



*Webinar*  
September 13, 2019

Presented by:  
**Alice Ostdiek**  
Stradling, Yocca Carlson & Rauth PC  
Seattle, Washington  
AOstdiek@sycr.com | 206-829-3002

**Sheila Gall**  
Association of Washington Cities  
Olympia, Washington  
sheilag@awcnet.org | 360-753-4137

# INITIATIVE 976

WHAT IT WOULD DO & WHAT YOU CAN (AND CAN'T) DO

**Stradling**  
Attorneys at Law

# OVERVIEW OF AGENDA

2

## Review of Initiative Process

- Background - Process Overview
- Initiative to the Legislature (compared to Initiative to the People)
- Overview of Legal Challenges to Initiatives

## I-976: Get the facts

- What would it do?
- Who would it affect?

## What Cities Can (and Can't) Do – Election Guidelines

- MAY provide Information and Educational Materials
- No Public Funds or Public Resources May be used For or Against
- Guidelines for Actions by Elected Bodies, Elected Officials, and Candidates

## Resources & Questions

# AGENDA ITEM #1

3

## Review of Initiative Process

- Background - Process Overview
- Initiative to the Legislature (compared to Initiative to the People)
- Overview of Legal Challenges to Initiatives

## I-976: Get the facts

- What would it do?
- Who would it affect?

## What Cities Can (and Can't) Do – Election Guidelines

- MAY provide Information and Educational Materials
- No Public Funds or Public Resources May be used For or Against
- Guidelines for Actions by Elected Bodies, Elected Officials, and Candidates

## Resources & Questions

# REVIEW OF INITIATIVE PROCESS

4

## Wash. Constitution Article 2, Section 1

Direct Legislation  
(Amendment 7, 1911)

- ✓ Initiative
- ✓ Referendum

### Initiative

- To the People
  - Signatures – 8% of number of votes cast for Governor
  - Filing deadline – 4 months before election date
- To the Legislature
  - Signatures – 8% of number of votes cast for Governor
  - Filing deadline – 10 days before regular session

### Referendum

- Referred by Petition of the People
  - Signatures – 4% of number of votes cast for Governor
  - Filing deadline – 90 days after final adjournment
- Referred by Legislature

# REVIEW OF INITIATIVE PROCESS

5

## ■ Preparation & Submission of Initiatives

- Sponsor: Drafts legislation
- Atty Gen: Prepares ballot title and explanatory statement
- Sponsor: Collects and turns in signatures by deadline
- Sec State: Determines if petition & signatures are sufficient

## ■ Initiative to the People

- If petition is sufficient...



## ■ **Measure sent to Nov ballot**

- Passage: Simple Majority
- Effective Date: 30 days after election

## ■ Initiative to the Legislature

- If petition is sufficient, measure is sent to Legislature
  - No Changes Permitted by Legislature
- Legislature may:
  - Enact
    - Subject to referendum (petition or direct)
  - Reject
    - May propose alternate (both go to ballot)
  - Do Nothing

# REVIEW OF INITIATIVE PROCESS

6

If an initiative is approved by voters...



## ■ Legislation Altering Initiatives

- Can the Legislature alter it?
  - No – Constitutional 2-year bar to amending initiative legislation approved by voters
  - Except with supermajority approval:
    - No “act, law or bill” may be amended within 2 years except with 2/3 approval of each house
    - Amendment passed by 2/3 of each house is not subject to referendum
- Can the People alter it?
  - Yes – May be amended or repealed by another initiative (or referendum) at any time

# REVIEW OF INITIATIVE PROCESS

## Legal Challenges to Initiatives



- When may they be filed?
  - Before the election
    - Procedural challenges to election/voting process (wording of ballot title, explanatory statement, voters pamphlet)
    - Substantive challenges disfavored *before election* except for challenges alleging that the measure is “beyond the scope of the initiative power”
  - After the election
    - Challenges to both form and substance may be brought; challenges to election procedure difficult
    - May seek injunction against measure going into effect
- What kinds of challenges may be filed?
  - **Any legal challenge may be limited in scope and may not invalidate entire initiative.**
    - Challenges may be facial or as-applied
    - “Severability” may save parts of measure

# AGENDA ITEM #2

8

## Review of Initiative Process

- Background - Process Overview
- Initiative to the Legislature (compared to Initiative to the People)
- Overview of Legal Challenges to Initiatives

## I-976: Get the facts

- What would it do?
- Who would it affect?

## What Cities Can (and Can't) Do – Election Guidelines

- MAY provide Information and Educational Materials
- No Public Funds or Public Resources May be used For or Against
- Guidelines for Actions by Elected Bodies, Elected Officials, and Candidates

## Resources & Questions



# I-976 OVERVIEW — THE BALLOT TITLE

9

## BALLOT MEASURE SUMMARY:

### This measure would...

- repeal or remove authority to impose certain vehicle taxes and fees;
- limit state and local license fees to \$30 for motor vehicles weighing 10,000 pounds or less, except charges approved by voters after the measure's effective date;
- base vehicle taxes on Kelley Blue Book value;
- require regional transit authorities to retire bonds early where allowed; and
- either reduce or repeal taxes pledged to bonds depending on whether bonds are retired by 2020.

## BALLOT TITLE

Initiative Measure No. 976 concerns motor vehicle taxes and fees.

This measure would repeal, reduce, or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle-license fees to \$30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.

Should this measure be enacted into law:

☐ Yes

☐ No

*Effective date: 30 days after election, except certain provisions pertaining to Sound Transit.*

# I-976: WHAT WOULD IT DO?

10

	<u>Current Law</u>	<u>Under I-976</u>	<u>What does it pay for?</u>
<b><u>State Taxes and Fees</u></b>			
<b>Vehicle License Fees</b>	\$30 to 93	Reduced to \$30 unless voter approved	Various highway purposes, incl. State highways and Local roads
<b>Vehicle Weight Fees</b>	\$25-75	Eliminated	Various highway purposes, incl. State highways and Local roads
<b>Snowmobiles</b>	\$50	Reduced to \$30	Snowmobile facilities, safety, enforcement and education programs
<b>Commercial Trailers</b>	\$34 (Registration) \$30 (Renewal)	Registration reduced to \$30 Renewal unchanged	State transportation purposes
<b>Electric Vehicle Fee</b>	\$150	Reduced to \$30	Transportation feasibility studies & other transportation purposes
<b>Transp. Electrification Fee*</b>	\$75	Unchanged	“Green” transportation projects
<b>Other Vehicle-Related Fees</b> (filing and service fees, special license plate fees, etc.)	Various	Unchanged	Administrative costs, etc.
<b>Motor Vehicle Sales/Lease Tax</b>	0.3% of selling price	Eliminated	Multimodal Account, various transportation purposes

# I-976: WHAT WOULD IT DO?

11

	<u>Current Law</u>	<u>Under I-976</u>	<u>What does it pay for?</u>
<b><u>Local Taxes and Fees</u></b>			
<b>TBD Vehicle License Fees</b>	\$20 to \$80	Eliminated	Local TBD purposes (typically pavement preservation, local road projects)
<b>Local Voter-Approved Passenger-Only Ferry MVET</b>	Up to 0.4% of depreciated value (based on MSRP)	Eliminated	Local passenger-only ferry service
<b>Sound Transit Rental Car Sales Tax</b>	Up to 2.172% of rental price	Eliminated only when outstanding bonds are redeemed or restructured.	Debt service on bonds issued for various Sound Transit projects
<b>Sound Transit MVET</b>	<u>Current:</u> 1.1% of depreciated value (based on MSRP) <u>Future:</u> 0.8% of depreciated value (based on MSRP)	If bonds not restructured by 3/31/20, future voter approved MVET max reduced to 0.2% of Kelley Blue Book Value.	(Note: WSSCt decision held unaffected by I-776 in 2006)

# I-976: WHAT WOULD IT DO?

12

## ■ Total DOL Revenue Impact:

### ■ OFM Fiscal Note estimates (based on June TRFC forecast)

■ State Revenue Impact:	\$1.921 billion over six years (FY 2020-25)
■ Local Direct Revenue Impact:	\$2.317 billion over six years (FY 2020-25)
■ Total State & Local Direct:	\$4.238 billion over six years (FY 2020-25)

#### Notes:

- *Reflects direct revenue impacts only – does not include any estimates of costs for legislative responses (project delays, restructured or delayed financing, etc.)*
- *OFM Fiscal Notes (not Fiscal Impact Statement) include estimates approx. \$11 million in increased expenditures (FY 2020-25) for implementation*
- *Data above reflects DOL only - does not include loss of 0.3% motor vehicle sales/lease tax revenue or impact to ST of losing its rental car sales tax. – Est. DOR impact approx. \$333 million (FY 2020-25) – OFM Fiscal Note (Feb 2019)*

# MEASURING LOCAL IMPACTS

13

## OFM Fiscal Note estimates

- Local Direct Revenue Impact: \$2.317 billion over six years (2020-2025)

## Three Important Points!

- Includes only lost TBD revenues, ST lost MVET revenues; does not include lost rental car tax revenues
  - Sound Transit cuts do make up a large portion of the total. This number assumes that ST redeems or defeases bonds and becomes subject to the reductions in the initiative immediately.
- Not based on forecasts – based on historical 2018 actuals
  - The Local total produced by OFM is based on 2018 actuals, not forecast data, and reflects only direct loss of tax or fee revenue.
- Does not include lost revenues from State
  - OFM Local Impact estimate **does not** reflect reductions in local revenues that come from State allocations or distributions of transportation revenues, State grants, and other State-funded programs.
  - Local governments will **also** feel the State revenue impact in the form of cuts to State programs that fund local projects, which are unknown until the State Legislature acts.

# LOCAL IMPACTS – TBDs

14

## OFM Fiscal Note estimates

- Local Direct Revenue Impact: \$2.317 billion over six years (2020-2025)

## Transportation Benefit District Impacts

- Transportation Benefit Districts will lose all VLF revenues.
- Voter-approved TBD sales tax is not affected and will continue.
- TBD Estimates:
  - \$58 million collected in calendar year 2018 (Statewide)
  - OFM estimates of fiscal impact are based on this collection number, not forecast data
  - Currently, according to DOL:
    - 61 jurisdictions collect VLFs, mostly \$20, 10 are between \$20 and \$40, Seattle \$80
- *Legal challenges and TBD Revenues?*

# HOW DO I MEASURE LOCAL IMPACTS?

15

## OFM Fiscal Note estimates

- Local Direct Revenue Impact: \$2.317 billion over six years (2020-2025)

When estimating your local impacts, make sure to include:

- Direct revenue losses – TBD revenues to your jurisdiction (if any)
  - Recalculate a forecast?
- Indirect revenue losses:
  - Shared/interlocal revenues w/ TBD VLF source
  - Revenues from State programs
    - Direct allocations & distributions
    - Grant and Loan program that may be impacted
- Estimates of increased costs to be incurred?
  - Project delays? Terminations? Cancellations? Increased borrowing costs?
- Other economic impacts?
  - Traffic congestion? Effect of delayed State highway, rail or other multimodal projects?

# STATE IMPACTS: DOLLARS ARE FUNGIBLE — *MOSTLY!*

16

## State Transportation Spending

- State adopts Biennial Transportation Budget
  - Includes both operating and capital
  - WSDOT accounts for 86% of all State transportation spending (including debt service)
    - 2019-21 Biennium - \$6.887 billion  
\$1.7 billion for debt service
- WSDOT administers many programs that affect local government projects
  - Direct Local Programs - \$349.5 million (in 2019-21)
  - Other programs also affect local projects:
    - Highway programs
    - WSF (for jurisdictions served by ferry systems)
    - Aviation & Public Transportation
    - Rail programs

### Major WSDOT Programs (WSDOT portion of 2019-21 Biennium Transportation Budget) (\$ in millions)

Highway Construction	\$3,745.6	44.2%
Debt Service	1,718.1	20.3
WSF (Cap & Op)	998.9	11.8
Highway Maintenance	519.1	6.1
Local Programs (Cap & Op)	349.5	4.1
Other Operating Prog's	348.4	4.1
Aviation & Public Transportation	276.9	3.3
Facilities/Traffic Op	212.8	2.5
Rail Programs	180.7	2.1
Toll Maintenance & Op's	118.4	1.4



# STATE IMPACTS: DOLLARS ARE FUNGIBLE — *MOSTLY!*

17

## Where do State transportation dollars come from?

### Major Sources of State Transportation Dollars (2019-21 Biennium)

- State Tax & Fee Revenue Sources (~57% of WSDOT Funding)

- Motor Vehicle Fuel Taxes (incl. Diesel Tax) (MVFT)
- Vehicle-Related Licenses, Fees, & Permits (LPFs)
- Driver-Related Fees & Charges
- User Charges (Ferry Fares, Tolls)
- Other Transportation-Related Revenues

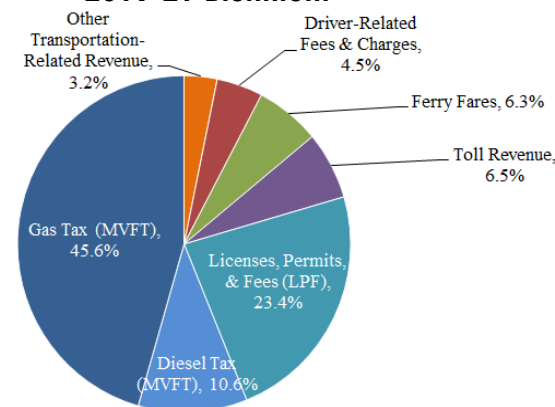
- Bond Proceeds (~29% of WSDOT Funding)

- GO: MVFT, MVFT/VRF Bonds
- Non-GO: Toll Bonds, Garvees

- Other

- Federal Sources (~13% of WSDOT Funding)
- Local Sources (~1% of WSDOT Funding)

WSDOT State Tax & Fee Revenues By Source  
2019-21 Biennium



Source: TRFC June 2019 Transportation Revenue Forecast (dated June 25, 2019).  
As printed in the State of Washington Preliminary Official Statement, dated August 30, 2019

# STATE IMPACTS: DOLLARS ARE FUNGIBLE — *MOSTLY!*

18

Which State accounts would be affected by I-976 reductions?

Forecast DOL Revenue Impacts by Fund Distribution *(Reflects State Vehicle Fees only)*

*(OFM Fiscal Impact Statement) (prepared using June 2019 TRFC forecast – differs from Legislative Fiscal Note)*

DOL Impacts	Total 2020-25
Multimodal Account (218)	\$ (1,484,121,700)
Motor Vehicle Account (108)	(265,553,425)
WSP Highway Account (081)	(88,573,400)
Transportation Partnership Account (09H)	(45,684,900)
Nickel Account (550)	(20,745,000)
Puget Sound Ferry Operations (109)	(5,446,700)
Rural Arterial Trust Account (102)	(5,013,938)
Transportation Improvement Account (144)	(4,272,075)
Snowmobile Account (01M)	(2,490,100)
<b>Total</b>	<b>\$ (1,922,643,101)</b>

# STATE IMPACTS: DOLLARS ARE FUNGIBLE — *MOSTLY!*

19

- Largest State impact will be to Multimodal Account (\$1.5 billion over six years), which funds local programs such as:
  - Regional Mobility Grant Program
  - Rural Mobility Grant Program
  - Highway Safety
  - Puget Sound Ferry Operating and Capital programs
  - Washington State Patrol
  - Rail Capital and Operating
  - Transportation Improvement Board
  - Bicycle/Pedestrian
  - Safe Routes to School
  - Direct allocations to cities and counties

# THE 18TH AMENDMENT

20

- The 18<sup>th</sup> Amendment (1944) restricts certain vehicle license fees (VLFs), gas taxes and certain other revenues to being used for “State Highway Purposes”
  - A “highway funds” designation does not protect VLFs from reduction or repeal
  - Highway projects (and particularly local projects) are funded from a variety of sources

## Wash. Const., Art. 2, Sec. 40 *(18<sup>th</sup> Amendment, approved November 1944)*

**Highway Funds.** All fees collected by the State of Washington as **license fees for motor vehicles** and all **excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel** and **all other state revenue intended to be used for highway purposes**, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes.

\* \* \*

Provided, **That this section shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway purposes, or apply to vehicle operator's license fees or any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles.**

# AGENDA ITEM #3

21

## Review of Initiative Process

- Background - Process Overview
- Initiative to the Legislature (compared to Initiative to the People)
- Overview of Legal Challenges to Initiatives

## I-976: Get the facts

- What would it do?
- Who would it affect?

## What Cities Can (and Can't) Do – Election Guidelines

- MAY provide Information and Educational Materials
- No Public Funds or Public Resources May be used For or Against
- Guidelines for Actions by Elected Bodies, Elected Officials, and Candidates

## Resources & Questions

# RULES OF ENGAGEMENT — PDC RESTRICTIONS

22

**RCW 42.17A.555 - prohibition on use of public facilities for or against ballot measures, with several exceptions:**

- Vote by the city council to take a position for or against a ballot measure
- Elected official response to question by media about position on a ballot measure
- “Normal and regular course” factual communications
- Distinction between elected and appointed officials
- No de minimis exception for use of city equipment, vehicles, or supplies
  - May not reimburse city for use

**\*Disclaimer: This information is not intended as legal advice. Consult your legal counsel or the Public Disclosure Commission for specific guidance.**

# ELECTED OFFICIALS RULES OF ENGAGEMENT

23

What is allowed:

Members of an elected **council may vote to support or oppose** an initiative or referendum

- Notice of the meeting when the vote will be taken must include the title and number of the ballot proposition.
- Council members or the public must have an equal opportunity to express an opposing view

Elected officials may make **statements** about support or opposition in **response to a specific media inquiry**.

May **attend an event** and give their opinion about a ballot measure, as long as they are not being compensated by the city or using any public equipment, facility or vehicle (with exceptions for specific media inquiries).

**Objective and fair presentations** to community forums or groups on impacts of ballot measures

- Normal and regular conduct
- May use city technology/equipment

City employees or elected officials may use their job title with the city in a letter to the editor (written on their own time, not using city equipment).

- Clarify expressing own opinion, and not speaking for the city.

Contingency planning for impacts

- Budget alternatives
- Factual presentation of impacts

# STAFF RULES OF ENGAGEMENT

24

## What is allowed:

All city officials may respond to **requests for factual information** as part of their normal job duty

Staff may prepare **communications** for city website, newsletter, or other publications to provide citizens with information

- Distribution of information to "**normal and regular**" recipients, using the publication's regular schedule
- If routinely provide objective and fair facts ballot measures or controversial issues, may present objective and fair facts
- If website or newsletter publishes resolutions or reports on council activity, may report on action taken on a resolution
- Repeated distribution of the same information may be considered campaign activity by the PDC

## Research and **contingency planning**

- Presentation of budget alternatives

## **Objective and fair presentations** to community forums or groups on impacts of ballot measures

- Normal and regular conduct
- May use city technology/equipment



# STAFF RULES OF ENGAGEMENT (CONT.)

25

## **What is allowed (continued):**

May respond to **requests for public records** even if the records will be used to support or oppose a measure, as long as the record is not exempt from disclosure

City officials may on their own time **during non-work hours, participate in campaign-related activities**

- Clarify personal opinion and not on behalf of the city
- May not use city property or equipment

City employees may use their job title with the city in a letter to the editor (written on their own time not using city equipment).

- Clarify expressing own opinion, and not speaking for the city

## **What is not allowed:**

May not pressure city employees to participate in campaign activities, take a position, or coordinate informational activities with campaign work

# USE OF CITY FACILITIES

26

## What is allowed:

- A public agency may make its **facilities available on a nondiscriminatory, equal access basis** for political uses
  - Room rental fee, if applicable
- May make facilities available for a **public forum**
- Equal opportunity for presentation by both sides
- May use **city website, newsletter, or other publications** to provide citizens with factual information, if part of normal and regular course
- Employees with bumper stickers on **personal vehicles** may park in city lot
- City policy may allow wearing **campaign buttons**

## What is not allowed:

- Use of **city equipment** (vehicles, city-provided uniforms) in campaign materials
- May not **post signs** advocating for or against ballot measures on city property

# REVIEW

27

## Review of Initiative Process

- Background - Process Overview
- Initiative to the Legislature (compared to Initiative to the People)
- Overview of Legal Challenges to Initiatives

## I-976: Get the facts

- What would it do?
- Who would it affect?

## What Cities Can (and Can't) Do – Election Guidelines

- MAY provide Information and Educational Materials
- No Public Funds and Public Resources in Campaigns
- Actions by Elected Bodies, Elected Officials and Candidates

## Resources & Questions

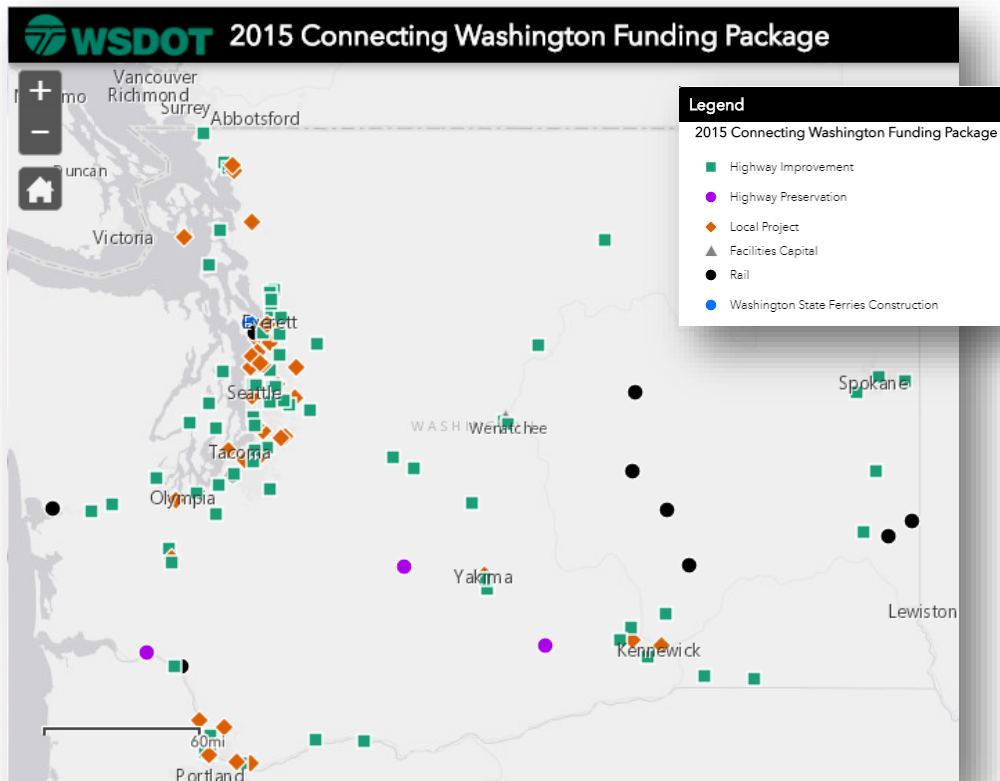
# RESOURCES FOR EXPLAINING STATE TRANSPORTATION FUNDING

28

- Voter-Approved Packages
  - 2003 – Nickel Package (MVFT, heavy truck fee, sales tax on motor vehicles)
    - Total \$3.9 Billion (*158 projects mostly completed*)
    - New highway projects (incl. AWV & 520), highway preservation, WSF, freight mobility, multimodal
  - 2005 – Transportation Partnership Package (MVFT, vehicle weight fees, motor home fee)
    - Total \$7.1 Billion (*274 projects mostly completed*)
    - At-risk structures (AWV, 520, bridges), safety, congestion choke points, multimodal (Amtrak), environmental, freight mobility
  - 2015 – Connecting Washington Package (MVFT, various fees)
    - Total \$16 Billion State highways & local roads (construction, operation and maintenance), multimodal (transit, pedestrian, bike, vanpool), ferries & terminals, fish passage barrier removal

# RESOURCES FOR EXPLAINING STATE TRANSPORTATION FUNDING

29



<https://wsdot.maps.arcgis.com/apps/webappviewer/index.html?id=02b28f10d90b4ffa87e9f1a0c7df4a49>

Connecting Washington is a \$16 billion voter-approved package that includes:

- State Highway Improvements & Preservation
- Washington State Ferries Construction
- Local Projects:
  - Street improvements
  - Highway interchanges and overpasses
  - Rail overpasses
  - Pedestrian overpasses
  - Bridge replacements
  - Seismic improvements
  - Culvert replacements
- Rail Projects:
  - Eastern Washington
    - (Palouse, Coulee City West Whitman, Connell, Port of Moses Lake, Port of Warden)
  - Western Washington
    - (Cascades Corridor Slide Prevention, Point Defiance Bypass, Grays Harbor Rail Corridor Safety Study, West Vancouver Freight Access, South Kelso Crossing)

# OTHER RESOURCES



- Other Resources:
  - Secretary of State Initiatives & Referenda Website:  
<https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=I>
  - Text of measure
    - Legislature - <https://app.leg.wa.gov/billinfo/initiatives.aspx?year=2019>
  - OFM
    - <https://www.ofm.wa.gov/budget/fiscal-impact-ballot-measures-and-proposed-legislation/2019-general-election-ballot-fiscal-information>
    - Fiscal Impact Statement (prepared for Voters' Pamphlet – Based on June 2019 Forecast)  
<https://fortress.wa.gov/ofm/fnspublic/FNSPublicSearch/Search/initiative/976/>
    - Fiscal Note (prepared for Legislature – Feb 2019)  
<https://app.leg.wa.gov/billsummary?year=2019&billnumber=976&initiative=true>
  - See also:
    - WSDOT – Connecting Washington Projects  
<https://wsdot.maps.arcgis.com/apps/webappviewer/index.html?id=02b28f10d90b4ffa87e9f1a0c7df4a49>
    - 18<sup>th</sup> Amendment  
[http://leg.wa.gov/JTC/trm/Documents/TRM\\_1315Update/6%20-%2018th%20Amendment.pdf](http://leg.wa.gov/JTC/trm/Documents/TRM_1315Update/6%20-%2018th%20Amendment.pdf)

# QUESTIONS?

31



Presented by:

**Alice Ostdiek**

Stradling, Yocca Carlson & Rauth, PC

Seattle, Washington

AOstdiek@sycr.com | 206-829-3002

**Sheila Gall**

Association of Washington Cities

Olympia, Washington

sheilag@awcnet.org | 360-753-4137