

**County Road Administration Board  
County Engineer Desk Manual --- Supplement**

Document Title	<b>Property Tax, Levy Shift, and Levy Diversion</b>
Supplement to	<b>Section 3.1.2 - Revenues</b>
Document Date	<b>10/5/11</b>
Replaces Document (dates)	4/15/11, 4/10/10

<b>Contents</b>	<b>Page</b>
Property Taxes	2
Use of Road Funds for Road Purposes	4
Road Levy Shift	5
Road Levy Diversion	5
Process to Establish the Road Levy	6
Road Levy Certification	7
Summary / Comment	7

County Road Administration Board (CRAB)  
2404 Chandler Ct SW, Suite 240  
Olympia, WA 98504

Ph: 360-753-5989  
www.crab.wa.gov

Any questions about the information contained in this document should be directed to the County Road Administration Board

---

The information provided by CRAB is intended to be general guidance and should not be used to replace qualified legal review pertaining to the application of laws, rules, and policies in order to address specific questions and circumstances.

Any printed laws or rules, or summaries thereof, always have the potential for decay in validity due to their continual change. No training or reference material is intended to replace “due diligence” when investigating the full extent and applicability of established rules and past practices. This is especially true due to issues and particular requirements that may be unique to an individual county’s codes, policies, and operational circumstances.

CRAB welcomes comments and recommendations that improve accuracy and clarity

## **Property Taxes**

Revenue collected as a result of property taxes is highly regulated, with very specific limitations. When dealing with property taxes, some of the common terminology includes:

- Ad valorem tax - A tax based on the value of property
- Levy - The act of imposing taxes, assessments or charges, OR, the total amount of taxes, assessments or charges imposed by a governmental unit
- Levy Rate - The rate necessary to raise the amount of taxes for any taxing district within the county, expressed in dollars and cents per one thousand dollars assessed value
- Levy Limit - The restriction on the amount that a taxing district's property tax levy may increase over the highest lawful levy since 1985
- Lid-lift - A ballot measure, wherein the voters authorize the taxing district to increase their levy rate beyond the levy limit
- Senior Taxing Districts - Means the state (for support of common schools), the county, county road, and city or town
- Junior Taxing Districts - All taxing districts other than the state, county, county roads, city, port, and public utility districts (such as fire districts, libraries, etc.)
- Road levy shift - A temporary shift of levy capacity (rate) from the county's road levy to the county's current expense levy

Note: *The above information was taken from the [Washington State Department of Revenue - Operations Manual - Property Tax Levies](http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/#property), otherwise known as the "Levy Manual", which includes detailed information and guidance on these topics - available at <http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/#property>.*

[RCW 84.52.043](#) lists the maximum levy rates allowed by any one district, with the limits associated with the senior district summarized in the table on the following page.

The primary rules for setting levies each year are as follows (subject to supplemental rules for certain entities and/or situations):

- Each taxing district may not exceed its statutory maximum levy rate
- The aggregate levy rate for taxing district's regular levies, within a tax code area, must not exceed \$9.50 (with a few exceptions)
- The levy limit from one year to the next may not exceed the lesser of 101% or 100% plus the rate of inflation, depending on the district's population, plus the addition of new construction, improvements to property, newly constructed wind turbines classified as personal property, increases in state assessed property, and annexations
- The levy limitations may be adjusted by voter approved increases (lid-lift), AND
- A levy rate applied in a given taxing district must be uniform throughout the district

Limitations upon regular property tax levy rates ( <a href="#">RCW 84.52.043</a> )		Max allowed per \$1,000	Levy Shift Max	
Senior Districts	County Current Expense	\$ 1.80	\$ 2.475	\$4.05 combined
	County Road	\$ 2.25 *		
	City / Town	\$ 3.375 **		
	State Common School	\$ 3.60 ***		
Junior plus Senior Districts, less state		\$ 5.90 ****		
Junior plus Senior Districts, including state		\$ 9.50		

- \* County Road levies include the amount diverted to the Current Expense fund for traffic policing
- \*\* If annexed to a fire and or library district the maximum rate is \$3.60 less the actual levy rate of the fire and or library district
- \*\*\* Statewide equalized rate
- \*\*\*\* State, Ports, PUDs, EMS, Affordable Housing, Conservation Futures, County Ferry Districts, Criminal Justice, and Transit levies are not subject to the \$5.90 aggregate levy limit. Fire districts and certain flood control zone districts may protect up to \$0.25 of their levy rate outside of the \$5.90 limitation.

The primary obligation of every taxing district as a part of their budgeting process is to declare what funding “need” exists, as well as receive information from the County Assessor pertaining to levy limitations, as a part of their actual establishment of a levy amount.

The calculated levy rates have been declining for most senior taxing districts over the past few years due to the combination of significant increases in property value and the legal restrictions on levy increases without voter approval. This can be seen with the decline in the following average county road levy rates:

2003 Average Road Levy / State-wide	\$ 1.90
2005	\$ 1.84
2007	\$ 1.66
2009	\$ 1.47
2011	\$ 1.52

The County Assessor is the most qualified individual to describe the specific rules and limitations affecting each county.

## Use of Road Funds for Road Purposes

The term “diversion” is commonly used by county road practitioners broadly to describe the application of road related revenues for anything other than direct road construction, maintenance, and administrative expenditures. However, this is not entirely accurate. Common terminology is summarized as follows, with further explanation later in this document:

- road levy “shift”
  - legally allowed
  - is not equivalent to any form of the statutory use of the term “diversion”
- road levy “diversion”
  - is routinely referred to as “Diversion” (with an upper case “D”)
  - legally allowed
  - RAP eligibility tests applied
- road fund “diversion”
  - is routinely referred to “diversion” (with a lower case “d”) even though it is actually a budgeted road fund expenditure
  - use of road funds for anything other than a road purpose is prohibited by law
  - RAP eligibility may be the least of the potential issues requiring attention

### Protection of Road Funds

Article II, Section 40, [Washington State Constitution](#)

“All fees collected... as license fees for motor vehicles and all excise taxes collected... on... motor vehicle fuel and all other state revenue intended to be used for highway purposes, shall... be used exclusively for highway purposes.”

(Note: highway purposes includes “policing by the state of public highways”)

### [RCW 47.08.110](#)

“It shall be unlawful and a misdemeanor, unless...by... law... a felony or gross misdemeanor, to divert or use, or authorize, permit or participate in the diversion or use of any moneys in the county road fund... for any other purpose or in any other manner than that authorized by law.”

The above legal protection on use of road funds is primarily due to the receipt and use of state fuel taxes. Once any revenue is deposited in the road fund and “comingled” with fuel tax revenue, the entire road fund is similarly protected. The underlying question is then only whether road funds are used exclusively for road purposes.

For traffic law enforcement expenditures, use of road funds is allowable and use of the term “diversion” applies equally to:

- Road Levy Diversion
- A predetermined amount of money agreed to by the Board, Sheriff, and County Engineer, for traffic policing that is “transferred” through an interfund transaction from the Road Fund during the budget year
- The reimbursement of actual expenditures by the Sheriff for traffic policing, that were estimated and agreed to by the Board and County Engineer

## **Road Levy Shift**

As the previous definition suggests, a levy shift is literally the shifting of taxing authority away from the Road District (unincorporated portion of the county) to the general county levy (county-wide). As summarized in the first table, the shift of Road Levy authority to the County's Current Expense authority is described in [RCW 84.52.043](#).

While there are numerous procedural steps required prior to implementing a levy shift, the result of such action does not carry with it any limitations on the use of resulting funds other than those normally assigned to general county government purposes. While it is certainly true that a portion of the funds generated as a result of a levy shift can be utilized for road purposes, it is not required.

There are no Rural Arterial Program eligibility impacts. Action by the County legislative authority to exercise this option is valid for one year.

## **Road Levy Diversion**

As noted earlier, Road Levy Diversion is a subset of the broader use of the term "diversion". Road Levy Diversion is literally the action of (1) collecting property tax through the Road District ad valorem authority and (2) diverting all or a portion of these tax revenues to a separate fund so that they are never actually deposited in the Road Fund.

There are currently three possible applications of this concept:

1. [RCW 36.33.220](#) allows for the use of the road levy for any service provided in the unincorporated area. Even though allowed by law, continued Rural Arterial Program eligibility requires that all diverted funds be utilized only for road purposes. The term "road purposes" in this case means traffic law enforcement in the unincorporated area. Even though allowed by law, use of diverted road levy for anything other than traffic policing removes Rural Arterial Program eligibility. (Note: counties with a population of less than 8,000 are exempt from this restriction.)

Action by the County legislative authority to exercise this option is valid for one year.

2. [RCW 39.89](#), Community Revitalization Financing, also allows use of diverted road levy. The specific application of this statute is not occurring in any county at this time and there is limited information as to what type of restrictions may exist if considered. Rural Arterial Program eligibility is not impacted if this authority is exercised.
3. [RCW 84.55.050](#) provides for voter approval of a "lid-lift" by taxing districts, which would include its application on road district levy. The actual ballot measure would describe amount, purpose, and restrictions. Rural Arterial Program eligibility is not impacted if this authority is exercised.

## **Process to Establish the Road Levy**

Note: - Certain noted dates may not apply to counties operating under a Home Rule Charter  
- *Portions of the information below was taken from the [Washington State Department of Revenue - Operations Manual - Property Tax Levies](#)*

By the first Tuesday in September the County Legislative Authority receives a preliminary budget from the County Auditor ([RCW 36.40.050](#))

By September 15th, the County Assessor reports the preliminary values to taxing districts. Within the context of a proposed budget, the Legislative Authority establishes the level of property tax (levy) collection needed to satisfy the budget requirements ([RCW 36.40.070](#) / [36.40.071](#) and [RCW 36.40.090](#))

Even though the “highest lawful levy calculation” for the subject year is likely not available until after formal action to establish levies must occur, the estimated “highest lawful” levy is commonly calculated based on the new construction value provided by the Assessor added to 101% of the previous year’s highest lawful levy.

By November 30th, the Legislative Authority adopts an ordinance/resolution setting the amount for the taxing district to levy and a separate ordinance/resolution authorizing an increase in their levy compared to the prior year’s levy ([RCW 84.52.070](#) and [84.55.120](#)):

- “... shall specifically state ... the dollar increase and percentage change in the levy from the previous year.”
- New construction, improvements to property, newly constructed wind turbines classified as personal property, increases in state assessed property, and annexations are not included in the above “increase” statement, but added to the total levy amount
- If the levy amount is less than the Highest Lawful, then the difference is considered “banked capacity” legally available to be exercised in future collections
- In the case of a Road Levy Shift, in addition to ordinance/resolution action establishing the two levies, separate action must occur to “shift” a specific levy amount from the Road Levy to Current Expense Levy. While not legally required to do so, it is highly recommended that explanatory language is included within the text of the ordinance(s)/resolution(s) clearly describing the financial relationship between the two levy calculations, the levy shift, and the net result of the actions.
- In the Case of a Road Levy Diversion, the ordinance/resolution includes language stating the legal authority being exercised, the amount to be diverted, and its purpose.

County Assessor adjusts the requested levy amounts, if required to do so, as directed by various statutory taxation limits ([RCW 84.52.010](#)), and by January 15th delivers the certified levy to the County Treasurer ([RCW 84.52.080](#)).

Note: Refer to the “Highest Lawful Levy Calculation” and “Actual Levy Calculation” [levy forms](#) provided by the WA Department of Revenue

## **CRAB Road Levy Certification Form**

No later than February 1st of each year the form [certifying the road levy](#) for the current calendar year is due to CRAB. The form is intended for each county to report:

- Total county land and improvement valuation (incorporated plus unincorporated areas)
- Road District land and improvement valuation (unincorporated area only)
- Highest Lawful Road Levy permissible that may be established by the county legislative authority without voter approval
- Amount of levy to be “shifted” from the Road Levy to the Current Expense Levy ([RCW 84.52.043](#))
- Highest Lawful Road Levy remaining if a levy shift is approved
- Actual Road Levy to be collected
  
- Listing of the Road Levy diversion(s) (potentially affecting RAP eligibility):
  - Traffic law enforcement ([RCW 36.33.220](#))
  - Other unincorporated services ([RCW 36.33.220](#))
  - Community revitalization ([RCW 39.89](#))
  - Voter approved levy lid-lift ([RCW 84.55.050](#))
- Calculation of Road Levy revenues remaining for direct road operational purposes
  
- Separate listing of road funds budgeted for Traffic Law Enforcement expenditures authorized by the County Engineer (may affect RAP eligibility):
  - Pre-determined operating transfer(s) out from the road fund based on an agreement between the Board, Sheriff, and the County Engineer
  - Estimate of direct payments from the road fund for reimbursement of allowable Traffic Enforcement costs

## **Summary / Comment**

The focus of this document was intended to describe both general issues pertaining to the use of road funds and specific issues pertaining to the use of road levy revenues. It is clear that a number of legal tools exist for use of county road related revenues for traffic law enforcement and other general county purposes. The county legislative authority may determine they have no other viable means by which to finance county operational priorities other than use of these legal tools, and they should not be faulted for this consideration.

As a part of the legislative authority’s deliberation, it is incumbent upon the County Engineer to develop and communicate the potential impact to the county’s road system if such action is implemented. While the resulting short-term impact may be relatively easy to describe (project or program delay), the most significant impacts are usually associated with the long-term implications of deferred maintenance and delayed improvements. Both of these will almost certainly result in either an increase in cost to catch-up later, or the need for a future reduction in current service standards.

A wise person said, “just because you can doesn’t mean you should” ...