



CALLIE A. CASTILLO
206.223.7145
castilloc@lanepowell.com

January 10, 2022

VIA ELECTRONIC AND REGULAR MAIL

Honorable Bob Ferguson
Attorney General
State of Washington
1125 Washington Street SE
PO Box 40100
Olympia WA 98504

Re: Request to the Attorney General on Behalf of Taxpayers To Investigate and Institute Legal Proceedings to Invalidate Engrossed Substitute Senate Bill 5974, Laws of 2022 ch. 182.

Dear Attorney General Ferguson:

We represent individual and corporate Washington taxpayers, Tracy Doriot, his company Doriot Construction, and Oak Harbor Freight, Inc. On behalf of these and other taxpayers of the state of Washington, we request that your office investigate and institute legal proceedings to invalidate Engrossed Substitute Senate Bill 5974, Laws of 2022 ch. 182 (“ESSB 5974”).

The Legislature passed ESSB 5974 as part of the State’s 2022 transportation budget package. The 122-page bill entitled “An Act Relating to Transportation Resources” purports to amend, add, and repeal a variety of laws. As enacted, however, ESSB 5974 is unconstitutional under Article II, section 19 of the Washington Constitution.

Article II, Section 19 provides that “No bill shall embrace more than one subject, and that shall be expressed in the title.” It thus has two distinct prohibitions: (1) no bill shall embrace more than one subject and (2) no bill shall have a subject that is not expressed in the title. The purpose of this constitutional provision is “(1) to prevent ‘logrolling’ or pushing legislation through by attaching it to other necessary or desirable legislation and (2) to assure that the members of the legislature and the public are generally aware of what is contained in proposed new laws.” *Lee v. State*, 185 Wn.2d 608, 620, 374 P.3d 157 (2016). A bill that violates Article II, Section 19 is void in its entirety because it is impossible to determine whether any one subject would have received majority support if voted on separately. *Id.* at 629.

Honorable Bob Ferguson

January 10, 2022

Page 2

ESSB 5974 is void because the legislation contains multiple subjects that do not have any rational unity to the bill's title or to each other. The subject of the Act is "transportation resources-various provisions." The body of the Act contains multiple, discrete, and unrelated subjects including: (1) appropriations to reduce stormwater runoff from roads and existing infrastructure; (2) creation of specific climate-related transportation accounts, including the move ahead Washington account created in the motor vehicle fund; (3) increases to aircraft fuel excise taxes; (4) increases to stolen vehicle check, dealer temporary permits, drivers' license, license plate, and other driver and vehicle fees; (5) amendments to certain special transportation districts' authority to impose motor vehicle and sales taxes; (6) grant of authority to the Department of Ecology to adopt carbon intensity standards via rulemaking for certain transportation fuels used in Washington; (7) a prohibition on the sale, purchase, or registration of gas-powered passenger and light duty vehicles of model year 2030 or later; (8) creation of certain statewide transportation programs; (9) a requirement that Washington state ferries allow all riders 18 years and younger to ride free of charge; (10) creation of state grants to be issued to public transit agencies creating zero-fare policies for persons 18 years and younger; (11) revisions to local pilot programs allowing use of automated traffic safety cameras; (12) creation of an interagency electric vehicle coordinating council; (13) creation of safety improvement projects for highway systems; and (14) creation of other miscellaneous programs.

The myriad subjects in ESSB 5974 lack rational unity. For instance, sections of ESSB 5974 related to transportation-related expenditures for the move ahead WA projects are not germane to sections of ESSB 5974 granting rulemaking authority to the Department of Ecology to adopt transportation fuel standards for the Washington carbon cap and trade program. Similarly the sections of ESSB 5974 addressing taxing authority for local and special transportation-related districts are not germane to the prohibition in Washington of gas-powered vehicles by the year of 2030. Likewise, the section in ESSB 5974 increasing driver's license, vehicle registration, and other fees are not germane to the amendments to the climate commitment act which is funded by other means. None of these subjects are necessary to implement or operate the other.

Furthermore, ESSB 5974's generic title of "transportation resources" does not give adequate notice to the bill's contents because it could refer to (1) financial sources for Washington transportation projects or (2) natural sources of fuels as are used for transportation. Neither an individual legislator or the public could know what subject matter is being legislated on due to the ambiguity in title. It is also impossible for anyone to assess whether any one subject in ESSB 5974 would have received majority support if voted on separately. ESSB 5974 is thus void in its entirety.

Honorable Bob Ferguson
January 10, 2022
Page 3

Taxpayers throughout Washington, including Mr. Doriot, Doriot Construction, and Oak Harbor Freight, will be harmed by this unconstitutional piece of legislation. On their behalf, we ask that your office commence proceedings to invalidate ESSB 5974 immediately.

Sincerely,

LANE POWELL PC



Callie A. Castillo

134849.0001/9229414.1