, therefore, that the title be accurate as well as concise. It is not required that the title be perfectly precise, but it should adequately describe the scope and purpose of the law being changed so as to cause a reader following a particular issue to determine if further inquiry into the text of the bill is necessary.

Often, there are many options available for titles to a particular measure, and the President is mindful that there are legal, policy, and even political reasons for preferring one set of language to another. The President will give great deference to the title chosen by a member or the body for a bill. The challenge for the President is to adequately recognize the title protection afforded by Rule 25 while refraining from simply substituting his judgment for that of the drafters. Nonetheless, the title limitation adopted by this body must be enforced to the same degree as the other rules, and it is appropriate for the President to examine a

title to determine not its legal import, but whether or not it sufficiently describes the subject of the bill itself.

In this case, the President believes that the title of Substitute Senate Bill 6896 does not sufficiently describe the subject matter of the bill. The title, “An Act relating to state funding stabilization” provides no reasonable implication that the bill contains within it policy changes to the state expenditure limit—changes which have application beyond the accounts being referenced in the bill itself. The President makes no ruling as to the appropriateness of the measure itself, and there is every reason to believe that the expenditure limit change is rationally related to the accounts created, but the title, itself, is incomplete. In so holding, the President expressly invites the drafters to amend the title in a manner consistent with this ruling, because it is his belief that any number of titles could adequately reflect the subject matter of this bill.

Finally, the President believes it is appropriate to caution the body that this ruling is a very narrow application of Rule 25 to a specific bill. This ruling should not be viewed as inviting the members to make wholesale challenges to every bill with a title not to a member’s liking. So long as a title sufficiently provides notice as to the subject of a bill, drafters have great latitude as to the language they choose. The President will enforce the body’s rules, but he will be at great pains to avoid second-guessing their choice of language for a title.

For these reasons, Senator Zarelli’s point is well-taken: The title of Substitute Senate Bill 6896, as presently drafted, is incomplete, and the measure is ineligible for final passage in its present form.” (Pages 454-455—2006).

Title Not Reflecting Content

“In ruling upon the Points of Order raised by Senator Brandland as to whether the House amendments to Second Engrossed Substitute Senate Bill 6508 violate Senate Rules 25 and 66 by including a subject not reflected in the bill’s title and beyond the scope and object of the bill, the President finds and rules as follows.

The bill as it passed the Senate defined the rights and liabilities of various parties with respect to the wrongful death of an adult child. That bill included a joint and several liability provision to limit claims against the state and local governments.

The House amendments remove the joint and several liability limitation altogether, and then add in provisions by which local governments may be reimbursed for certain wrongful death claims by making a claim against a newly-created account. That account is to be funded by the imposition of an additional five dollar charge for traffic infractions and a ten dollar charge for superior court filing fees.

As passed by the Senate, it is fair to say that the Senate version approached the issue of wrongful death liability—and its limitations—by assigning and limiting the rights and liabilities of various private and governmental parties. There was no provision for any funding, and, while government liability would likely arise from claims, such potential claims derive from private lawsuits, not a state program or mandate. Creating an entirely new account and imposing additional fees, as well as a mechanism by which local governments can make claims for reimbursement of payments made in connection with wrongful death lawsuits, goes well beyond merely adjusting the rights and liabilities of the parties to a private lawsuit. For these reasons, the

amendments impermissibly broaden the scope of the bill.

Similarly, because the amendments remove the joint and several liability provisions entirely, the title no longer reflects the subject of the bill, which includes the language:

AN ACT Relating to wrongful death or survival actions by limiting the liability of state and local agencies or political subdivisions in those recoveries.

As a result, the title no longer meets the mandate of Senate Rule 25, which requires that the subject of the bill be described in the title.

For these reasons, the President finds that the House amendments may not be considered for concurrence by this body, and Senator Brandland's points are well-taken." (Page 1178—2010.

Title-Only Bills – Scope & Object

“In ruling upon the point of order raised by Senator Schoesler that the proposed substitute is beyond the scope and object of Senate Bill 6156, the President finds and rules as follows:

The underlying bill falls into the category of what is commonly known as a title-only bill. These are measures which are introduced without any substantive provisions, but instead contain only generalized language which may be replaced by more specific provisions at a later date. It is fair to say that they are used as a tactic for meeting or even getting around applicable legislative deadlines. Whatever the Constitutional and legal challenges posed by such measures may be, the President must decide the

parliamentary propriety of such measures, at least as raised by this scope and object challenge.

The President believes this is a matter of first impression. In the 31 years the President has served in various capacities, he is unaware of this matter ever having been raised. Likewise, a review of years of past precedent of this body reveals no instance where this specific issue has been raised or decided. As a result, the President must provide a thorough rationale both in deciding this particular point and in providing guidance for the body as to future practice.

Applying traditional scope and object analysis to a title-only measure is of limited utility, and it quickly becomes problematic. On the one hand, because there is no substantive language in the bill, it can be argued that almost any subject matter could be properly included except as limited by the title itself, in which case, of course, this language would be proper and within the scope and object of the bill. Such an argument is tenuous, however, because this body has never relied solely on titles in determining scope and object. On the other hand, another argument, and one which is in keeping with past precedent, is to restrict the subject matter to that set forth in the underlying bill, as limited as that may be. Under such an analysis, the proposed substitute before us would be outside the scope and object of the underlying bill.

The President believes, however, that he has a duty to this body to ensure that it is able to conduct and complete its business, and that it is not unreasonable for the body to rely on its past practices when this has been the unchallenged tradition for as long as the President can recall. Accordingly, the President rules that the body may so substitute language which is germane to the

overall subject expressed in title-only bills for the remainder of this Session.

In so holding, the President recognizes that this ruling may not perfectly harmonize past rulings with respect to scope and object, but the President believes the greater equities weigh in favor of deferring to past practice. It may be that the body finds it desirable to change its rules for future sessions, or to be more specific as to title-only bills for the future, or even abandon the practice altogether. However the body chooses to order its business for future sessions, the President encourages the body to be cognizant of the limited latitude granted the practice for this Session only.

For these reasons, the President finds that the substitute bill may be considered, but cautions the body as to its use of title-only measures in future Sessions.” (Page 2169 – 2007).

TRANSMITTAL

MOTION

Senator Johnson moved that Engrossed Substitute Senate Bill No. 6108, as recommended by the Conference Committee, be immediately transmitted to the Office of the Governor. (Page 1295–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator Johnson, the President believes that the motion is

¹⁰⁷ See Rule 22: “...5. The passage of a bill or action on a question is lost by a tie vote, but when a vote of the senate is equally divided, the lieutenant governor, when presiding, shall have the deciding vote on questions other than the final passage of a bill. (See

actually out of order. I have to sign the bill first and then it has to go to the House for the signing by the Speaker of the House.” (Page 1295–1998).

UNGAVELLING

PARLIAMENTARY INQUIRY

Senator McCaslin: “A parliamentary inquiry, Mr. President. Even if you had ruled Senator West correct, what would then be the procedure.” (Page 1429–1999).

REPLY BY THE PRESIDENT

President Owen: “Excuse me?”

Senator McCaslin: “Well, how would you undo the gavel? I know that President Pritchard used to undo it several times and I always asked him, ‘what does ungavel mean’ when he ungaveled things. I hope you would not ungavel things.”

President Owen: “Well, Senator McCaslin, I like to take issues as they actually come up and so since I was right in that last one, I don’t feel that it is necessary for me to respond to that. If it comes up, I’ll figure it out.”

Senator McCaslin: “And I want to make it clear to you and the body, I am not saying that you are wrong.” (Page 1429–1999).

VOTING

Ability of Lt. Governor To Vote To Break Tie on Underlying Bill¹⁰⁷

also Art. 2, Secs. 10 and 22, State Constitution.)...”; See also **Washington Constitution** Article 2, § 10: “...When presiding, the lieutenant governor shall have the deciding vote in case of an equal division of the senate.” See also Mason’s Rules 513-514.

REMARKS BY THE PRESIDENT
REGARDING HIS NOT VOTING TO
BREAK THE TIE ON SUBSTITUTE
SENATE BILL NO. 5301

President Owen: “Since the issue came up and the potential for additional tie votes is significant this session, I wish to submit the following: The Senate cannot pass a rule that conflicts with the State Constitution. The President believes that the Constitution is very explicit in Article 2, Section 10, when it says: ‘Each house shall elect its own officers; and when the lieutenant governor shall not attend as president, or shall act as governor, the senate shall choose a temporary president. When presiding, the lieutenant governor shall have the deciding vote in case of an equal division of the senate.’

“My comments during the brief time we had a tie vote on final passage were that there was conflict in the Constitution on the President’s responsibility to break the tie and indicated I would not vote. The President not voting on final passage has been the tradition, but given the opportunity, the President believes the issue should be tested. In other words, the President believes the practice of the President of not voting on final passage when there is a tie vote is potentially a shirking of his constitutional duty. This issue became moot when the vote changed.” (Page 439–2001).

Actual Practice: President Votes on Final Passage

On April 26, 2009 (Page 2124–2009), the President voted to break a tie on the final passage of 2SSB 5433. He then ruled, in response to an inquiry, that the plain language of the Constitution (Article 2, §10) as to his ability to break a tie supersedes Senate Rule 22’s prohibition on his voting on final passage.

Every Member Present Within the Bar Must Vote

Senator West: “A parliamentary inquiry, Mr. President. I may be one of the greater offenders of this, but I want the President to clarify what the definition of what the bar of the House is—or the bar of the Senate is. Rule 39 requires that Senators be present, every Senator within the bar of the Senate shall vote. Does the bar include the area beyond the curtains or may the Senator’s head be just outside the curtain are into the bar? Could you give us a clarification of that sir?”

REPLY BY THE PRESIDENT

President Owen: “It is kinda like in a football field, if you break the plane, you score. To some people, that would be the head and the stomach.”¹⁰⁸

“No” Prevails in Tie Vote¹⁰⁹

the journal. (See also Art. 2, Sec. 21, State Constitution.)”

¹⁰⁹ See Rule 22: “...5. The passage of a bill or action on a question is lost by a tie vote, but when a vote of the senate is equally divided, the lieutenant governor, when presiding, shall have the deciding vote on

¹⁰⁸ See Rule 39: “The yeas and nays shall be taken when called for by one-sixth of all the senators present, and every senator within the bar of the senate shall vote unless excused by the unanimous vote of the members present, and the votes shall be entered upon

PARLIAMENTARY INQUIRY

Senator Heavey: “Thank you, Mr. President, a point of parliamentary inquiry. If the vote is twenty-four to twenty-four, is there a prevailing side?” (Page 1062–1999).

REPLY BY THE PRESIDENT

President Owen: “The prevailing side is ‘no’ Senator.” (Page 1062–1999).

Joint Session- Votes Needed

[At a joint session, the underlying motion dealt with deferring the certification of the office of Governor]

Senator Esser: “Mr. Speaker, point of inquiry. Would you please tell the body how many votes from each chamber—the Senate and the House—are needed for this motion to carry?”

Speaker Frank Chopp: “Neither the Joint Rules adopted by the House and Senate, nor Reed’s Rules, which the House and Senate separately rely upon for guidance in answering parliamentary questions, address the issue of voting in a joint session.

The Speaker has therefore turned to several sources for guidance in deciding the standards that will govern the conduct of our joint session today.

These include Mason’s Manual of Legislative Procedure, Article 3, Section 4 of our state constitution, records of a previous vote in joint session in 1941, and parliamentary common law.

questions other than the final passage of a bill. (See also Art. 2, Secs. 10 and 22, State Constitution.)...”
Accord, Mason’s Rule 513.

Mason’s, the parliamentary manual of the 49 other state legislatures, specifies the following in section 782:

‘When the two houses meet in a joint session, they, in effect, merge into one house where the quorum is a majority of the members of both houses, where the votes of members of each house have equal weight, and where special rules can be adopted to govern joint sessions or they can be governed by the parliamentary common law.’

Article 3, section 4 of our state constitution provides that when two or more persons for election to a state constitutional office receive the highest and equal number of votes, one of them shall be chosen by the joint vote of both houses.

The only instance of a recorded roll call vote in joint session in our state’s history occurred in 1941. In that case, a motion to refer an election protest to a special committee was defeated by a vote of 15 to 30 by members of the Senate and a vote of 30 to 68 by members of the House. The journal then states that the motion “having failed to receive the constitutional majority in both the Senate and the House, was declared lost.”

One could interpret this as dicta, a simple statement of fact, or as a requirement that the votes necessary for passage of a motion in joint session are a constitutional majority of the members of the Senate plus a constitutional majority of the members of the House.

The Speaker rejects the last interpretation. It would be untenable to find that when sitting in joint session the vote of the members of

one house could serve to make the vote of the members of the other house irrelevant.

The Speaker therefore finds and rules that the vote necessary to decide any question presented to the body in joint session is a majority of the combined membership of the House and Senate.” (Page 34–2005).

Prevailing Side

PARLIAMENTARY INQUIRY

Senator Benton: “A point of parliamentary inquiry, Mr. President. Earlier today, the gentleman from the Forty-eighth District rose to give notice of reconsideration of Substitute Senate Bill No. 5232. According to Rule 37, the rules of the Senate, it states, ‘Any member who voted with the prevailing side may give notice of reconsideration.’ According to the official roll call vote, Substitute Senate Bill No 5232 did not receive a constitutional majority. However, the ‘yeas’ were, in fact, the prevailing side, even though a constitutional majority was not achieved. Therefore, I would ask the President to consider this parliamentary question as to whether or not the Senator from the Forty-eighth would be considered a member of the prevailing side.” (Page 507–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator Benton, the prevailing side is the side that prevailed is the side that lost. I mean the bill went down. They won, because the bill lost. Therefore, the ‘no’s’ prevailed. That is as clear as mud.” (Page 507–1999).

Reader Board not Controlling

POINT OF ORDER

Senator Tim Sheldon: “A point of order, Mr. President. There are several members that have expressed a desire to raise this subject. The amendment by Senators Tim Sheldon, Rossi, West and Honeyford on page 86, after line 8, was incorrectly identified on the board. Several members have expressed a desire to change their vote and I think that would be a fair item to do and take up.” (Page 841–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Sheldon, the President clearly stated which amendment we were on. Senator Heavey clearly stated which amendment we were on. The members were clear on what amendment we were on. The proper motion would be to move to reconsider, but the body can not just take it up without that motion.” (Page 841–2000).

POINT OF ORDER

Senator Roach: “A point of order, Mr. President. That point—we don’t know who it was that messed up the vote—okay?” (Page 841–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Roach, that has nothing to do with a point of order that is before us right now. We are not discussing whether or not the amendment was appropriately displayed before us. If you want to bring that up in debate, that is fine, but that point of order has been settled.”

Senator Roach: “But the point of order would be, if a vote was mistaken—miscast—then the members of the Senate can

go to the Journal and write in the Journal, for the record, reasons for the inappropriate vote. I have had occasion to do that at least twice in my ten years and maybe someone would want to do that.” (Page 841–2000).¹¹⁰

Sixty Percent is Thirty Votes

PARLIAMENTARY INQUIRY

Senator Goings: “A point of parliamentary inquiry, Mr. President. How many votes will be required to pass the amendments by Senator Hargrove?” (Page 1170–1999).

REPLY BY THE PRESIDENT

President Owen: “Sixty percent, which would be thirty votes.”

Senator Goings: “Thirty votes? Thank you Mr. President.” (Page 1170–1999).

Sixty Percent of Those Elected¹¹¹

PARLIAMENTARY INQUIRY

Senator Benton: “A parliamentary inquiry, Mr. President. Does the Senate rule requiring thirty votes pertain to sixty percent of the Senate or sixty percent of the members present?” (Page 707–2001).

¹¹⁰ See Rule 34: “Any senator or senators may protest against the action of the senate upon any question. Such protest may be entered upon the journal if it does not exceed 200 words. The senator protesting shall file the protest with the secretary of the senate within 48 hours following the action protested.” See also **Senate Rule 22(2)**: “A member not voting by reason of personal or direct interest, or by reason of an excused absence, may explain the reason for not voting by a brief statement not to exceed fifty words in the journal.”

REPLY BY THE PRESIDENT

President Owen: “Sixty percent of the members elected.”

Senator Benton: “Thank you.” (Page 707–2001).

Two-Thirds Vote is Thirty-Three

PARLIAMENTARY INQUIRY

Senator Snyder: “This is a bit unusual, but the House has passed Second Substitute Senate Bill No. 6404 with amendments and I would like to request a ruling on the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House. In the regular session, President Owen made a ruling on the votes necessary to pass Substitute Senate Bill No. 6404. He ruled that a simple majority vote was required to transfer money from the emergency fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account, but Section 907 of also expressly amended RCW 43.135.045 was adopted as part of Initiative 601 and the ruling in the earlier inquiry concerned the number of votes necessary to amend Initiative 601. I would like a ruling on the votes needed to pass Second Substitute Senate Bill No. 6404, as amended by the House. (Page 1138–2000).

¹¹¹ See Rule 53: “No amendment to the budget, capital budget or supplemental budget, not incorporated in the bill as reported by the ways and means committee, shall be adopted except by the affirmative vote of sixty percent of the senators elected or appointed.” See also Rule 54: “...“Majority” shall mean a majority of those members present unless otherwise stated.”

REPLY BY THE PRESIDENT PRO
TEMPORE

President Pro Tempore Wojahn: “Senator Snyder, I am not prepared to make that ruling at the present time and would like to defer further consideration of Second Substitute Senate Bill No. 6404.” (Page 1138–2000).

RULING BY THE PRESIDENT PRO
TEMPORE

President Pro Tempore Wojahn: “In ruling on the point of inquiry raised by Senator Snyder on March 23, 2000, concerning the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House of Representatives, the President would first note that advisory rulings are not normally given by the President. For example, earlier this session, President Owen declined to rule on a point of order on whether a bill was properly before the Senate under Senate Rule 25, as long as that bill remained on Second Reading.

“The President reasoned that until such time as a bill is on final passage, it may be changed by the body. Second Substitute Senate Bill No. 6404, as amended by the House, will be on third reading if a motion to concur is adopted. The House amendment cannot be changed by the Senate. For these reasons, the President finds that Senator Snyder’s point of inquiry is timely.

“Section 501 of the House striking amendment to Second Substitute Senate Bill No. 6404 would allocate money from the emergency reserve fund to school districts to pay for increased fuel costs. Section 724 would transfer money from the emergency reserve fund to the multi modal transportation account for rail programs. RCW 43.135.045(2) provides that the Legislature appropriate moneys from the emergency reserve fund only with approval

of at least two-thirds of the members of each house of the Legislature. The President, therefore, finds that final passage of Second Substitute Senate Bill No. 6404, as amended by the House, would require a two-thirds vote of the Senate (thirty-three members).

“The President would distinguish an earlier ruling on Substitute Senate Bill No. 6404 in which President Owen ruled that a simple majority vote was required to transfer money from the emergency reserve fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account. However, Section 907 also expressly amended RCW 43.135.045(2) to remove the statutory requirement for a two-thirds majority vote to make the transfer. RCW 43.135.045 was adopted as part of Initiative 601 and the point of inquiry in the earlier instance concerned the number of votes necessary to amend Initiative 601. President Owen ruled that only a simple majority was necessary to amend Initiative 601. (Page 1139–2000).

**Unanimous Vote Needed to Excuse A
Member on the Floor**

PARLIAMENTARY INQUIRY

Senator Heavey: “A point of parliamentary inquiry, Mr. President. When a member is moved to be excused, and that excuse is challenged is it merely a majority of those present to either approve the excused or oppose the excused—and if so, and if they are not excused, are they listed as absent?” (Page 1220–2000).

REPLY BY THE PRESIDENT

President Owen: “Senator Heavey, if a member is absent, it would take a majority of the members to excuse them. If they are on

the floor, it would take a unanimous vote to excuse them from the vote.” (Page 1220–2000).

Vote Cannot Be Interrupted Once Started¹¹²

POINT OF ORDER

Senator Spanel: “A point of order, Mr. President, I don’t believe you asked for any debate. You immediately went to the roll call and I–.” (Page 838–1998).

REPLY BY THE PRESIDENT

President Owen: “We are in the middle of a roll call Senator Spanel. Your point is out of order at this time.” (Page 838–1998).

PERSONAL PRIVILEGE

Senator Spanel: “I rise to a point of personal privilege. Mr. President, I know that in the last hours of the last day of cutoff things get very hurried, but I am very disappointed that there was no debate on this last bill. I think that the President has usually asked, ‘Are there any remarks or any further remarks,’ and I did not hear that and I don’t believe any others around me did either and we were paying close attention. So I would ask that, at least, on further bills we do have time allowed for debate.” (Page 838–1998).

REPLY BY THE PRESIDENT

President Owen: “Senator Spanel, I appreciate your point, but I will make it crystal clear. The President does the same thing every time. He points out that we are on

final passage of such and such bill and I look around to see if anybody is standing or stands or is ready to stand to speak. I did exactly the same thing at that point and none of those factors were in play at the time, so I called for the vote. Once the vote has started, the vote cannot be interrupted, which was the case in this case. I appreciate your point and I will watch more closely, but I would urge the members to be prepared to stand up and speak at that point.” (Page 838–1998).

WAIVER - SEE TIMELINESS

(See the rulings under timeliness)

¹¹² See Senate Rule 39: “...When once begun the roll call may not be interrupted for any purpose other than to move a call of the senate”; **Reed’s Rule 232:**

“...After the first name has been called the call can not be interrupted, even by the arrival of the hour appointed for the adjournment of the assembly...”

APPENDIX I – Tax v. Fee Rulings

Tax v. Fee: Pre *League of Education Voters* Rulings

Prior to the Supreme Court’s opinion in *League of Education Voters v. State*, one of the most common parliamentary inquiries in the Senate was whether state revenue which would be raised by a bill was a “tax” or a “fee.” This was true of the older I-601 and I-960 rulings as well as for the more recent I-1053 rulings. All three initiatives (and I-1185) provided that any bill containing a tax increase be passed by a two-thirds majority vote of the Legislature.

On February 28, 2013, the State Supreme Court issued an opinion stating that the statutory supermajority vote requirement to raise taxes violates Article I, Section 22 of the State Constitution.¹¹³ The opinion had no effect on other provisions of these initiatives.

What follows are the Rulings of the Lieutenant Governor on the tax and fee issues prior to the Court’s opinion.

I-601¹¹⁴

Collection v. New Tax

In ruling upon the point of inquiry raised by Senator Schoesler that Senate Bill 5794 takes a two-thirds vote on final passage under statutes enacted by Initiative Number 601 because it increases revenue, the President finds and rules as follows:

The President begins by examining the language of I-601, codified at RCW 43.135.035, which states:

[A]ny action or combination of actions by the legislature that raises state revenue... may be taken only if approved by a two-thirds vote of each house...

There is no doubt that enactment of this measure could eventually result in additional revenue to the state. Application of I-601 is more, however, than a simple function of arithmetic. The question for our purposes is not simply whether or not additional money is expected by the state; rather, it is whether the legislature has taken actions which are raising new revenue or collecting revenue that is due.

¹¹³ No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

¹¹⁴ The relevant law is RCW 43.135.

The application of state cigarette taxes to tribes has been the subject of much debate and litigation. While a final disposition of this litigation is properly a matter for the courts, the President notes that this body is faced with a unique interplay between the legislative, executive, and judicial branches of government. At some level, litigation in the courts has established that state cigarette tax may be collected on non-tribal member purchases of tobacco products from tribal facilities or members. What has been lacking is a mechanism to collect this tax.

The bill before us provides a mechanism by which a settlement of this litigation may be implemented, allowing the Governor to negotiate with the Puyallup Tribe of Indians to collect a tax on tobacco products, some portion of which will then be sent by the Tribe to the state. The state will realize estimated income of about \$17 million per biennium that it had previously not collected, but this is not a new tax. Instead, this is simply a mechanism by which the state will settle with the Tribe on a debt that is owed, as has been determined at least in part by the courts.

This is similar to the state employing additional tax agents at the Department of Revenue to look into back taxes owed: such an action could definitely result in increased revenue to the state, but it is a matter of enforcement and collection, not authorization of new revenues. Likewise, this bill essentially empowers the Governor to try and collect on a debt that is owed; it is not an action of the Legislature to raise state revenue. The 2002 ruling to which Senator Schoesler referred, by contrast, expanded a tax to a new class of taxpayers. The measure before us neither creates a new tax nor expands the class of taxpayers to which it applies. For these reasons, I-601's supermajority provisions are not triggered, and Senator Schoesler's point is not well-taken. Only a simple majority vote of this body is needed for final passage of this measure. (Pages 514-15 – 2005).

Converting Fee to Tax

“Senator Schoesler has raised the question as to whether Substitute Senate Bill 5080 takes a simple majority or a two-thirds vote on final passage, because it implicates provisions of the law commonly referred to as Initiative 601. The President believes this is an important issue and wants to be clear in his explanation, and therefore asks for the body's patience as he issues this ruling.

The workings of the statutes enacted by I-601 are complex, made more complex by various amendments to the original law enacted by the Legislature over the years. At its heart, though, one of the primary limitations in this collective law is clear: The legislature may not take action which raises state revenue unless the enacting legislation is passed with a two-thirds vote of the Senate.

The key to this ruling, as with many of the President's past rulings, is whether or not the measure before us raises state revenue. The President has a long history of differentiating between taxes and fees when making this analysis. In general, enacting a tax increase requires a supermajority vote, while enacting a fee takes only a simple majority vote. The President has taken guidance from Article VIII, Section 1(c) of our state Constitution in making this determination. In short, a fee is collected for a specific, limited purpose. It is often placed into a specific account. This narrow nexus between the collection of the money and its limitation on being spent for a specific

purpose is crucial in classifying a revenue action as a fee and not a more general tax. By contrast, where there is not a specific connection between the collection of money and a limitation as to the purpose for which it will be spent, it is more likely that the revenue action is a tax. In making this analysis, the accounts into which fees are placed are important, but not controlling; more important is the limitation on the funds. The President does believe that the interplay between various accounts is far more controlling with respect to transfers, rainy day funds, and expenditure limits, but not for making the initial determination as to whether the revenue action is a fee or tax increase in the first place. A careful review of all of the President's past rulings will show this to be the overriding factor, and, while the President has never specifically ruled on the matter before us, this ruling is consistent with and continues past precedent.

Applying this analysis to the matter before the body, the President believes a brief recitation of the bill's background is helpful. The waste tire fee is not new to this body or enacted by this bill. As originally implemented, there was a solid nexus between the fee collected and the purpose for which the proceeds could be spent: \$1 per tire sold was collected, placed into a dedicated account, and the proceeds were limited to waste tire clean-up and prevention. Under this bill, the amount collected would be unchanged, but its distribution is significantly altered. While half of the money would essentially be deposited and spent as before, the other half would be placed into a more general account, with the only limitation being that it be spent for transportation purposes. And, in 2010, this bill would direct that all of the money would be placed into this more general account, with only the more general limitation. In so doing, the President believes the bill would convert a dedicated fee—which is not subject to I-601's supermajority provisions—into a general tax.

For these reasons, Senator Schoesler's point is well-taken, and passage of this bill will require a two-thirds vote of this body.¹¹⁵ (Page 519 - 2007).

Dedicated Account and Direct Distribution

President Pro Tempore Wojahn: "Senator Benton, the President finds that part of the money from the assessment goes to a dedicated account. The other part of the assessment is dedicated for local purposes and is not subject to state revenue until Initiative 601.

"Therefore, a simple majority vote is required and the point of order is not well taken." (Page 851–2000).

Dedicated Account vs. General Fund

President Owen: "In ruling upon the parliamentary inquiry raised by Senator Benton, regarding the number of votes necessary to pass Senate Bill No. 5352, the President finds that

¹¹⁵ An earlier ruling (Page 521-2002, "*Expanding the Class of Persons to Whom a Tax Applies Takes 2/3 Vote*," below) states that this means 33 votes, or 2/3 of the total membership.

Senate Bill No. 5352 raises the building code permit fee, which funds the building code council account.

“RCW 43.135.035 (Initiative 601) concerns the raising of ‘state revenues.’ The building code council account is a dedicated account and is not appropriated under the state general fund budget.

“The President, therefore, rules that the final passage of Senate Bill No. 5352 requires a simple majority vote.” (Page 418–2001).

Emergency Reserve Transfer Takes Two-Thirds Vote Unless Specifically Excepted

President Pro Tempore Wojahn: “In ruling on the point of inquiry raised by Senator Snyder on March 23, 2000, concerning the number of votes necessary to pass Second Substitute Senate Bill No. 6404, as amended by the House of Representatives, the President would first note that advisory rulings are not normally given by the President. For example, earlier this session, President Owen declined to rule on a point of order on whether a bill was properly before the Senate under Senate Rule 25, as long as that bill remained on Second Reading.

“The President reasoned that until such time as a bill is on final passage, it may be changed by the body. Second Substitute Senate Bill No. 6404, as amended by the House, will be on third reading if a motion to concur is adopted. The House amendment cannot be changed by the Senate. For these reasons, the President finds that Senator Snyder’s point of inquiry is timely.

“Section 501 of the House striking amendment to Second Substitute Senate Bill No. 6404 would allocate money from the emergency reserve fund to school districts to pay for increase fuel costs. Section 724 would transfer money from the emergency reserve fund to the multi modal transportation account for rail programs. RCW 43.135.045(2) provides that the Legislature appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the Legislature. The President, therefore, finds that final passage of Second Substitute Senate Bill No. 6404, as amended by the House, would require a two-thirds vote of the Senate (thirty-three members).

“The President would distinguish an earlier ruling on Substitute Senate Bill No. 6404 in which President Owen ruled that a simple majority vote was required to transfer money from the emergency reserve fund. In Section 907 of Substitute Senate Bill No. 6404, money was transferred from the emergency fund to the multi modal transportation account. However, Section 907 also expressly amended RCW 43.135.045(2) to remove the statutory requirement for a two-thirds majority vote to make the transfer. RCW 43.135.045 was adopted as part of Initiative 601 and the point of inquiry in the earlier instance concerned the number of votes necessary to amend Initiative 601. President Owen ruled that only a simple majority was necessary to amend Initiative 601. (Page 1139–2000).

Expanding the Class of Persons to Whom a Tax Applies Takes 2/3 Vote

President Owen: “In ruling upon the parliamentary inquiry by Senator Benton concerning the number of votes necessary to pass Senate Bill No. 6591, the President finds that the tobacco products tax currently does not apply to persons who purchase tobacco products from exempt

tribes (See *Washington v. Colville et. al* 2nd WAC 458-20-192). Senate Bill No. 6591 would broaden the definition of the term ‘distributor’ in the tobacco tax statute to include persons who purchase tobacco products from exempt tribes for resale.

“Initiative 601--RCW 43.135.035(1) provides that ‘any action or combination of actions by the legislature that raises state revenue....may be taken only if approved by a two-thirds vote of each house...’ According to the fiscal note, Senate Bill No. 6591 would raise almost \$2.5 million for the general fund in the remainder of this biennium.

“The President, therefore, finds that passage of Senate Bill No. 6591 requires a two-thirds vote (33 votes) on final passage.”

The President ruled that Senate Bill No. 6591 would require a two-thirds majority vote (33 votes) on final passage. (Pages 479; 521–2002).

Fee vs. Tax

President Owen: “In ruling upon the parliamentary inquiry by Senator Benton concerning the number of votes necessary to pass Second Substitute Senate Bill No. 5127, the President notes that RCW 43.135.035 (Section 4 of Initiative 601) requires a two-thirds majority vote for ‘any action or combination of actions by the Legislature that raises state revenue or requires revenue-neutral tax shifts.’ The President must analyze two issues. First, whether the revenue raised under Second Substitute Senate Bill 5127 is a ‘tax’ or a ‘fee,’ and, second is the dedicated fund under Second Substitute Senate Bill No. 5127 outside the scope of Initiative 601?”

“Fee’ or ‘tax’—It appears to the President that the word ‘revenue’ in this section means revenue in the form of new taxes or tax increases, not fees. ‘Taxes’ are intended to raise revenue for governmental purposes generally. ‘Fees’ raise revenue, also, but are charges to offset the cost of the specific governmental program facility or service provided in return for the fee. ‘Regulatory fees’ are charged to cover the cost of administering a regulatory program ‘User fees’ are charged in return for the fee. ‘Regulatory fees’ are charged in return for the use of a public service or facility.

“Second Substitute Senate Bill No. 5127 would impose a charge which in part relates to the cost of processing vehicle sales. That part is clearly a ‘fee’. The remainder of the charge, however, is transferred to a fund for the provision of trauma care services. The latter portion cannot properly be characterized as either a license fee or a user fee, because it is substantially unrelated to the vehicle sale. Therefore, it is properly characterized as a tax.

“Dedicated fund’—RCW 43.135.035 concerns the raising of ‘state revenues.’ Article VIII, Section (c)(4) of the State Constitution defines ‘general state revenues’ to exclude ‘moneys to be paid into and received from trust funds including, but not limited to monies received from tax levied for specific purposes.’ The President also notes that under RCW 43.135.025(4) and RCW 43.135.035(4), the state expenditure and trust account is not included in the state general fund.

“The President finds that the tax collected under Second Substitute Senate Bill No. 5127 would be placed into an account for the sole and specific purpose of funding trauma care. The President, therefore, rules that the tax is outside of the definition of ‘state revenues’ under RCW 43.135.035.

“For the foregoing reasons, the President rules that the final passage of Second Substitute Senate Bill No. 5127 requires a simple majority vote” (Page 763–1997).

Fee v. Tax – Changing Purpose of Fee

“Senator Haugen has raised the question as to whether Substitute Senate Bill 5080 takes a simple majority or a two-thirds vote on final passage, because of a prior ruling of the President on this measure. In that ruling, the President held that this measure in a previous form would take a two-thirds vote, under provisions of the law commonly referred to as Initiative 601, because it converted a specific fee into a general tax. Senator Haugen believes that adoption of the latest striking amendment to the bill changes this analysis, and has asked for a ruling based on this new language.

The President believes this is an important issue and wants to be clear in his explanation, because it involves the interplay of two earlier rulings, including one on an earlier version of this same bill. The President knows that this can be a complicated area of procedure and takes his role in this matter very seriously. In addition to answering the specific issue before us, this ruling may also provide guidance for the body in drafting for the future, and he appreciates the body’s patience as he issues this ruling.

Although the mechanics of the law may be complex, the President believes that the primary limitation in this collective law is clear: The legislature may not take action which raises state revenue unless the enacting legislation is passed with a two-thirds vote. Over the years, a body of parliamentary precedent has developed within the Legislature to differentiate between a specific fee, which takes only a simple majority vote, and a general tax increase, which would take a supermajority vote. While this is a reasonable distinction, it is not without its limits, and various rulings over the years should not be viewed by the body as an invitation to play games with revenue, names, and accounts to obfuscate the true nature of a tax increase in hopes that this will somehow circumvent the clear provisions of the law. Such machinations elevate form over substance and make a sham of the plain language of I-601.

With this in mind, the President reiterates that it is neither the name given the revenue action nor the name assigned to an account which is controlling. Calling something a fee when there is no nexus between its collection and how it is to be spent does not make it a fee for purposes of this analysis, regardless of the name of the account into which the proceeds are placed. Simply put, there must be a reasonable connection between the fee, those paying it, and the purpose on which its proceeds may be spent. Failing this, it is a tax, and a supermajority vote is required.

Applying this to the measure before us, the previous language in the bill converted a specific fee into a general tax by impermissibly broadening the purpose for which it could be spent—indeed, over time, it would have completely done away with any reasonable limitation on the proceeds, severing the connection that previously existed between a specific fee and a specific purpose. By contrast, the language before us now essentially maintains the original purpose, but would then add another purpose—road wear related maintenance on highways.

The question then becomes whether a \$1 fee collected on the sale of tires may be used for both waste tire removal purposes and road wear maintenance on highways? The President believes that

there is a logical connection between a fee collected on tires and these two purposes, and thus the fee remains a fee under the new language, it is not converted to a more general tax.

In so ruling, the President believes it would be instructive to issue a few cautionary notes. First, there is language in the bill relating to how and when proceeds would be transferred between accounts. It is important to understand that the mechanism for transfer between accounts has no bearing on the initial determination as to whether a revenue action is a fee or tax in the first place. The President will always begin by looking for a connection between the fee, those paying it, and the limited purpose for which it can be spent; accounts and transfers between them are not necessarily controlling for such an analysis. Likewise, while an intent section may be helpful, it simply provides guidance in looking at the measure as a whole, and it will not otherwise change the plain language of the substantive provisions of the bill.

Second, while the President cannot give a specific number of purposes which would be too many, thereby breaking the nexus between a fee and the limited use of its proceeds, it does seem that an excessive number of purposes tied to one limited fee would indicate that it is no longer a fee, but is instead a general tax increase. At some point, there might be so many purposes stated that the distinction between a fee and a tax increase is lost. The President issues these cautions not as a comment upon any policy choice made by this body, but simply as guidance for the future in meeting the parliamentary constraints of I-601.

For these reasons, the President responds to Senator Haugen's inquiry by ruling that only a simple majority of this body, 25 votes, is needed for final passage of this measure as recently amended by striking amendment 302." (Pages 1204-05 - 2007).

Fee v. Tax – Discrete Program

In ruling upon the point of inquiry raised by Senator Esser that Senate Bill 5069 takes a two-thirds vote on final passage under statutes enacted by Initiative Number 601 because it imposes a tax, the President finds and rules as follows:

As with many I-601 issues, the question before us turns on the difference between a "tax" and a "fee." A "tax" raises revenue for general government purposes. By contrast, a "fee" is charged to a specific class of payors to provide for a specific service, program, or facility.

In this case, a program is created whereby two cents per hour, in the form of a premium, is charged each employee, and the funds collected are placed into a specific account. The proceeds from the account may be spent by the Director of the Department of Labor & Industries for family leave purposes.

It is worth noting that neither the terming of the funds collected nor their deposit into a specific account is controlling for this analysis. Instead, what is key to this determination is whether the

funds are being collected from a specific group for a specific purpose relating to that same group. Here, only employees are paying into a program whereby only those same employees are eligible to take family leave for which they may be paid from funds collected under this program. It is true that participation is mandatory, and it is also true that not every employee may, at a given point in time, have family for which leave might be taken. Fees and taxes are both mandatory, so this point is not decisive. Likewise, while an employee's specific family circumstances may change, his or her eligibility does not: any employee who meets the criteria for family leave may take that leave.

Finally, the President notes that the funds raised under this program are not used for general government purposes, but only for the discrete family leave program established by the measure. For these reasons, the premium to be collected is properly characterized as a fee and not a tax. I-601's supermajority provisions are not triggered, and Senator Esser's point is not well-taken. Only a simple majority vote of this body is needed for final passage of this measure. (Page 692–2005).

Fee v. Tax – Past Precedent in Determining

In ruling upon the point of inquiry raised by Senator Honeyford that Engrossed Second Substitute House Bill 1359 takes a two-thirds vote on final passage under statutes enacted by Initiative 601 because it increases revenue, the President finds and rules as follows:

The President finds that determining whether a revenue measure takes a simple majority or a 2/3 vote is one of the most difficult rulings to make. In part, this is because the initiative was poorly written, and it does not clearly set forth definitions as to various categories of revenue. Therefore, the President must look to several sources of authority when making rulings, starting with the plain language of the law itself, court rulings if pertinent, and previous parliamentary rulings of this body.

The President believes that, although the law does allow for revenue increases, it is meant to limit these increases, and he has therefore endeavored to rule very narrowly in determining when a new revenue source is a fee, needing only a simple majority vote, rather than a tax needing a 2/3 vote to pass. In previous rulings, the President has maintained that there needs to be a relationship, or nexus, between the source of the revenue and the purposes for which its proceeds may be used. The President acknowledges that this determination can be somewhat subjective and difficult to determine absolutely. The situation is complicated further by the need of the body to tie together complicated matters of policy with the complexities of budgeting, all while trying to work within the constraints of this initiative and the constantly evolving body of case law and parliamentary authority. With this in mind, the President suggests that there is a need for the Legislature to put into law certain definitions as to taxes and fees for the purpose of raising revenue.

In the case before us, the President takes note of a similar ruling in 2001 where an increase in recording fees for real estate documents was used to fund a specific program on low-income housing. The President must note again, at this point, that just calling something a specific program but using the revenue for a very broad purpose would be improperly gaming the law, and the President, as he has in the past, would rule such an action as being, in fact, a tax which would need a 2/3 vote for passage.

The bill before us raises revenue through an increase in the recording fees on real estate documents to fund a program to provide housing for the homeless. This is a classic example of walking the fine line between a fee and a tax, and a specific versus a broad purpose. The President is concerned that the entirety of the bill's language could allow the revenue raised to be used for multiple purposes, such as providing many very worthy yet additional services that may not be directly related to housing. Because this is all new law, it is unclear precisely how, in practice, all of the proceeds will ultimately be used. Nonetheless, the President believes that he must rely on past precedent and defer to stated intent rather than speculation. The President therefore finds, in keeping with a past ruling on this same subject, that the revenue source is sufficiently limited so as to be considered a fee for a dedicated purpose.

For these reasons, the measure will take only a simple majority for final passage, 25 votes. (Pages 1540-41 - 2007).

Fee v. Tax – Payor and Purpose

In ruling upon the point of inquiry raised by Senator Benton that Senate Bill 5584 takes a two-thirds vote on final passage under statutes enacted by Initiative Number 601 because it imposes a tax, the President finds and rules as follows:

The President has long differentiated between taxes and fees for purposes of I-601 provisions, but a brief review of this precedent is instructive. A “tax” raises revenue for general government purposes. By contrast, a “fee” is charged to a specific class of payors to provide for a specific service, program, or facility. The analysis does not turn on whether a measure calls a specific revenue increase a tax or fee, but rather upon the nexus between the class of those paying and the purpose for which the funds are to be used.

In this case, only those renting cars from an airport will pay this fee. The fee proceeds will be used only to design and construct consolidated rental car facilities at airports, and to provide shuttle service between airport terminals and those facilities. No other class of persons will be paying this amount, and no funds raised by the fee will be used for any purpose other than those specifically related to airport rental car facilities. As a result, this revenue is properly characterized as a fee and not a tax.

For these reasons, I-601's supermajority provisions are not triggered, and Senator Benton's point is not well-taken. Only a simple majority vote of this body is needed for final passage of this measure. (Page 611–2005).

Local Taxes/Fees Not Covered

In ruling upon the point of inquiry raised by Senator Benton that House Bill 1386 takes a two-thirds vote on final passage under statutes enacted by Initiative Number 601 because it imposes a tax, the President finds and rules as follows:

The underlying measure authorizes a surcharge to be imposed at the county level, and no portion of this surcharge is paid to the state. Because this is a local fee, passage by this body is not an action which raises state revenue. For this reason, Senator Benton's point is not well-taken, and only a simple majority vote of this body is needed for final passage of this measure. (Page 1108–2005).

Necessary Fees

President Owen: “In ruling upon the point of order raised by Senator Honeyford concerning the number of votes necessary to pass Engrossed Substitute Senate Bill No. 5201, the President finds that the measure permits the Department of Health and local registrars to raise fees for the stated purposes of copying vital statistics and record searches, it is not clearly apparent that the raised fees are ‘user fees,’ because a portion of the fees are turned over to the State Treasurer and could possibly be used for general governmental purposes. As such, it is necessary to look behind the measure.

“In looking behind the statute, the President finds that although a portion of the fees raised under the statute are turned over to the State Treasurer, the fees are held by the treasurer in the general fund local account, not the general fund state account. The President also finds that currently the amount of fees collected for vital records and statistics services is not adequate to fund those services. The Vital Records and Statistics Program within the Department of Health is subsidized by the general fund.

“For these reasons, the President finds that the fees raised in Engrossed Substitute Senate Bill No. 5201 are, in fact, necessary to fund the governmental services for which the fees are paid. These fees are ‘user fees’ as defined by the resident in previous rulings, and are not ‘taxes’ as defined by Initiative 601.

“The President, therefore finds that Engrossed Substitute Senate Bill No. 5201 required only a simple majority vote on final passage.” (Page 694–1999).

Nexus Between Action and Purpose

“Senator Oemig has raised a question as to whether Substitute Senate Bill 5797, as amended, takes a simple majority or a two-thirds vote of this body on final passage, because it implicates provisions of the law commonly referred to as Initiative 601. This is an important issue, and the President thanks the members in advance for their patience as he sets forth his analysis.

The President believes that this is another case where the difference between a state action that raises revenue for a general purpose as opposed to a specific purpose is key to deciding whether the supermajority provisions of I-601 are triggered. This bill would implement a \$10 surcharge on special endorsements for motorcycle driver's licenses. This surcharge would be distributed into three different accounts: The bulk would be placed into an account that is used for motorcycle safety and education; another portion would be placed into an account for driver's licensing costs and traffic safety; and the final portion would be placed into an account for use on highway purposes and vehicle safety.

The President reminds the body that neither the term assigned to the revenue action nor the name of the account into which funds are to be deposited is controlling for this analysis. Instead, the President believes it is the nexus between the tax or fee to be charged and the limited purpose or purposes for which the proceeds may be spent. The more direct the connection between the money collected and the narrow purpose for which it may be spent, the more likely it is that this is a specific fee, not a general tax, and the supermajority provisions of I-601 do not come into play. On the other hand, where the purposes for which the proceeds may be spent are broad and the connection between the revenue and its purpose is less direct, it is more likely the action would be a general tax which would need a supermajority vote for final passage.

In a recent ruling,¹¹⁶ the President determined that a fee collected for waste tire prevention had been converted into a more general tax because the purpose for which the amount was collected had been greatly expanded to the point where the connection to the fee's original purpose was no longer maintained. Despite retaining the name of the fee, the resulting tax would have had little connection to waste tire prevention and could instead be used for any transportation purpose. This broke the direct connection between the collection and the purpose for which it was being used, impermissibly broadening the former limitation on use of proceeds, and therefore put it under the supermajority requirements of I-601.

By contrast, this measure's proposed surcharge can be likened to a user fee, with a fairly direct nexus between the fee to be collected and the purposes for which it may be spent. Although the surcharge will be placed into several accounts, some of which are more limited in their use than others, all have a sufficient connection to the fee collected from motorcycle driver's license applicants: Motorcycle safety is a very direct connection, as is the use of the proceeds to defray the costs of actual license issuance. Likewise, the use for highway purposes and vehicle safety is sufficiently limited and connected to motorcycle drivers, although the President would caution that this final purpose seems to be getting on the outside edge of what could reasonably be included in this analysis.

For these reasons, Senator Oemig's point is not well-taken, and passage of this bill will require a simple majority vote of this body, 25 votes." (Page 725 - 2007).

Not Re-Enacted by R-49

PARLIAMENTARY INQUIRY

Senator Rossi: "Mr. President, I rise to a point of parliamentary inquiry concerning how many votes are necessary to amend Initiative 601. Section 907, on page 219, says that the Legislature may transfer up to three hundred million dollars for the emergency reserve fund to the multi model fund. Mr. President, Article II, Section 1 (c) of the State Constitution provides as follows: 'No act, law approved by the majority of the electors voting thereon shall be amended or

¹¹⁶ This is the March 9, 2007 ruling, above, "Converting Fee to Tax."

repealed by the legislature within a period of two years following such enactment, except by a vote of two-thirds of all the members elected to each house.’

“However, in November of 1998, the people passed Referendum 49. Referendum 49 contains the following unequivocal language in Section 14: ‘Initiative Measure 601, Chapter 43.1.35 RCW is hereby reenacted and reaffirmed.’ The word ‘reenacted’ is the operative word, Mr. President. This is the word that needs to be interpreted. In doing so, you need not, and I respectfully submit should not look beyond that word.

“In determining legislative intent, the court looks first to the language of a statute. The court must give effect to the statute’s clear language. Specifically, in this case, the word ‘reenact’. It is clear, it must therefore be accorded its ordinary meaning. The word’s ordinary meaning can be derived from the dictionary. *The American Heritage Dictionary, Second Edition* defines the term ‘enact’ as follows: ‘to make, a bill for example, into law.’ The same dictionary defines the term ‘reenact’ as follows: ‘to enact again, re-enact a law.’ Thus the term ‘reenact’ plainly means to enact a law a second time.

“I submit that it is clear that in November, 1998, the people enacted Initiative 601 into law a second time. Any amendment to Initiative 601, by this Legislature this session can only be made by two-thirds vote of each house under Article II, Section 1(c) of the State’s Constitution.” (Page 842–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the parliamentary inquiry by Senator Rossi concerning the number of votes necessary to amend Initiative 601, the President agrees that the issue here is the meaning of the term, ‘I-601 is hereby reenacted.’ In Section 14 of Referendum 49, that is, whether the passage of Section 14 by the voters in November of 1998 insulated I-601 in its entirety from amendment by the Legislature without a two-thirds vote through November, 2000.

The President interpreted the word ‘reenacted’ differently in a 1998 ruling on Senator Snyder’s point of order that the bill that became Referendum 49 contained two subjects in violation of Senate Rule 25. At that time, the President noted that the changes to I-601 referenced in Section 14 of Referendum 49 were made to accommodate the shift of Motor Vehicle Excise Tax funds and did not constitute a second subject in the measure. The President based his ruling, in part, on the fact that the text of I-601 was not set forth in full in Referendum 49.

“The President believes that he must be consistent in his rulings, so that this body will maintain a degree of certainty in the conduct of its business. For these reasons, the President believes that passage of an amendment to I-601—seven years after that measure’s passage—requires a simple majority vote.” (Page 842–2000).

Raising Revenue

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator Benton concerning the number of votes necessary to pass Senate Bill No. 6515 in light of the passage of Initiative 695,

the President finds that Initiative 695 requires that ‘any tax increase imposed by the state shall require a vote of the people.’ The President finds that Senate Bill No. 6515 is a measure which permits counties to assess a \$120 filing fee for mandatory arbitration requests.

“Because the measure does not impose a tax, the President need not rule at this time whether the absence of a referendum clause on a measure which does impose a tax constitutes an amendment to Initiative 695 requiring a two-thirds vote under Article 2, Section 1 of the State Constitution.

“The President, therefore, rules that a simple majority is necessary to pass Senate Bill No. 6515.” (Page 354–2000).

PARLIAMENTARY INQUIRY

Senator Benton: “Thank you, Mr. President. I had also requested as a part of my point of order a ruling on 601 implications. Your ruling did not address the 601 question, only the 695.” (Page 354–2000).

RULING BY THE PRESIDENT

President Owen: “Senator Benton, the President did not understand that that was a part of your inquiry. Since you make that inquiry, I am prepared to rule that since this measure does not raise state general revenues, it does not take a two-thirds vote under Initiative 601.” (Page 354–2000).

Revenue & Historical Levels

President Owen: “In ruling on the parliamentary inquiry raised by Senator Benton concerning the number of votes necessary to pass Substitute Senate Bill No. 5240, the President finds that the measure permits the Department of Ecology to raise vehicle emissions inspection fees from \$15 to \$26. Current law requires that the department set the fee at the minimum whole dollar amount necessary to cover its administration costs and the cost of contractor charges. Current law also require that any surplus be deposited in the state general fund.

“Because the department must round up the inspection fee to the nearest whole dollar amount, there has existed a surplus for general fund purposes of forty cents to ninety-four cents per fee in six of the last eight years. Although Substitute Senate Bill No. 5240 will allow the department to raise the overall inspection fee to cover the costs of the program, the department will still round up the fee to the nearest whole dollar amount. The amount which is deposited in the general fund will not increase over historical levels and ‘state revenues’ will not be raised under RCW 43.135.035. For this reason the President rules that Substitute Senate Bill No. 5240 requires a simple majority vote on final passage.” (Page 474–2001).

Surcharge v. Revenue

POINT OF ORDER

RULINGS OF LIEUTENANT GOVERNOR BRAD OWEN

Senator West: “A point of order, Mr. President. First of all, I want to make clear that I am not an enemy of this bill and I would like to see it pass. Mr. President, I would like for you to rule whether this is a fee or a tax and whether it requires a simple majority or a two-thirds vote on final passage under Initiative 601. I would point out the differences between a fee and a tax. A fee is a charge for a particular service. You pay a fee to, perhaps, use something that government has or to be provided with a service. A fee typically pays for the cost of providing that service. A tax, on the other hand, is an amount of money levied, but then is used for some purpose other than the transaction upon which it was paid. In this case, you will be paying the county clerk an amount of money for the privilege of recording documents. If you call it a fee, it would imply that the cost of recording those documents is imbedded in that and that is the sole purpose for that money—to call it anything other than a tax. It is a tax if that money, then, is used for some other stated purpose and in this bill it is used for housing. Again, I am not an enemy of the bill, but I want it clear that we are either levying a tax, which I believe this is, or we are assessing a fee. So, I would like the Lieutenant Governor to rule on that important point.” (Page 593–2001).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator West, concerning the number of votes necessary to pass Second Substitute Senate Bill No. 5936, the President finds that the measure requires county auditors to collect a three dollar surcharge for the recording of instruments. Up to ten percent of the surcharge would be retained by county auditors to cover the cost of collection. Forty percent of the remainder of the surcharge would be deposited into the Washington housing trust account. Sixty percent of the remainder of the surcharge would be retained by counties for low income housing projects.

“Because no part of the surcharge would be considered ‘state revenues’ under RCW 43135.135 (Initiative 601), the President finds that final passage of Second Substitute Senate Bill No. 5936 requires a simple majority vote.” (Page 593–2001).

Two-Part Test

POINT OF ORDER

Senator West: “Mr. President, I rise to a point of order. I submit that Engrossed Substitute Senate Bill No. 5811 requires a two-thirds vote under Initiative 601 and I would ask that the President rule accordingly. Regardless of what it may be called in the bill, in artful drafting, the term ‘contribution’—the President must first decide whether it is a fee or whether it is a tax requiring a two-thirds vote. It obviously raises state revenues. The President, in the past, has ruled that there are two kinds of fees. Fees that are regulatory or fees that are license fees that cover the cost of administrating a regulatory program or user fees that are imposed on users—only those users of a public service or a public facility. Any other general government revenue would be a tax and I would ask the President there.

“Secondly, in arguing that 601 applies, I submit that because Engrossed Substitute Senate Bill No. 5811 is intended to benefit every person in the state of Washington—the general citizenry who use telephone service. It is anticipated that under this bill that would be everybody. It is a case

of first impression that this is clearly, clearly a good budgeting practice that would be covered if the funding were available in the general fund, rather than in this dedicated mechanism.

“Given that it is a tax, in my opinion, it is a tax for the general welfare. Mr. President, I ask you to rule that it is subject to 601. To rule otherwise, will start this Senate and this Legislature down the road of manipulating the budget process to avoid Initiative 601 and subvert the will of the voters. Should this matter be taken to the courts, I would mention, Sir, that the Supreme Court has ruled ‘In case of doubt, taxing statutes are construed most strongly against the government and in favor of the tax payer.’ I can give you the cite for that case.

“It would seem that just as tax statutes are construed against the interest of those who wish to raise revenues—and in favor of taxpayers—Initiative 601 which was intended to protect taxpayers should be construed in every case of ambiguity in favor of taxpayers interest. So, for those forgoing reasons, Mr. President, I would ask that you would find that Engrossed Substitute Senate Bill No. 5811 does require a two-thirds vote on final passage.” (Page 641–1999).

RULING BY THE PRESIDENT

President Owen: “In ruling on the point of order raised by Senator West regarding the number of votes needed to pass Engrossed Substitute Senate Bill No. 5811, Senator West is correct in that the President’s previous rulings have taken a two step approach in analyzing whether a measure constitutes an action by the Legislature that ‘raises state revenues or requires revenue neutral tax shifts’ under Initiative 601.

“First, the President asks whether the measure is a fee, which is not subject to a two-thirds vote, or a tax, which may be subject to a two-thirds vote. The President had defined two kinds of fees: ‘regulatory’ or ‘license’ fees that cover the cost of administering a regulatory program; and ‘user’ fees that are imposed only on users of a public service or facility. The stated purpose of the charge upon telecommunications carriers under Engrossed Substitute Senate Bill No. 5811 is as follows: ‘{to} benefit all telecommunications ratepayers in the state by ensuring that there exists a modern telecommunications network to which all citizens and business have reasonable access.’ The charge upon telecommunications carriers under Engrossed Substitute Senate Bill No. 5811 would be placed into a dedicated account for the sole and specific purpose of funding universal telephone service. The account is expressly not part of the state treasury nor is the account subject to appropriation.

“The President, therefore, finds that the tax is outside of the definition of ‘state revenues’ under RCW 43.135.035. For the foregoing reasons, the President rules that the final passage of Engrossed Substitute Senate Bill No. 5811 requires a simple majority vote.

“The President would like to comment on Senator West’s remarks that this ruling may subject the budget process—in Senator West’s words—to ‘manipulation.’ The President is bound to interpret the language of Initiative 601 to the extent that the drafters of Initiative 601 left a perceived loophole. It is for the Legislature to amend if it so desire, not the President.” (Page 643–1999).

Two-Thirds Vote Needed to Shift Tax Burden

RULING BY THE PRESIDENT

RULINGS OF LIEUTENANT GOVERNOR BRAD OWEN

President Owen: “In ruling on the parliamentary inquiry by Senator Johnson concerning the number of votes necessary to pass Substitute House Bill No. 1345, the President finds that RCW 43.135.035 provides that “any action”...by the Legislature that raises state revenue or requires revenue neutral tax shifts may be taken only if approved by a two-thirds vote of each house....”

“Substitute House Bill No. 1345 provides a property tax exemption for certain low income rental housing owned by nonprofit organizations. The result of this exemption would shift a tax burden to nonexempt property owners.

“The President, therefore, rules that final passage of Substitute House Bill No. 1345 requires a two-thirds vote or thirty-three members of the Senate.” (Page 1288–1999).

REMARKS BY SENATOR SNYDER

Senator Snyder: “Mr. President, it is probably unusual, but I would like to make a remark or two. I couldn’t get on my feet before you made your decision, even though I am sure it wouldn’t have changed it. I think that you are probably referring to the statute that was created by 601. I think it talks about tax increases, but I don’t know about tax shifts. Also, we passed—the Legislature—a few years ago Referendum 47. That passed the Legislature with thirty votes in the Senate and sixty votes in the House of Representatives. I don’t know if you could make your ruling retroactive or not, but it would seem that maybe Referendum 47 would be in some jeopardy. Also, we passed—we increased the amount of property tax exemptions for senior citizens from time to time.

“It seems to me that in the future those would all come under a two-thirds vote. Other times, we have eliminated sales tax from certain businesses and replaced them with a higher B & O tax. It seems like there would be a lot of different bills that come through here that are probably—some agreed to and some of them that are not—but I am not saying that your ruling isn’t proper and the right one, but it certainly is going to be a big change on how we look at a lot of legislation that goes through here. Particularly, that Referendum 47 bill that was passed.” (Page 1288–1999).

REPLY BY THE PRESIDENT

President Owen: “Senator Snyder, the President would make just merely a brief comment. First, the language requires revenue neutral tax shifts that is taken from the statute. Secondly, this ruling is consistent with the previous rulings this session by the President, and third, he would take any other issue that you brought up as that issue is brought up, too, and the President will rule upon it at that particular time, and fourth, things are going to change because of the fact that Initiative 601 was passed by the people of the state of Washington that requires this new interpretation or interpretations of what, in fact, does require a fifty percent and what, in fact, does require two-thirds. It is the responsibility of the President to enforce the law as he is sworn to do.” (Page 1288–1999).

FURTHER REMARKS BY SENATOR SNYDER

Senator Snyder: “I might be taking a little liberty here, too, but also one of these times, I would hope that maybe one of these measures won’t require a two-thirds vote and that it would give us a reason to get 601 over and test it in the court. I would think that the court in being

consistent would rule that you cannot amend the State Constitution by an initiative like they ruled when they made their decision on Term Limits about a year and half ago.” (Page 1288–1999).

I-695

Fee vs. Tax

President Owen: “In ruling upon the point of order by Senator Benton concerning the number of votes necessary to pass Senate Bill No. 6515 in light of the passage of Initiative 695, the President finds that Initiative 695 requires that ‘any tax increase imposed by the state shall require a vote of the people.’ The President finds that Senate Bill No. 6515 is a measure which permits counties to assess a \$120 filing fee for mandatory arbitration requests.

“Because the measure does not impose a tax, the President need not rule at this time whether the absence of a referendum clause on a measure which does impose a tax constitutes an amendment to Initiative 695 requiring a two-thirds vote under Article 2, Section 1 of the State Constitution.

“The President, therefore, rules that a simple majority is necessary to pass Senate Bill No. 6515.” (Page 354–2000).

PARLIAMENTARY INQUIRY

Senator Benton: “Thank you, Mr. President. I had also requested as a part of my point of order a ruling on 601 implications. Your ruling did not address the 601 question, only the 695.” (Page 354–2000).

RULING BY THE PRESIDENT

President Owen: “Senator Benton, the President did not understand that that was a part of your inquiry. Since you make that inquiry, I am prepared to rule that since this measure does not raise state general revenues, it does not take a two-thirds vote under Initiative 601.” (Page 354–2000).

Simple Majority Required When Initiative Not Amended

POINT OF ORDER

Senator Rossi: “Mr. President, I rise to a point of order, and a point of inquiry. Section 210 of Substitute Senate Bill No. 6231 requires that the Director of the Department of Labor and Industries charge a new fee for the inspection of certain installed telecommunications systems. I submit that this fee would constitute ‘tax’ for the purposes of section 2(1) of I-695. For support for this interpretation, I would respectfully direct the President to page 8 of a memorandum from Solicitor General Narda Pierce to all Assistant Attorneys Generals, dated December 22, 1999. Second 2(1) of I-695 requires that ‘any tax increase imposed by the state shall require voter approval.’

“Mr. President, on February 11, in response to a point of inquiry concerning the number of votes necessary to pass Senate Bill No. 6515 in light of I-695, you noted as follows: ‘The President need not rule at this time whether the absence of a referendum clause on a measure which does impose a tax constitutes an amendment to I-695, requiring a two-thirds vote under Article 2, Section 19 of the State Constitution.’ Mr. President, the time has come for such a ruling. Substitute Senate Bill No. 6231 does impose a tax, and does not contain a referendum clause.

“Mr. President, my point of order: Substitute Senate Bill No. 6231 does not contain a referendum clause in violation of section 2(1) of I-695. As such, the measure should be set down.

“Mr. President, my contingent point of order is on the number of votes necessary to pass Engrossed Substitute Senate Bill No. 6231. If you decline to rule that Engrossed Substitute Senate Bill No. 6231 requires a referendum clause, then I submit that because the measure does not contain a referendum clause, it effectively amends I-695. Under Article 2, section 1 of the Constitution, I respectfully submit that the passage of Engrossed Substitute Senate Bill No. 6231 would therefore require a two-thirds majority vote.” (Page 500–2000).

RULING BY THE PRESIDENT

President Owen: “In ruling upon the point of order by Senator Rossi concerning Engrossed Substitute Senate Bill No. 6231, the President finds in accordance with prior rulings, first, that the question of whether or not a referendum is required is not in order, and, second, that the measure is not an amendment to Initiative 695, because it does not change any provision of the initiative. Therefore, a simple majority vote is required to pass the measure.” (Page 500–2000).

I-960¹¹⁷

Agencies Setting Fees

“In ruling upon the point of order raised by Senator Stevens as to the application of Initiative Number 960 to Substitute Senate Bill 5352, the President finds and rules as follows:

Senator Stevens argues that this bill improperly delegates toll and ferry rate setting authority to the Transportation Commission. Her argument seems to be first, that this open-ended grant of authority amounts to a tax requiring a super-majority vote; and second, that the actual delegation of this authority to an agency is improper under I-960.

The President begins by noting that it is not clear that this measure, in fact, directly sets any tolls or ferry rates. Assuming for the sake of argument that it does, the President would then apply the traditional analysis in determining whether or not proposed revenue is a tax or a fee. Chiefly, the test is whether there is a nexus between the charge to be paid and the purpose for which the proceeds may be spent. The President believes that, in general, a fairly tight connection between

¹¹⁷ The relevant law is codified at RCW 43.135.035(6), which provides, “For the purposes of chapter 1, Laws of 2008 [I-960], ‘raises taxes’ means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.”

tolls being paid by those using the tolled facility is present. Likewise, there is a direct connection between those paying ferry fares and their use of ferries. Thus, even were this measure presumed to directly set those charges—and the President is not convinced that it does—these charges would likely still need only a simple majority vote to enact.

As to whether the Legislature may delegate rate-setting authority to an agency in the first place, the President again notes that the language in I-960 is far from a model of clarity, and Senator Stevens is correct that the initiative does seem to include language meant to limit the delegation of revenue-setting authority to agencies. The language in the initiative is, however, imprecise as to its application or enforcement, stating only, in its Section 14, “No fee may be imposed or increased in any fiscal year without prior legislative approval...” Whether this prevents any delegation of fee-setting authority in the first place, or whether his section means only that the Legislature must ultimately approve a fee set by an agency, is unclear. The President need not decide this question, however, as ambiguities within an initiative are more properly decided by a court of law. Simply put, this is a legal question, not a parliamentary one, and therefore the President does not issue an opinion on this matter.

For these reasons, Senator Stevens’ point is not well-taken, and this measure will take only a constitutional majority for final passage.” (Page 872—2009).

Broader Social Purpose – Tax

In ruling on the inquiry raised by Senator Benton as to the application of Initiative Number 960 to Engrossed Substitute Senate Bill 5912, the President finds and rules as follows:

At issue is the imposition of a three-dollar fee on certain court filings, the proceeds of which will be used to publicly fund Supreme Court campaigns. While this measure’s goal of enhancing the integrity of our Supreme Court is laudable, the President believes that this purpose is of overall benefit to society at large. While a filing charge paying for a judicial purpose—such as the daily functioning of the courts—would very likely be a fee, paying for campaigns seems only remotely connected with the operations of the courts. It is possible, for example, that a candidate who benefits from the fee by having his or her campaign paid for with public funds would not prevail in the election, never even serving on the bench. This broader social purpose of publicly-funded campaigns, arguably of great benefit to the general public, is not sufficiently connected to the fee and those paying it. The nexus between those paying and the benefit is too indirect, and thus this charge is more properly considered a tax under the provisions of I-960.

For these reasons, this measure will need a two-thirds vote of this body for final passage. (Page 435—2010).

Clarification: Agency Determination

“In ruling upon the point of order raised by Senator Brandland as to the application of Initiative Number 960 to Senate Bill 6096, the President finds and rules as follows:

As was the case with several other recent rulings involving I-960, this bill is argued to be a clarification of existing law, not the imposition of a new tax. The President has, over this past Session, struggled with the provisions of I-960 and noted on a number of occasions the difficulties with interpreting some of the ambiguities and inconsistencies with its provisions. In fact, the President will use this opportunity to comment upon the fact that the range of issues brought forward for parliamentary decision have grown astronomically in complexity, often involving the interplay of court decisions, past legislative actions, contradictory agency determinations, and complicated legislative history. The President often finds that he must unwind all of these matters and arguments simply to get to the proper procedural starting point in making these I-960 rulings.

The bill before us presents exactly this sort of complicated procedural background. What should be a fairly straightforward application of the provisions of I-960 to the plain language of the bill has quickly become a review of competing Department of Revenue determinations and court filings. The President would note that the Department's own apparent inconsistencies with interpreting a statute that has remained unchanged since 1987 clouds the issue significantly. This is every bit as troubling to the President as it must be to the individual taxpayers involved, and the President would note as an aside that this is at least the third case of which he is aware this year where an agency changing its mind after issuing an earlier determination has resulted in chaos, expense, and heartache for many members of the public. It is one thing for there to be a genuine dispute as to the meaning of a statute; it is quite another for the agency charged with implementing that statute to reverse itself. In this case, for example, we are left with little or no explanation as to why the Department of Revenue changed its original interpretation from that issued in a 1993 determination. Likewise, it is unclear as to why the Department did not seek an earlier change to the law if this was truly an issue of clarification. The President—and the public—are left to wonder as to the Department's rationale and motivations. The President points this out to illustrate both the difficulties he faces in making a ruling now, given the past unclear history, as well as the disservice he believes is done to the general public by the Department's reversals. The Legislature may wish to consider actions to prevent such reversals or inconsistent interpretations by agencies that have such dramatic negative consequences on our state citizens.

That said, while the President would prefer that the Department had been more consistent over the years, he does believe the Legislature nonetheless has a valid interest in stepping forward to clarify this law. As near as the President can determine from the complex history of the matter, it appears that the weight of factors present in the bill itself and the procedural history come down in favor of clarification as opposed to imposition of a new tax. Factors such as the present disposition of the court case, the tax payment history involved, and deference to the intent language and provisions of the bill favor finding this to be a proper clarification, not an action that "raises revenue" pursuant to I-960.

For these reasons, the President believes this measure will take only a simple majority vote on final passage." (Page 1927—2009.)

Clarification v. New Tax

“In ruling upon the point of order raised by Senator Honeyford as to the application of Initiative Number 960 to House Bill 2075, the President finds and rules as follows:

While the bill does many things, the subject matter at issue is the tax treatment of what are commonly known as “digital goods.” The President believes it is appropriate to begin by taking note of the history of this matter. It is fair to say that the application of certain taxes to digital goods has been unclear over the years, largely because of the effects that the ever-changing technology continues to have on the marketplace. In 2007, as part of the adopted budget, the Legislature mandated, and I quote, “a study of the taxation of electronically delivered products”—that is, digital goods. In late 2008, that study was completed and submitted, and it contained numerous findings and recommendations. It is fair to characterize the bill before us as implementing some of those recommendations and setting forth definitions and parameters relating to digital goods taxation.

The President does not necessarily agree, as some have argued, that the supermajority provisions of I-960 can be avoided simply by offsetting or depleting the same account or fund into which new revenue is to be deposited. Put another way, the President believes it is appropriate to look at both the individual provisions within a bill as well as the total effect of the bill as a whole. The President would therefore caution the body to be mindful of this with respect to bills which attempt to balance out one set of revenue increases against another set of revenue decreases or exemptions which act to offset one another, because the President also finds that the initiative’s language on this matter clearly unclear; however, he is bound to implement its provisions just as with any other law.

In this particular case, this bill contains provisions that clearly raise revenue and others that clearly lower expected revenue. In sum, however, the President believes that this bill is most properly viewed as a clarification of the law with respect to the taxation of digital goods. Whatever the intent and limitations of I-960, the President believes the Legislature must, as a branch of government charged with law-making authority, retain its inherent powers and duties to clarify its own mandates and its prior policies. This power is not unlimited, of course, and there may be situations where legislative action may go beyond clarification and come to be a tax increase in its own right, but such is not the situation presented today. A genuine dispute existed as to the application of taxes to digital goods; the Legislature chose to study the matter for the purpose of clarifying the issue, and, based on that study, make the reasonable definitions and clarifications embodied in this bill.

For these reasons, the President believes this measure will take only a simple majority vote on final passage.” (Page 1692—2009).

Application of Current Tax to New Process

In ruling on the Point of Order raised by Senator Padden as to whether 3E2SHB 2565 raises taxes in a manner that requires a 2/3 supermajority vote, the President finds and rules as follows:

3E2SHB 2565 concerns the taxation of “roll your own” cigarettes. Such cigarettes are made by a consumer who purchases loose tobacco and paper tubes for holding the tobacco. A machine available in many Washington stores allows the consumer to have the loose tobacco inserted into the paper tubes. This form of cigarette manufacturing is not subject to the cigarette tax under current Washington law.

This situation is most similar to the Legislature’s action in 2009, when it acted to clarify another pre-existing tax by confirming that it applied to digital goods. Here, the Legislature has already enacted the tax, but is simply applying that tax to a cigarette process that did not exist until recently. As the President previously ruled, the Legislature retains the power to clarify existing law and apply it to new technologies, and such an action does not trigger the supermajority provisions of I-1053.

The bill also imposes a licensing fee on businesses that operate a roll your own machine. Licensing fees generally do not constitute tax increases, and there is no showing that the licensing fee in this instance is a tax.

For these reasons, the President finds that the bill does not “raise taxes” as defined in Initiative 1053, and will require a constitutional majority for final passage. Senator Padden’s point is not well-taken. (Page 1299 - 2012).

Constitutionality

“In ruling upon the inquiry raised by Senator Sheldon as to the application of Initiative Number 960 to Senate Bill 6931, as well as the point raised by Senator Brown as to the Constitutional duties of this body, the President finds and rules as follows.

The President begins by addressing the argument raised by Senator Brown as to a possible conflict between the Constitution and I-960 with respect to the number of votes required to pass a measure. The Constitution is the preeminent law of our state, and all other laws and rules applicable to this body are unquestionably subordinate to the Constitution. Nonetheless, the President has taken an oath to uphold all of the laws of our state and nation, including both Constitutional and statutory law. Whatever the merits of Senator Brown’s legal argument—and the President is inclined to agree with her arguments—it is not for him to decide legal matters. Under our Constitutional framework of separation of powers, the authority for determining a legal conflict between the Constitution and a statute is clearly vested with the courts. It is for this reason that the President has a long-standing tradition of refraining from making legal determinations, and he does so, again, in this case. Senator Brown’s arguments are cogent and persuasive, but the proper venue for these legal arguments is in the courts, not in a parliamentary body. For these reasons, the President believes he lacks any discretion to make such a ruling, and he explicitly rejects making any determination as to the Constitutionality of I-960 and instead is compelled to give its provisions the full force and effect he would give any other law.

Turning now to the issue raised by Senator Sheldon as to whether or not the surcharge imposed by this measure is a tax or a fee, the President takes note of his prior rulings and the plain language of I-960 in making this determination. In so doing, it is worth noting that I-960 includes a very broad definition of tax, covering ‘any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account.’ The President still believes that there is a distinction between a ‘tax’ and a ‘fee,’ just as there was under Initiative Number 601—indeed, I-960, itself, speaks of both taxes and fees. As a result, the President’s earlier body of precedent for determining fees and taxes under I-601 is still instructive, albeit working within this tighter definition of ‘tax’ set forth in I-960.

Harmonizing these past rulings with the specific language of I-960, the President believes that there must be a very close nexus between those paying a fee and the purpose for which that fee is being used; absent this tight connection, a revenue action is more properly characterized as a general tax, not a specific fee.

Applying this analysis to the measure before us, the President does find a connection between collecting a charge on liquor and spending the proceeds on increased drunk driving patrols and drug treatment, but he believes the nexus is not sufficiently direct under the tighter definition of I-960—that is, the connection between those paying the surcharge and the purposes for which it may be used is not narrow. The purposes are very noble and desirable, but they are not directly connected to those paying the surcharge: Many who pay the surcharge will benefit from increased patrols, but so will the general populace; likewise, almost all who pay the surcharge will not need drug treatment programs. Because the purposes for which the surcharge’s proceeds will be spent are not specifically connected with those who will pay the surcharge, it should more properly be characterized as a tax, not a fee. For this reason, a supermajority vote of this body—that is, 33 votes—is needed for final passage, and Senator Sheldon’s point is well-taken.” (Pages 654-55—2008).

Court Action – Comity/Deference

“In ruling upon the point of order raised by Senator Zarelli as to the application of Initiative Number 960 to House Bill 1088, the President finds and rules as follows:

The President believes it is appropriate to begin by taking note of the history of this matter. The RCW being amended was last acted upon by the Legislature in 1957. Recently, however, a trial court ruled that the Department of Revenue’s past interpretation of this law was erroneous, holding that the law did not include all “recurring charges billed to consumers” within the definition of “gross revenue” for purposes of collecting public utility district privilege taxes. This bill is sought by the Department as a clarification of the law, and it is fair to say that this measure would restore the definition of “gross revenue” to the Department’s long-standing interpretation of this term.

The President agrees that this bill could be deemed a clarification, and would respectfully take issue with the court’s interpretation of the law as it has existed since 1957. Nonetheless, under long-standing comity and separation of powers principles, the President is obligated to defer to another branch of government acting in its duly-constituted role in interpreting law. As recently

as 2006, for example, the President took note of a court decision which declared Initiative Number 872 unconstitutional. In that ruling, the President acknowledged that a trial court's ruling may or may not prove to be the final word on a legal matter, and that subsequent appeals or other legal actions could dramatically alter the earlier decision. In this sense, the action could be viewed as unsettled or uncertain, at least until another court has acted. In resolving this problem, the President noted then—as he does now—that, “It is precisely because of this uncertainty, however, that the President cannot engage in speculative analysis, but must instead confine himself to the state of the law as it exists at the time of his ruling.” Such is also the case with the matter before the body today, as the President must again take note of a proper court interpretation affecting the measure before us.

Applying this same precedent to the matter before us, it may be that a later court will revisit or change the trial court's decision, but the President notes that this decision is, presently, the law of the case and binding on the Department, at least with respect to those litigants. The Department quite reasonably is seeking this legislation to clarify that its interpretation was correct all along. This may well be a clarification of the law, but, viewed with the court's decision, it is one which amounts to a state action which raises revenue considered a tax under I-960—a tax which could not otherwise be collected without this bill. If this measure is not passed, the litigants—and perhaps other groups similarly situated—will not pay this PUD privilege tax on as broad of a definition of gross revenue, at least until a higher court changes the trial court's ruling. Such subsequent court action is speculative. By contrast, the proposed re-imposition of this tax by legislative action is not speculative, it is in the plain language of the measure before the body.

For these reasons, the President believes this is a measure which triggers the supermajority provisions of I-960. This measure will take a 2/3 vote on final passage.” (Page 1692—2009).

Fee v. Tax¹¹⁸

“In ruling upon the inquiry raised by Senator Sheldon as to the application of Initiative Number 960 to Senate Bill 6931, as well as the point raised by Senator Brown as to the Constitutional duties of this body, the President finds and rules as follows.

The President begins by addressing the argument raised by Senator Brown as to a possible conflict between the Constitution and I-960 with respect to the number of votes required to pass a measure. The Constitution is the preeminent law of our state, and all other laws and rules applicable to this body are unquestionably subordinate to the Constitution. Nonetheless, the President has taken an oath to uphold all of the laws of our state and nation, including both Constitutional and statutory law. Whatever the merits of Senator Brown's legal argument—and the President is inclined to agree with her arguments—it is not for him to decide legal matters. Under our Constitutional framework of separation of powers, the authority for determining a legal conflict between the

¹¹⁸ The relevant law is codified at RCW 43.135.035(6), which provides, “For the purposes of chapter 1, Laws of 2008 [I-960], ‘raises taxes’ means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.”

Constitution and a statute is clearly vested with the courts.¹¹⁹ It is for this reason that the President has a long-standing tradition of refraining from making legal determinations, and he does so, again, in this case. Senator Brown's arguments are cogent and persuasive, but the proper venue for these legal arguments is in the courts, not in a parliamentary body. For these reasons, the President believes he lacks any discretion to make such a ruling, and he explicitly rejects making any determination as to the Constitutionality of I-960 and instead is compelled to give its provisions the full force and effect he would give any other law.

Turning now to the issue raised by Senator Sheldon as to whether or not the surcharge imposed by this measure is a tax or a fee, the President takes note of his prior rulings and the plain language of I-960 in making this determination. In so doing, it is worth noting that I-960 includes a very broad definition of tax, covering 'any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account.' The President still believes that there is a distinction between a 'tax' and a 'fee,' just as there was under Initiative Number 601—indeed, I-960, itself, speaks of both taxes and fees. As a result, the President's earlier body of precedent for determining fees and taxes under I-601 is still instructive, albeit working within this tighter definition of 'tax' set forth in I-960.

Harmonizing these past rulings with the specific language of I-960, the President believes that there must be a very close nexus between those paying a fee and the purpose for which that fee is being used; absent this tight connection, a revenue action is more properly characterized as a general tax, not a specific fee.

Applying this analysis to the measure before us, the President does find a connection between collecting a charge on liquor and spending the proceeds on increased drunk driving patrols and drug treatment, but he believes the nexus is not sufficiently direct under the tighter definition of I-960—that is, the connection between those paying the surcharge and the purposes for which it may be used is not narrow. The purposes are very noble and desirable, but they are not directly connected to those paying the surcharge: Many who pay the surcharge will benefit from increased patrols, but so will the general populace; likewise, almost all who pay the surcharge will not need drug treatment programs. Because the purposes for which the surcharge's proceeds will be spent are not specifically connected with those who will pay the surcharge, it should more properly be characterized as a tax, not a fee. For this reason, a supermajority vote of this body—that is, 33 votes—is needed for final passage, and Senator Sheldon's point is well-taken." (Pages 654-55—2008).

Fines/Purpose

"In ruling on the inquiry raised by Senator Benton as to the application of Initiative Number 960 to Senate Bill 6638, the President finds and rules as follows.

The President does believe that many of his prior rulings on Initiative Number 601 are good precedent and instruction for applying similar provisions of I-960. The President has reviewed

¹¹⁹ Senator Brown did challenge this ruling in the Supreme Court, which issued a ruling on March 5, 2009, *Brown v. Owen*, No. 81287-0. In an En Banc opinion (9-0), the Court declined to take up or decide the constitutional issues posed by I-601 and I-960.

past I-601 rulings for application to the situation presented by this measure. Consistent with that past precedent, the President notes that the tax at issue—whatever its purpose—is purely local in nature, and is a preexisting local tax, at that. It is true that state law originally authorized this tax, but its collection and usage remain local. I-960 relates to state taxes and fees, and thus it has no application to this measure’s distribution of proceeds from a local tax.

For these reasons, Senator Benton’s point is not well-taken, and this measure will need only a simple majority vote of this body for final passage.” (Page 237 - 2010).

Increasing Fees Beyond Fiscal Year

“In ruling upon the points of order raised by Senator Schoesler as to the application of Initiative Number 960 to Engrossed House Bill 3381, the President finds and rules as follows:

The President believes it is appropriate to restate the arguments made by Senator Schoesler, because there was some confusion on the Floor. Senator Schoesler does not argue that this measure takes a 2/3 vote because it raises taxes under I-960. Instead, he argues, first, that a 2/3 vote is needed because this measure amends I-960 within two years of its enactment; and second, that the measure violates I-960 because certain provisions impose or increase fees beyond the current fiscal year.

With respect to amending the initiative, the President finds that no statutory language of I-960 is amended by this measure. Senator Schoesler’s argument as to an indirect amendment is a legal argument, and the President has consistently refrained from making legal decisions.

Likewise, with respect to the imposition of fees beyond the fiscal year, it is debatable whether this measure does or does not impose some fees beyond the current fiscal year. Whatever the merits of this argument, however, this would again be a legal determination, not a parliamentary question.

For these reasons, Senator Schoesler’s points are not well-taken, the measure is properly before us and will take only a simple majority vote for final passage.” (Page 1325—2008).

OFM v. Legislative Roles

In ruling on the inquiry raised by Senator Schoesler as to the application of Initiative Number 960 to Engrossed Substitute Senate Bill 5261, the President finds and rules as follows.

I-960 contains many provisions, but, for purposes of my analysis, its major sections may be properly segregated as conferring obligations on two branches of government: First, the Office of Financial Management, as part of the executive branch, is charged with providing certain fiscal analysis and public notice when a bill imposes a tax or a fee. Second, I-960 imposes certain obligations upon the Legislature, requiring supermajority votes on and referral to the voters of particular measures under certain circumstances relating to the imposition of tax increases. In this particular case, Senator Schoesler is challenging OFM’s determination that this measure is neither

a tax nor a fee, and therefore those provisions of I-960 which require OFM to perform fiscal analysis and provide public notice are not triggered.

The President reminds the body that he provides parliamentary rulings, not legal advice. While the President can properly rule on those provisions of I-960 which affect this body and the votes required for a particular measure under consideration, he has no authority to decide the propriety of actions taken by coordinate branches of government. The President renders no opinion as to whether OFM should have applied the mandates of I-960 to this particular bill; instead, under long-established precedent with respect to comity, he defers to OFM's judgment that it has complied with its obligations under I-960. It is not the role of the presiding officer to second-guess the legal judgments of another branch of government.

The President wishes to make clear that he is deferring to OFM's judgment only with respect to its determination of its own duties under I-960; he reserves the right to independently determine whether a measure is a tax or fee for purposes of the ultimate vote needed in this chamber, and need not defer to OFM's prior opinion on this subject with respect to such a ruling. In such a case, his judgment will be independent from that of OFM, and he will analyze each measure on its own merits, irrespective of prior OFM action.

In this particular case, Senator Schoesler's inquiry related to whether or not OFM should have provided fiscal analysis and public notice under I-960. Because it is not the President's role to make a determination as to the legal obligations of a coordinate branch of government, the President finds that this measure is properly before the body for consideration, and Senator Schoesler's point is not well-taken. (Pages 149-50—2008).

Past Precedent on I-601 Instructive

“In ruling on the inquiry raised by Senator Benton as to the application of Initiative Number 960 to Senate Bill 6638, the President finds and rules as follows.

The President does believe that many of his prior rulings on Initiative Number 601 are good precedent and instruction for applying similar provisions of I-960. The President has reviewed past I-601 rulings for application to the situation presented by this measure. Consistent with that past precedent, the President notes that the tax at issue—whatever its purpose—is purely local in nature, and is a preexisting local tax, at that. It is true that state law originally authorized this tax, but its collection and usage remain local. I-960 relates to state taxes and fees, and thus it has no application to this measure's distribution of proceeds from a local tax.

For these reasons, Senator Benton's point is not well-taken, and this measure will need only a simple majority vote of this body for final passage.” (Page 423—2008).

Revenue Neutrality

“In ruling upon the point of order raised by Senator Holmquist as to the application of Initiative Number 960 to Engrossed Second Substitute Senate Bill 5809, the President finds and rules as follows:

The President begins by reminding the body that neither he nor they adopted the law that was enacted by I-960. I-960 was drafted with very strict parameters, and the President—like the members of this august body—is charged with enforcing its strictures. It may be that the strict language of I-960 results in harsh or undesirable consequences, but this is a result of the strict language of the initiative, not the judgment of the President.

That said, the President is once again called upon to determine whether an action of the Legislature may be properly characterized as a tax or a fee. The President begins by addressing the threshold question of whether the proposed language of the measure is a revenue increase in the first place. While it is true that the net effect to individual rate payors is unchanged, the President believes that this measure contains two significant but separate actions: the first reduces the rate of tax paid for traditional unemployment purposes; the second increases the rate paid into a fund for the purpose of retraining unemployed workers, which is presently not permitted under the federal unemployment program.

The President believes that simply achieving a net effect of payor neutrality does not dispose of the I-960 implications. Instead, the President believes that the proper analysis is to view the actions separately: that is, one which reduces the amount paid, and another that increases the amount paid. It is this second action that is the focus of this ruling. The President believes that it is the rate of tax—not the funds—which is transferred under this measure. As a result, the question then becomes a determination of whether there is a sufficient nexus between the purpose on which the raised revenue may be spent and those who are paying the increase. In this case, the President believes that there is not a sufficient nexus. While it may come to pass that those paying the increase will receive an indirect benefit from this action, it seems more appropriate to characterize the benefit as being one to society at large. For this reason, the President believes this second action is more properly characterized as a tax increase that requires a 2/3 vote under the plain language of I-960.

For these reasons, Senator Holmquist’s point is well-taken, and this measure as presently drafted will take a 2/3 vote of this body for final passage.” (Page 579—2009).

Tolls & Ferry Rates

“In ruling upon the point of order raised by Senator Stevens as to the application of Initiative Number 960 to Substitute Senate Bill 5352, the President finds and rules as follows:

Senator Stevens argues that this bill improperly delegates toll and ferry rate setting authority to the Transportation Commission. Her argument seems to be first, that this open-ended grant of

authority amounts to a tax requiring a super-majority vote; and second, that the actual delegation of this authority to an agency is improper under I-960.

The President begins by noting that it is not clear that this measure, in fact, directly sets any tolls or ferry rates. Assuming for the sake of argument that it does, the President would then apply the traditional analysis in determining whether or not proposed revenue is a tax or a fee. Chiefly, the test is whether there is a nexus between the charge to be paid and the purpose for which the proceeds may be spent. The President believes that, in general, a fairly tight connection between tolls being paid by those using the tolled facility is present. Likewise, there is a direct connection between those paying ferry fares and their use of ferries. Thus, even were this measure presumed to directly set those charges—and the President is not convinced that it does—these charges would likely still need only a simple majority vote to enact.

As to whether the Legislature may delegate rate-setting authority to an agency in the first place, the President again notes that the language in I-960 is far from a model of clarity, and Senator Stevens is correct that the initiative does seem to include language meant to limit the delegation of revenue-setting authority to agencies. The language in the initiative is, however, imprecise as to its application or enforcement, stating only, in its Section 14, “No fee may be imposed or increased in any fiscal year without prior legislative approval...” Whether this prevents any delegation of fee-setting authority in the first place, or whether his section means only that the Legislature must ultimately approve a fee set by an agency, is unclear. The President need not decide this question, however, as ambiguities within an initiative are more properly decided by a court of law. Simply put, this is a legal question, not a parliamentary one, and therefore the President does not issue an opinion on this matter.

For these reasons, Senator Stevens’ point is not well-taken, and this measure will take only a constitutional majority for final passage.” (Page 872—2009).

I-1053

Action of the Legislature

“In ruling upon the point of order raised by Senator Tom as to the application of Initiative Number 1053 to Engrossed Substitute Senate Bill 5942 as amended by the House, the President finds and rules as follows:

As Sen. Tom states, this bill privatizes the distribution of liquor within the state. In part, it requires that the state issue a Request for Proposal regarding such distribution. Section 2 of the bill requires that any person responding to that RFP must provide a variety of information, including a description of any “changes to retail profits generated as a result of the lease or contract.” In essence, Sen. Tom’s argument is that, to the extent that the contract changes the amounts paid by retail establishments, the contract will result in increased taxes paid by those establishments.

It is possible that Senator Tom is correct: the contract may alter the prices paid by retail establishments, and this could have a corresponding impact on prices paid by consumers. If retail prices are increased, then an argument can be made that taxes have increased through passage of

this bill. This is not, however, the only possible outcome. It is possible that there will be no change; it is possible that changes at the wholesale level will not be passed on to consumers; it is even possible that efficiencies utilized by a private distributor could result in lower consumer prices. However, as the President has previously stated, on a challenge made to a prior bill involving the sale of liquor: “it is not possible, at this point in time, to determine with precision which scenario will ultimately come to pass.” (Ruling re ESHB 1087; April 18, 2011.)

Each potential outcome depends on several factors: the nature and content of each response to the RFP, the market for the sale of liquor, and the actual contract, if any, entered into by the state. Each of these actions will occur outside of the legislature, and the provisions of I-1053 are triggered only by legislative action.

For these reasons, only a constitutional majority vote of twenty-five is necessary and Senator Tom’s point is not well-taken.” (Pages 2057-2058 - 2011).

Benefit v. Payment

“In ruling upon the point of order raised by Senator Holmquist Newbry as to the application of Initiative 1053 to Engrossed Substitute Senate Bill 5581, the President finds and rules as follows:

Procedural challenges to revenue bills have been relatively common since the enactment of Initiative 601, followed by Initiatives 960 and 1053. These challenges often have a significant impact on revenue legislation, as the result of each challenge determines the number of votes necessary for a matter to pass. The President has attempted to approach these challenges in a consistent manner, and strongly believes that consistency provides guidance to members and legislative staff in drafting legislation that increases revenue. Certainly, some of the challenges have been easier to decide than others. In this particular instance, excellent arguments have been made to support both sides of the ultimate question – whether this assessment is a tax or a fee – and the President believes that this is one of the more difficult decisions he has been called upon to make.

Substitute Senate Bill 5581 addresses the collection of revenue referred to as a "safety net assessment." The bill does two separate things: it reduces the Medicaid rates paid to nursing homes for the care of Medicaid eligible patients, and it collects an assessment to supplement those reduced rates. This challenge focuses on the collection and distribution of the assessment, arguing that it constitutes a tax under I-1053.

Generally, the bill imposes an obligation on licensed nursing homes to pay an assessment based on the number of beds in each facility, but only for those beds occupied by private pay and Medicaid patients. After federal funds are received and added to the assessments, those amounts are used to pay for the care of Medicaid patients in licensed nursing homes. The bill carefully excludes certain nursing homes from the obligation to pay the assessment, such as continuing care facilities, publicly owned facilities, hospitals, and smaller nursing homes. However, to the extent that those facilities may have Medicaid patients, they will benefit from the increased rates provided

by the assessments. For almost all individual nursing facilities, the amount paid and the benefit received will vary from one another, and these variances are likely to be significant.

Past rulings by the President have recognized that a measure may be appropriately described as a fee if there is a sufficient nexus between those paying the fee or tax, and the purpose for which the revenue is used. Several additional elements contribute to this analysis, such as the common elements linking members of the group obligated to pay, whether the amounts are paid into an account with limited purposes, and the specific purpose or purposes for which the revenue may be used.

The latter two elements – paying the funds into a limited account, and limiting the purpose for which the funds may be used – weigh in favor of this measure being considered a fee.

Admittedly, there is not a perfect symmetry between the individual institutions that may pay the assessment and those that receive the benefit of the increased Medicaid rates. The precise amounts paid will vary between nursing homes, and the Medicaid rate payments will also vary, because the mix of beds – private pay and Medicaid – will be different for each institution and will also change over time for each individual institution.

But even though individual circumstances may vary, the President cannot ignore that the nursing home industry provides a broad range of vital services for Washington citizens, particularly elderly citizens. These services are paid for through private resources, Medicare, and Medicaid. Most nursing homes – although not all of them – have a mix of all three. Accordingly, the President views this bill as imposing an assessment on the licensed nursing home industry, and returning that assessment to the industry in the form of increased Medicaid rates. Neither I-1053 nor the President’s prior rulings have required that a fee fall equally on individual payors, nor that its benefits be the same for each recipient. Simply put, “there must be a reasonable connection between the fee, those paying it, and the purpose on which its proceeds may be spent.” (April 4, 2007, Journal Pages 1204-05).

For these reasons, the President believes this measure will take only a simple majority vote on final passage, and Senator Holmquist Newbry’s point is not well-taken.” (Page 1820 - 2011).

Delegation of Fee-Setting Authority

“In ruling upon the point of order raised by Senator Benton, the President finds and rules as follows:

Senator Benton has raised the question of whether I-1053 prohibits the legislature from delegating fee setting authority to an agency. While the President believes that this is more properly a legal question on which he does not rule, this is an issue of first impression and the President believes that some explanation is appropriate, particularly as the number of votes necessary to pass a measure is impacted by the initiative.

The language of the initiative does not address the legislature's authority to delegate fee setting authority. Instead it simply restates the previous requirement that new or increased fees be approved with a majority vote in both houses of the legislature.

This result also comports with an Attorney General opinion¹²⁰ on the exact issue. Although the President is not necessarily bound by such opinions, he has a history of considering and giving some deference to these, and notes that the Attorney General's opinion states that the legislature retains its authority to delegate fee setting authority to appropriate state agencies, such as the Transportation Commission. The President believes that this result is consistent with the plain language of the initiative.

There does not appear to be any dispute that SB 5700 addresses a possible increase in fees. Under the terms of the initiative, the legislature's power to establish an increase in fees requires simply a majority vote; accordingly, the legislature's power to delegate such authority also may be based on a majority vote, and does not require a supermajority vote that the initiative requires for tax increases.

For these reasons, Senator Benton's point is not well taken, and this measure is properly before the body, requiring a constitutional majority for final passage." (Page 391 - 2011).

Mitigation

"In ruling upon the point of order raised by Senator Tom as to the application of Initiative 1053 to Engrossed Substitute Senate Bill 542, the President finds and rules as follows:

The bill before us imposes fees that are to be used for essentially two purposes: first, a smaller portion of the proceeds is used to administer the program; and second, the larger portion of the proceeds is directed to the Tobacco Prevention and Control Account, to be used for tobacco usage prevention and treatment programs.

There is no doubt that the use of proceeds for administrative purposes is properly characterized as a fee. The remaining question is whether there is a sufficient connection between those paying the fee and portion of the proceeds used for tobacco usage prevention and treatment. The President believes there is a sufficient nexus. While Senator Tom is correct that those seeking to use tobacco products may have no immediate interest in prevention or treatment programs, it is possible that they may utilize these programs at a later date. Moreover, it is proper to view the fee collected as being used to mitigate potential harmful effects which may result from the act contemplated. In

¹²⁰ The opinion is informal, communicated in a letter to Senator Pam Roach dated December 20, 2010. On page 6, it reads, "...[I-1053] does not otherwise constrain the manner in which the legislature proceeds [in setting fees]. The legislature could vote on bills that approve the imposition or increase of fees in any number of ways, which need not be fully cataloged here. For example, the legislature could enact a statute directly imposing or increasing a fee in a specified amount. It could alternatively delegate the authority to impose or increase fees to an administrative agency, so long as the legislation set forth sufficient standards or guidelines to govern the delegation of authority. *Peninsula Neighborhood Ass'n*, 142 Wn. 2d at 335-36."

either case, there is a clear connection between those paying and the purpose for which the fee may be used.

For these reasons, the President believes this measure will take only a simple majority vote on final passage, and Senator Tom's point is not well-taken." (Page 1861 - 2011).

Tax v. Fee – Past Precedent on I-960

"In ruling upon the point of order raised by Senator Ericksen as to the application of Initiative Number 1053 to Substitute Senate Bill 5251, the President finds and rules as follows:

Because the language with respect to revenue increases found in Initiative Number 1053 is essentially the same as that found in Initiative Number 960, the President believes that his past rulings differentiating a "tax" from a "fee" are useful precedent in making similar rulings for I-1053.

The President believes that almost every user of an electric vehicle can expect to drive that vehicle upon public roads. The fees to be paid on electric vehicles pursuant to this measure must be used only for highway purposes, and every account into which the proceeds are deposited is similarly limited to expenditure for road purposes. The President believes this direct connection between those paying the fee and the purpose for which the proceeds can be used satisfies the nexus test, and the revenue is properly viewed as a fee.

For these reasons, the President believes this measure will take only a simple majority vote on final passage, and Senator Ericksen's point is not well-taken." (Page 768 - 2011).

Transfer of Funds

"In ruling upon the point of order raised by Senator Sheldon as to the application of Initiative Number 1053 to Engrossed House Bill 1087 as amended by the Senate, the President finds and rules as follows:

The President believes that this is an issue of first impression, and he asks for the body's patience as he sets forth this analysis.

Section 949 of the bill as amended transfers eighty-five million dollars from the liquor revolving fund to the state general fund for the next fiscal biennium. Senator Sheldon argues that, because there may be insufficient funds in the account presently, this action amounts to a tax under I-1053 because additional revenue would be necessary to make up any shortfall.

Dealing first with the transfer, the President believes that merely moving money that is already raised between accounts—without actually raising the money or changing the specific purpose for which it may be used at the point or time of collection—is not, in and of itself, an action which "raises revenue" as that term is used in I-1053. This practice, commonly known as "sweeping" of

accounts, does not constitute any sort of revenue increase, and thus only a simple majority vote is needed to effect such a transfer.

Senator Sheldon argues, however, that the sweeping of the account when it has an insufficient balance effectively results in a tax increase, because some other state action will be needed to cover the shortfall. It is possible—perhaps even likely—that Senator Sheldon is correct: the transfer will leave an insufficient balance in the account which the Liquor Control Board can only make up by raising liquor prices. This is not, however, the only possible outcome. Possibly the Board would make additional service or facility cuts, or perhaps it would take some other action to cover the difference. Perhaps the estimates in this budget are incorrect, and there will be sufficient sums to cover the transfer. In fact, perhaps many possible things could happen, many different scenarios could eventuate—but it is not possible, at this point in time, to determine with precision which scenario will ultimately come to pass.

The President can determine, however, that all of the possibilities rely on subsequent agency action, not legislative action—and it is legislative action that I-1053 addresses. Because the account transfer language found in the bill in and of itself is not an action or combination of actions of the legislature which raises revenue, it does not require a two-thirds vote.

For these reasons, only a constitutional majority vote of twenty-five is necessary and Senator Sheldon's point is not well-taken." (Pages 1466-1467 - 2011).

APPENDIX II – Summary of Votes Needed - Subjects

SUMMARY OF SENATE VOTES NEEDED						
Subject	Present			Total Membership		
	Majority	2/3	Unanimous	Majority	60%	2/3
Adopt an Amendment	X					
Advance/Revert to Order of Business (Rule 17)	X					
Amend an Initiative within 2 years						X
Call for/Demand the Question (Rule 36)	X					
Call of the Senate (Rule 24)	X					
Censure/Punish a Senator (Rule 7(5))				X		
Committee of the Whole (Rule 52)	X					
Convening – Time, Lunch, Dinner (Rule 15)	X					
Debt – Contracting, Funding					X	
Excuse a member – in general (Rule 7(4))	X					
Excuse a member who is on the floor (Rule 39)			X			
Expel a Member/Impeach						X
Final passage (Rule 65; WA Const. Art. II, § 22)				X		
Gambling – amend a gambling bill	X					
Gambling – expansion					X	
I-601 triggers						X
Limit Debate (Rule 29)	X					
Lunch/Dinner Break – Suspension (Rule 15)	X					
Motion	X					
Move between Orders of Business	X					
Override a veto		X				
Quorum				X		
Reading – Suspend 10 days before <i>Sine Die</i> or 3 days before Cutoff (Rule 62)	X					
Reconsideration	X					
Relieve a Committee of a Bill (Rule 48)				X		
Rules – Adopt/Amend (Rule 35)				X		
Rules – Suspend (Rule 35)		X				
Special Order – Set	X					
Special Order – Postpone	X					

Notes: Generally, 1/6 = 9 votes 60% = 30 votes 2/3 = 33 votes

Rule 54: “‘Majority’ shall mean a majority of those members present unless otherwise stated

RULINGS OF LIEUTENANT GOVERNOR BRAD OWEN

APPENDIX III – Votes Needed Table – Math/Numbers

Minimum Votes Required for Passage					
Number Present	2/3's Present	2/3's Total	60% Total	Majority Total	Majority Present
49	33	33	30	25	25
48	32	33	30	25	25
47	32	33	30	25	24
46	31	33	30	25	24
45	30	33	30	25	23
44	30	33	30	25	23
43	29	33	30	25	22
42	28	33	30	25	22
41	28	33	30	25	21
40	27	33	30	25	21
39	26	33	30	25	20
38	26	33	30	25	20
37	25	33	30	25	19
36	24	33	30	25	19
35	24	33	30	25	18
34	23	33	30	25	18
33	22	33	30	25	17
32	22	33	30	25	17
31	21	33	30	25	16
30	20	33	30	25	16
29	20	33	30	25	15
28	19	33	30	25	15
27	18	33	30	25	14
26	18	33	30	25	14
25	17	33	30	25	13
24	16	33	30	25	13
23	16	33	30	25	12
22	15	33	30	25	12
21	14	33	30	25	11
20	14	33	30	25	11
19	13	33	30	25	10
18	12	33	30	25	10
17	12	33	30	25	9
16	11	33	30	25	9
15	10	33	30	25	8
14	10	33	30	25	8
13	9	33	30	25	7
12	8	33	30	25	7
11	8	33	30	25	6
10	7	33	30	25	6
9	6	33	30	25	5

APPENDIX IV – Index to Senate Rules

Matter	INDEX TO SENATE RULES	
	Rule	Comments/Notes
Adjourn	Rule 38	Always in order unless under Call of the Senate
Amending by reference prohibited	Rule 26	
Amendments to be in writing	Rule 64	
Call of the Senate	Rule 24	
Chambers, use of	Rule 9	
Committee – reports due 1 hour prior to Session	Rule 45 11.	
Committee Bills	Rule 60	
Committee of the Whole	Rule 52	Prohibited
Committees – creation	Rule 41	
Committees – majority report	Rule 45 5.	
Committees – meet during Session	Rule 46	Need leave to meet during Session or caucus – takes simple majority
Committees – minority report	Rule 45 8.	
Committees – no secret votes	Rule 45. 10	
Committees – notice	Rule 45 1.	
Committees – open to public	Rule 45 3.	
Committees – quorum	Rule 45 4.	
Committees – reconsideration	Rule 45 7.	
Committees – roll call	Rule 33 7.	1/6 of committee needed to sustain
Concur, non-concur, etc.	Rule 67	
Debate	Rule 29	
Debate, limiting	Rule 29	
Decorum	Rule 1 2., Rules 7 & 29	
Division	Rule 31	Matter of right any Senator may demand
Employees	Rules 5 & 6	
Employment Committee	Rule 51	
F&O	Rule 8	
Floor, admission to	Rule 10	
Gubernatorial appointments	Rule 69	
Impeaching motives prohibited	Rule 29	
Impeachment & censure	Rule 7	
Introduction of bills	Rule 56	By noon
Joint Resolutions & Memorials	Rule 58	
Lobbyists	Rule 13	
Meals	Rule 15	Suspend by majority
Motions, rank/precedence	Rule 21	
Orders of business	Rule 17	
Pocket Veto	Rule 63	
Points of order – appeal	Rule 32	

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INDEX TO SENATE RULES		
Matter	Rule	Comments/Notes
Prefiling	Rule 55	1 st Monday in December
President Pro Tempore	Rule 2	
President's duties	Rule 1	
Previous Question	Rule 36	Sustained by 3 Senators
Quorum	Rule 16	
Reading	Rule 27	
Reading – first	Rule 63	
Reading – second	Rule 64	
Reading – third	Rule 65	
Readings, suspension	Rule 62	
Recall bill from committee	Rule 48	
Reconsideration	Rule 37	
Reed's Application	Rule 40	Supplements unless direct conflict
Referrals	Rule 63	
Resolutions	Rule 20	
Roll call	Rule 22	
Roll Call - Demand	Rule 39	1/6 present (usually, 9)
Rules Committee	Rule 50	
Rules Committee referral	Rules 49, 63	
Scope & object	Rule 66	
Secretary of the Senate	Rule 3	
Security	Rule 14	
Sergeant at Arms	Rule 4	
Single Subject	Rule 25	
Special order of business	Rule 18	
Subcommittees	Rule 42	
Subpoenas	Rule 43	Rules committee involved; RCW 44.16
Three minute rule	Rule 29	
Tie vote	Rule 22 5.	
Voting	Rule 22	

RULINGS OF LIEUTENANT GOVERNOR BRAD OWEN

APPENDIX V – Summary of Senate Motions

SUMMARY OF SENATE PARLIAMENTARY MOTIONS							
	Motion	Rules	Debatable?	Amendable?	Second?	Vote Needed*	Notes
PRIVILEGED	Adjourn	Rule 21, 38; Reed's 168, 169, 198, 201, 176	No	No	None	Majority of those present.	In the absence of another time, convening time is 10 am (Rule 15). Always in order unless under Call of the Senate or in a roll call vote.
	Recess/Go at Ease	Rule 21; Reed's 168, 174, 198, 201	No	No	None	Majority of those present.	Cannot amend, but can defeat and propose different time in new motion.
	Reconsider	Rule 21, 37; Reed's 202-11	No	No	Maker on prevailing side	Majority of those present.	Special timing rules for when the underlying matter may be brought up.
	Call of the Senate	Rule 21, 24	No	No	2 others (3 total)	Majority of those present.	Can be made even in a roll call vote.
	Roll Call	Rule 21-22, 39	No	No	1/6 of those present (usually, 9)	Sustained by 1/6 present.	Cannot be interrupted except for a Call of the Senate.
	Question of Privilege	Rule 21, 33; Reed's 168, 178-80, 198	No	No	None	Any Senator may rise.	These are points of personal privilege.
	Orders of the Day	Rule 17, 21	No	No	None	Majority of those present.	Go in order from 1-9, unless other motion.
INCIDENTAL	Point of Order	Rule 1, 21, 32; Reed's 181-86, 199	Yes	No	None	Decision of the President.	One argument typically allowed for each side.
	Appealing Ruling	Rule 1, 21, 32; Reed's 185	Yes	No	None	Majority of those present.	Each member may only speak once.
	Suspend the Rules	Rule 21, 35; Reed's 181, 189-92, 199	No, except for maker and rebuttal	No	None	2/3 of those present.	Special rules for 2 nd and 3 rd reading near cutoff/ <i>Sine Die</i> (need simple majority).
	Reading Papers	Rule 21, 27; Reed's 187-88, 199	No	Yes	None	Majority of those present.	Practice is to allow reading unless there is an objection.
	Withdraw a Motion	Rule 20, 21; Reed's 181, 189, 190, 199	No	No	None	Majority of those present.	Practice is to allow withdrawal unless there is an objection.
	Division of a Question	Rule 21, 31; Reed's 181, 151-53, 193, 199	No	No	None	Any Senator may demand.	Only parts which may function independently may be divided.
SUBSIDIARY	Lay on the Table (1 st Rank)	Rule 21; Reed's 197	No	No	None	Majority of those present.	Does not carry the main question unless so specified.
	Demand the Previous Question (2 nd Rank)	Rule 21, 36; Reed's 123-27, 197, 201, 268, 269	No	No	2 others (3 total)	Majority of those present.	Ends debate immediately, except maker may close debate.

RULINGS OF LIEUTENANT GOVERNOR BRAD OWEN

SUMMARY OF SENATE PARLIAMENTARY MOTIONS							
	Motion	Rules	Debatable?	Amendable?	Second?	Vote Needed*	Notes
SUBSIDIARY	Postpone to a Day Certain (3 rd Rank)	Rule 21; Reed's 118, 197, 201, 256	Yes	Yes	None	Majority of those present.	Once motion is decided, cannot bring this motion again on the same day at the same stage of the proceedings.
	Commit or Recommit (3 rd Rank)	Rule 21, 68; Reed's 119, 120, 197, 201	Yes	Yes	None	Majority of those present.	Once motion is decided, cannot bring this motion again on the same day at the same stage of the proceedings.
	Postpone Indefinitely (3 rd Rank)	Rule 21; Reed's 121-22, 197, 201	Yes	No	None	Majority of those present.	Once motion is decided, cannot bring this motion again on the same day at the same stage of the proceedings. <i>Question postponed indefinitely cannot be raised again all Session.</i>
	Amend (4 th Rank)	Rule 21; Reed's 129-61, 197	Yes	Yes	None	Majority of those present.	Limited to amendments in the second degree.
MISCELLANEOUS	Special Order of Business	Rule 18	Yes	Yes	None	Majority of those present.	Senate may complete prior business afterwards.
	Recall a Bill from Committee	Rule 48	Yes	Yes	None	Majority of total membership.	Need to be in the Ninth Order.
	Division (vote)	Reed's 231	No	No	None	Any member may demand.	Also known as a Rising Vote.
	Motions in relation to other motions (priority/propriety)	Reed's 200, 201	No	No	None	Any member or the President may question.	Necessarily takes precedence of all other motions, except point of order.

* Rule 54: "Majority' shall mean a majority of those present unless otherwise stated."

Reed's Rule 198 – Privileged Questions: "Privileged questions are those which arise out of the needs of the assembly as a deliberative body. They have precedence over the main question, and over all subsidiary questions, because they concern the whole body and are essential to its needs."

Reed's Rule 199 – Incidental Questions: "Incidental questions are those which arise out of the needs of the orderly conduct of such business as comes before the assembly, whether it relates to the main question or to the privileged questions."

Reed's Rule 197 – Subsidiary Motions: "Subsidiary motions are those which directly concern the main question, and relate to the progress of that particular piece of business. They are of different rank, by which it is meant that some have precedence over the others...Those of superior rank precede those of inferior rank; those of the same rank have no precedence over each other."