



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: August 27, 2021

TIME: 11:38 AM

WSR 21-18-076

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-19-045 Levy limit-Removal of limit (lid lift).

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending WAC 458-19-045 to incorporate 2021 legislation, Engrossed Second Substitute House Bill 1069. This legislation allows a county with a population of more than 1,500,000 to supplant existing funds when voters approve a lid lift, if the lid lift is approved during specific years.

Reasons supporting proposal: This rule is being updated to incorporate changes resulting from 2021 legislation, Engrossed Second Substitute House Bill 1069.

Statutory authority for adoption: RCW 84.08.010 and 84.08.070

Statute being implemented: RCW 84.55.050

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Leslie Mullin	6400 Linderson Way SW, Tumwater, WA	(360) 534-1589
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is applicable to this rule update because the Department is incorporating changes resulting from 2021 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) November 1, 2021

Date: August 27, 2021

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 18-24-104, filed 12/4/18, effective 1/4/19)

WAC 458-19-045 Levy limit—Removal of limit (lid lift). (1) **Introduction.** This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Definitions.** The definitions in WAC 458-19-005 apply to this rule.

(3) **Lid lift - Purpose.** The purpose of a lid lift is to allow additional property taxes to be collected at a time when the levy limit in chapter 84.55 RCW is the effective legal constraint to increasing property taxes. A levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the levy limit as described in RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. Lid lifts may result in increasing the limit factor, as defined in WAC 458-19-005, for one year or up to six consecutive years. The result of the limit factor increase can temporarily or permanently impact subsequent levy limit calculations.

(4) **Election for approval of lid lift proposition - When held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must not be held more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift are prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW 29A.36.071. RCW 29A.36.071 requires a ballot title to include a concise description of the measure, not to exceed seventy-five words. The requirements for the text of a ballot title and measure differ depending on whether the levy limit will be exceeded for a single year or multiple years, up to six consecutive years. A simple majority vote is required for approval of a lid lift.

(5) **Single year lid lift.** A single year lid lift allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1985 for 1986 collection, for one year.

(6) **Ballot title and measure - Single year lid lift.** The text of a ballot title and measure for a single year lid lift must contain the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district; and

(b) Any of the following conditions that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed twenty-five years;

(ii) The purpose or purposes of the increased levy;

(iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base; and

(iv) Whether the increase in regular property taxes by a county or city resulting from the approval of the lid lift will not apply to property exempt under the senior citizens and disabled persons property tax exemption in RCW 84.36.381.

(7) **Multiple year lid lift.** A multiple year lid lift allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1985 for 1986 collection, for up to six consecutive years.

(a) Ballot title and measure. The text of a ballot title and measure for a multiple year lid lift must contain the following:

(i) The dollar rate of the first year's proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

(ii) The limit factor, or specific index used to determine the limit factor (such as the consumer price index), which is not required to be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years;

(iii) The limited purposes for which the proposed annual increases will be used; and

(iv) Any of the following conditions that are applicable:

(A) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed twenty-five years;

(B) The purpose or purposes of the increased levy;

(C) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base; and

(D) Whether the increase in regular property taxes by a county or city resulting from the approval of the lid lift will not apply to property exempt under the senior citizens and disabled persons property tax exemption in RCW 84.36.381.

(b) Supplanting of existing funds.

(i) Except as otherwise provided in (b) of this subsection, funds raised by a levy under this rule may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of (b) of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes:

(A) Lost federal funds;

(B) Lost or expired state grants or loans;

(C) Extraordinary events not likely to reoccur;

(D) Changes in contract provisions beyond the control of the taxing district receiving the services; and

(E) Major nonrecurring capital expenditures.

(ii) In counties with a population of less than one million five hundred thousand, funds raised through a lid lift can be used to supplant existing funds beginning with levies submitted and approved by the voters after July 26, 2009.

(iii) In counties with a population of one million five hundred thousand or more, funds raised through a lid lift can be used to supplant existing funds ~~((for levies))~~ if the levy was approved by the voters ((between)) after July 26, 2009, ((and December 31, 2011)) or in one of the following calendar years; 2009, 2010, 2011, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022.

(8) **Permanent lid lift.** A permanent lid lift occurs when the ballot title and measure expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies as provided in subsections (6)(b)(iii) and (7)(a)(iv)(C) of this rule. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) First levy after voter approval. The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title. The dollar rate is subject to the constitutional one percent limit, the statutory aggregate dollar rate limit, and any applicable prorationing.

(b) Subsequent levies. The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985 for 1986 collection, including the dollar amount of the regular levy calculated in (a) of this subsection, by the limit factor.

(9) **Temporary lid lift.** If the ballot title and measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is temporary.

(a) First levy after voter approval. The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title. The dollar rate is subject to the constitutional one percent limit, the statutory aggregate dollar rate limit, and any applicable prorationing.

(b) Subsequent levies. The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985 for 1986 collection, including the dollar amount of the regular levy calculated in (a) of this subsection, by the limit factor.