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MEMORANDUM

DATE: December 22, 2010

TO: Steve Reinmuth, Chief of Staff
WSDOT, MS: 47316

Reema Griffith, Executive Director
Washington Transportation Commission, MS: 47308

FROM: Bryce E. Brown, Senior Assistant Attorney General

SUBJECT: **I-1053 and WSF Fares**

The Washington State Department of Transportation (WSDOT) and Washington State Transportation Commission (Commission) have requested an interpretation of the Attorney General opinion issued December 20, 2010, regarding Initiative 1053 (I-1053). Specifically, WSDOT and the Commission want to know if I-1053 has any effect on the Commission's actions on November 15, 2010, with respect to increases to ferry fares.

Brief Answer from the Informal Attorney General Opinion

The informal Attorney General opinion concludes that "... RCW 43.135.055(1) now permits the imposition or increase of a fee only if the legislature so approves at some time after the effective date of I-1053." The opinion is clear that some form of future legislative action is necessary in order to increase fees after the effective date of the initiative, December 2, 2010.

Authority of the Transportation Commission – Ferry Fares

As noted in the informal opinion, the legislature has delegated authority to the Commission to "adopt [ferry] fares and pricing policies by rule." RCW 47.60.315(1). The opinion goes on to note that RCW 47.56.032 provides that the "commission shall determine all fares, tolls, and other charges for its facilities...." Finally, the informal opinion recognizes that "[t]he current state transportation budget specifically approves increases in ferry fares during the fiscal years it covers" Laws of 2010, ch. 247, § 205(1).

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CR 103 Rule-Making Order

On November 15, 2010, the Commission held a hearing and acted to adopt a new ferry fare schedule, effective January 1, 2011. The Commission's actions included:

- General Fare Increase of 2.5 percent.
- Tariff Route Equity Phasing: San Juan Islands interisland route fares were raised an additional 2 percent above the general fare increase to complete the Tariff Route Equity implementation.
- San Juan Islands Day-of-Week Pricing: Removed the early-week discount making early-week fares equal to late-week fares. Also eliminated the passenger peak surcharge in the San Juan Islands.

The CR 103 Rule-Making Order was adopted on November 15, 2010, and filed with the Office of the Code Reviser on November 19, 2010.

Legal Conclusion

Taking into consideration specific references in the informal opinion, and the Commission's actions on November 15 and November 19, 2010, it is my legal opinion that I-1053 has no effect on the actions that are the subject of the CR 103 order.

As noted above, the CR 103 order was adopted on November 15, 2010, well before the effective date of the initiative, December 2, 2010. Footnote 2 of the informal opinion is clear that "[t]he scope of this opinion is limited to the application of RCW 43.135.055(1) to actions that impose new or increased fees taking place after the effective date of I-1053." (emphasis supplied) The opinion at page 5 goes on to read that "[s]tatutory amendments are generally presumed to operate prospectively, addressing events that occur after the statute takes effect" (citation omitted) (emphasis supplied).

My legal advice to WSDOT and the Commission is that the agencies have the legal authority to move forward with the actions that are the subject of the CR 103 order. Given that both agencies have agreed to waive the attorney-client privilege associated with this advice, please feel free to distribute this memorandum as you deem appropriate.

BEB:mjc