



# ERIC J. RICHEY

## WHATCOM COUNTY PROSECUTING ATTORNEY



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### Memorandum

**To:** Whatcom County Council; Satpal Sidhu, Whatcom County Executive; Kayla Schott-Bresler, Deputy Executive; Aly Pennucci, Deputy Executive; Rebecca Xzcar, Whatcom County Assessor; Falon Hoven, Chief Deputy Assessor; Lauren Smith, Property Services Manager; Brad Bennett; Randy Rydell, Finance Director

**CC:** Whatcom County Prosecutor's Office – Civil Division

**From:** Eric Richey, Whatcom County Prosecutor;   
Christopher Quinn, Whatcom County Chief Civil Deputy 

**Date:** November 15, 2024

**Subject:** Correction to Legal Advice Regarding Banked Capacity for Whatcom County's EMS Levy

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### Background

Our office has been advising County officials on questions related to the calculation and proposed use of "banked capacity" for Whatcom County's Emergency Medical Services (EMS) Levy. Specifically, we have been asked to provide counsel on the following issues:

1. Questions concerning the initial determination of the maximum allowable EMS levy amount;
2. Whether a taxing jurisdiction, such as the County, can "bank" capacity in year one of a voter-approved levy; and
3. How banked capacity is calculated.

After further review, we believe a correction to our previous advice is necessary. This memo seeks to clarify our revised legal opinion on this matter and the related questions.

## Correction

In our initial advice, we suggested that the County's decision not to impose the full \$0.295 per \$1,000 rate for the EMS levy in 2023 (levy year 1) did not create banked capacity that could be used in future years pursuant to RCW 84.55.092. Specifically, we indicated that because the County did not levy the maximum voter-authorized rate in 2023, it was not entitled to preserve (or "bank") the uncollected amount for future use.

After further consideration and review of applicable law, we have determined that the decision to levy a lesser amount in levy year 1 of the renewed EMS levy **did** create banked capacity that can be used in future years. This corrected opinion aligns with RCW 84.55.092 and WAC 458-19-065, which allow taxing districts—including counties—to levy less than the maximum voter-authorized rate without losing the ability to bank the difference for future collection. This interpretation is also consistent with the Department of Revenue's historical guidance on the topic.

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## Explanation

"Banked capacity" refers to the difference between the highest lawful levy and the actual levy imposed in a given year. Under RCW 84.55.092, this difference ("capacity") can be carried over for future use. The purpose of the law is to remove any disincentive for taxing districts to levy below the maximum rate in any given year. The district should not be required to forgo a lower levy in one year out of fear that it will permanently lose its ability to collect the full authorized amount in the future.

For Whatcom County's EMS levy, the Assessor's Office correctly calculated the highest lawful levy for tax year 2023 to be approximately \$15 million, based on the voter-approved rate of \$0.295 per \$1,000 of assessed value. However, the County elected to levy only approximately \$13 million, which reduced the levy rate to approximately \$0.25 per \$1,000 and created approximately \$2 million in banked capacity that can be used in future years.

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## Summary

- The highest lawful levy for an EMS district is established when voters approve a new levy or renew an existing one. The maximum levy amount is based on the district's

taxable value in the assessment year in which the measure passes, and the voter-approved levy rate. (RCW 84.52.069 and WAC 458-19-060)

- For Whatcom County's EMS District, voter-approved Proposition 2022-6 set the maximum levy rate of \$0.295 per \$1,000 of assessed value. This rate, multiplied by the district's assessed value in 2022, determines the highest lawful levy for the year. This is the base for future levy calculations under the six-year EMS levy.
- A taxing district has banked capacity if its actual levy is less than the highest lawful levy. The difference can be carried over for future collection. (RCW 84.55.092 and WAC 458-19-065)
- Levy rates are calculated and fixed by the county assessor within the limits set by law. The county assessor works under the direction of the Department of Revenue and delivers the tax roll to the county treasurer by January 15th each year. (RCW 84.52.010 and RCW 84.52.080)

### **Final Thoughts**

We apologize for any confusion caused by our earlier advice. This is a complex area of law with limited case law providing clear answers. After further consideration, we continue to stand by the DOR's position and the Whatcom County Assessor's compliance with the law as detailed in this memo.

Further, this corrected legal opinion reflects the Prosecutor Office's view of the intent and purpose of state law on this subject, and we recommend that County officials proceed with utilizing and relying on this interpretation as part of their decision-making process. If you have any questions or need further clarification, please feel free to contact us.