

**From Lake Forest Council agenda packet for October 9,2008**

**LAKE FOREST PARK CITY COUNCIL**

**Agenda Item Cover Sheet  
Meeting Date: October 9, 2008**

|                                      |   |                        |
|--------------------------------------|---|------------------------|
| <b><u>Title</u></b>                  | <b>Transportation Infrastructure Funding</b>  |                        |
| <b><u>Originating Department</u></b> | Executive Department  |                        |
| <b><u>Contact Persons</u></b>        | David Cline, City Administrator<br>John Hawley, Finance Director  |                        |
| <b><u>Attachments</u></b>            | Ordinance 983, as amended<br>RCW 36.73<br>Association of Washington Cities Fact Sheet<br>Association of Washington Cities Checklist |                        |
| <b>Study Session</b>                 | <b>Regular Meeting</b>  | <b>Regular Meeting</b> |
| <b>August 28, 2008</b>               | <b>September 11, 2008</b>   | <b>October 9, 2008</b> |

**Executive Summary**

The State has authorized a funding mechanism for cities and counties that could provide necessary resources to help maintain critical infrastructure. This discussion will provide the background on the need for this funding and the legal framework regarding this funding source. We are offering new information (below) and two proposed amendments (also below) since the last Council meeting.

**New Information Since Last Council Meeting**

Ashley Probart from the Association of Washington Cities (AWC) will join us to answer questions regarding transportation benefit districts (TBDs) and how they are being implemented around the State. We have included the RCW language from Chapter 36.73 for your review. According to Mr. Probart, the key language is on page 2, lines 32-33, which allows local jurisdictions to use TBD funding for ongoing preservation and maintenance of local transportation infrastructure. The key words include “other transportation projects and programs.” Also, page 3, line 13, states that improvements are to be “necessitated by existing or reasonable foreseeable congestion levels.” Mr. Probart states that “congestion levels” are not defined anywhere in the State language and is therefore to be defined locally. Congestion levels are relevant to the district where the improvements are to be made. Standards will vary from jurisdiction to jurisdiction depending upon the severity of traffic and expectations of the local populace. Mr. Probart should be able to offer some perspective on this issue based on his discussions around the State.

Mike Doubleday has also been working with the Puget Sound Regional Council (PSRC) on a statement to be put on their website, stating that the PSRC position is consistent with AWC in taking a broad view of transportation benefit districts, recognizing local arterial maintenance,

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operations, preservation and improvements are reflected in the regional plan.

### **Proposed Amendments to Ordinance 923**

We are proposing two amendments to Ordinance 923. 1) On page 3, lines 29-31, striking language which limits the use of funds primarily to principal arterials. Based on discussions with AWC it appears that we will be able to use the full funding for our entire transportation infrastructure preservation and maintenance activity and we should, therefore, not limit the use of the funds to just arterials.

2) On page 3, lines 37-40, strike the language establishing the vehicle license fee. According to our City Attorney, the governing board for the TBD should be established first and then separate action by the governing board should then establish the vehicle license fee through a separate ordinance.

### **Transportation Benefit District Background Information**

As the City has discussed on numerous occasions, most recently during the budget updates, the City has limited transportation funding to pay for necessary transportation preservation and maintenance. This has resulted in the need to provide an ever-increasing annual subsidy from the General Fund to the Street Fund to continue to preserve and maintain our transportation infrastructure. In 2009, this subsidy is expected to reach approximately \$180,000.

Due to the continuing economic downturn, the increasing subsidy to the Street Fund is having a large impact on the City's ability to provide basic public services with our General Fund dollars.

The State Legislature has recently allowed for the ability for local governments to establish a transportation benefit district (TBD) and accompanying funding sources to provide for the preservation and maintenance of a local government's transportation infrastructure.

With the establishment of a TBD in the City and the levying of a vehicle license fee, the City will be able to begin to replace the transportation funding that has been lost to the City over the years, reduce or eliminate the General Fund subsidy, and be better able to preserve and maintain the City's transportation infrastructure.

The information provided here will describe the City's financial need for transportation maintenance funding, the issues surrounding the creation of a TBD and funding options, and an ordinance which would allow for the creation and funding for a City TBD.

Over the years, the funding dedicated for the preservation and maintenance of the City's transportation infrastructure has been dramatically reduced due to the 2003 loss of King County Local Vehicle License fees (28% revenue reduction) and the ongoing annual decrease in Gas Tax revenues (0.8% annual reduction for past seven years).

During the same period, while dedicated revenues have decreased, the ongoing annual costs to preserve and maintain the City's transportation infrastructure continue to rise, leaving the City

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unable to continue to adequately preserve and maintain the City's transportation infrastructure.

Due to the loss of Street Fund revenue and the increased costs of maintenance, the annual General Fund subsidy will grow from \$60,000 in the current budget to \$180,000 per year in 2009-2010 and more into the future.

This increasing subsidy is having a large impact on the financial ability of the General Fund to pay for basic public services. We are at the point of needing to make decisions between preserving and maintaining our transportation infrastructure or providing basic parks maintenance and public safety services.

The State Legislature has established a funding method to help us receive adequate funding for our transportation infrastructure.

### **Transportation Benefit Districts**

Through the cooperative efforts of the Association of Washington Cities (AWC) and the Washington State Associations of Counties (WSAC), legislation went into effect on July 22, 2007, which resulted in an important local transportation tool for cities and counties – Transportation Benefit Districts (TBDs). They are independent taxing districts that can impose an array of taxes or fees either through a vote of the people or through Council action.

In 1987, the Legislature created TBDs as an option for local governments to fund transportation improvements. Since 2005, the Legislature has amended the TBD statute to expand its uses and revenue authority. Most recently, the Legislature amended the TBD statute to authorize the imposition of vehicle fees and transportation impact fees without a public vote.

A TBD is a quasi-municipal corporation and independent taxing district created for the sole purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district. The legislative authority of a city may create a TBD by ordinance following the procedures set forth in RCW 36.73.

The members of the legislative authority proposing to establish the TBD is the governing body of the TBD. The legislative authority is acting ex officio and independently as the TBD governing body.

Although a TBD has many of the powers of a city (impose taxes, eminent domain powers, can contract and accept gifts, etc.), - it is a separate taxing district.

The creation of a TBD must be through an ordinance. The ordinance must include:

- a finding that the creation of a TBD is in the public's interest,
- the boundaries of the TBD,
- a description of the transportation improvement or improvements proposed by the district,
- and the proposed taxes, fees, charges, etc. the TBD will impose to raise revenue to fund the identified improvements.

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The boundaries of a TBD may be less than the boundaries of those jurisdictions participating in the TBD. For example, a city may choose to have the TBD boundaries identical with the city or just include a portion of the city. However, if a TBD chooses to exercise the tax authority that does not require a public vote (e.g. vehicle and impact fees), the boundaries of the TBD must be citywide.

A TBD can fund any transportation improvement contained in any existing state or regional transportation plan that is necessitated by existing or reasonably foreseeable congestion levels. This can include maintenance and improvements to city streets, county roads, state highways, investments in high capacity transportation, public transportation, transportation demand management and other transportation projects identified in a regional transportation planning organization plan or state plan.

A TBD may fund the operation, maintenance, and preservation of the programs and facilities noted above. Maintenance and preservation activities are noted in many state and regional transportation plans. For example, preservation of existing transportation facilities is the number one priority within the Washington State Transportation Plan. Eliminating the backlog of asphalt pavement projects and maintaining chip seal paving, along with many other maintenance and preservation activities, are specifically noted as priorities in that Plan.

Also, both the Washington State Transportation Plan, 2007-2026 State transportation plan ([www.wsdot.wa.gov/NR/rdonlyres/083D185B-7B1F-49F5-B865-C0A21D0DCE32/0/FinalWTP111406\\_nomaps.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/083D185B-7B1F-49F5-B865-C0A21D0DCE32/0/FinalWTP111406_nomaps.pdf)) and the Puget Sound Regional Council's Destination 2030 Update at page 62 ([www.psrc.org/projects/mtp/pubs/D2030plan5.07.pdf](http://www.psrc.org/projects/mtp/pubs/D2030plan5.07.pdf)) note that adequate maintenance, preservation, and expansion of local roads are an important element of the "system" and that new local options should be put to this purpose.

However, any transportation improvement also needs to be "necessitated by existing or reasonably foreseeable congestion levels". Consequently, not every street, road, transit program, etc. will qualify as a transportation improvement.

### Notice & Public Hearings

The creation of a TBD and any actions taken by the TBD's governing board thereafter must follow notice and public hearings. These items are specifically mentioned in the TBD statute:

- The jurisdiction creating the TBD must publish a notice of a hearing to establish a TBD at least once, ten days or more before the proposed hearing in a newspaper of general circulation within the proposed TBD.
- The notice must specify the transportation improvements to be provided or funded by the TBD.
- The jurisdiction proposing to create a TBD must hold a public hearing. The legislative authority of the jurisdiction must hear objections from any person affected by the creation of the TBD.

### TBD's have four revenue options subject to voter approval:

1. Property taxes – a 1-year excess levy or an excess levy for capital purposes;
2. Up to 0.2% sales and use tax;

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3. Up to \$100 annual vehicle fee per vehicle registered in the district; and
4. Vehicle tolls.

### TBD's have two revenue options not subject to voter approval:

1. Annual vehicle fee up to \$20. This fee is collected at the time of vehicle renewal.
2. Transportation impact fees on commercial and industrial buildings. Residential buildings are excluded. In addition, a city must provide a credit for a commercial or industrial transportation impact if the respective city has already imposed a transportation impact fee.

The law requires TBDs to provide a credit for vehicle fees previously imposed by a TBD. For example, if a City was the first to create a TBD to impose a \$20 vehicle fee and subsequently its County creates a countywide TBD imposing a \$20 vehicle fee, the County TBD must provide a \$20 credit against its fee for vehicles registered in the City. As a result, no fee would be collected by the County TBD from vehicles registered in the City.

However, if in the same example, the City TBD imposed only \$10 of the \$20 vehicle fee and the County TBD imposed a countywide \$20 vehicle fee, only a \$10 credit would be provided for vehicles registered in the City. The County TBD would collect \$10 from vehicles registered in the City.

### Other Requirements

Revenue rates, once imposed, may not be increased, unless authorized by voter approval. The TBD must issue an annual report to include the status of project costs, revenues, expenditures, and construction schedules.

The vehicle fee is administered by the Department of Licensing (DOL). The fee cannot be collected until 6 months after the fee is authorized by voters or the TBD governing board. There are a several vehicles types (snowmobiles, farm equipment, etc.) that are exempt from the fee. The fee is collected by DOL on vehicle renewals, remitted to the State Treasurer who will then remit the proceeds to the TBD monthly.

### **Issues for Lake Forest Park**

If the City wishes to take advantage of this option for providing funding for the preservation and maintenance of our transportation infrastructure, the City Council will need to:

- Publish notice of a public hearing
- Hold a public hearing
- Adopt an ordinance creating a TBD. The ordinance must include:
  - A finding that the creation of a TBD must be in the public's interest;
  - The boundaries of the TBD;
  - A specific description of the transportation improvements proposed by the district; and
  - The proposed taxes, fees, charges, and the range of tolls imposed by the TBD to raise revenue to fund the improvements.
  - The creation of the fees should be by separate ordinance after the TBD Board has

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been created and seated.

- The City Council would sit as the TBD Board (not during normal Council business) and determine funding mechanisms.
- To the extent City employees work on TBD projects, the City will have to be paid.
- In practical terms, the TBD will be a separate government -- much like a water district. The City Council would sit as the governing board, rather than an independently elected board of commissioners.
- There are also additional administrative considerations. The TBD would need to have all of the same administrative functions, including but not limited to: approved procedures, clerk functions (meeting notices, agendas, minutes, records, etc.), finance functions (budget, accounting, auditing, etc.), legal services.
- The most likely non-voted funding option would be the annual \$20 per vehicle license fee.

### Financial Impact

If it is assumed that the City implements an annual \$20 per vehicle license fee in Lake Forest Park and there are 5,200 households and there is an average of two cars per household, the City could potentially receive \$208,000 per year, minus some Department of Licensing administrative fee (1%). Another estimate from the Association of Washington Cities (AWC) uses a ratio of people to total vehicles countywide and then provides an estimate based on city population. For Lake Forest Park, that methodology would result in potential annual revenue of \$214,000 based on a \$20 per vehicle license fee.

If the TBD was created and the funding mechanism was put in place by November 1, 2008, since there is a six-month delay from the date of authorization to the date of actual fee collection, the City could expect to receive a maximum of approximately \$121,000 in 2009 for the seven months of revenue receipts and could expect to receive up to \$208,000 for a full-year in 2010.

### Potential Timelines

|                              |  |
|------------------------------|--|
| August 28:                   | Presentation of options, discussion with City Council, provide direction to City staff |
| September 11 <sup>th</sup> : | Introduce Ordinance, authorize public hearing for October 23 <sup>rd</sup>             |
| October 9 <sup>th</sup> :    | Continue discussions with staff and Ashley Probart from AWC                            |
| October 23 <sup>rd</sup> :   | Hold public hearing  |
| October 30 <sup>th</sup> :   | Take Council action  |

### Recommendation

Review the information and discuss the various options with the City staff.

**ORDINANCE NO. 983 (as amended)**

**AN ORDINANCE OF THE CITY OF LAKE FOREST PARK, WASHINGTON, ESTABLISHING A TRANSPORTATION BENEFIT DISTRICT, SPECIFYING THE BOUNDARIES FOR THE TRANSPORTATION BENEFIT DISTRICT, AND SPECIFYING THE MAINTENANCE AND PRESERVATION OF EXISTING TRANSPORTATION IMPROVEMENTS,<sup>5</sup> ~~AND AUTHORIZING A VEHICLE LICENSE FEE.~~**

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WHEREAS, the City Council of the City of Lake Forest Park has the responsibility under the Constitution of the State of Washington for the improvement, maintenance, and protection of public ways within the corporate limits of the City pursuant to RCW 35A.11.020 and Chapter 35A.47 RCW; and

WHEREAS, the improvement, maintenance, and protection of public ways requires maintaining and preserving existing transportation improvements to avoid catastrophic failure of the improvements which would require significant additional funds to reconstruct; and

WHEREAS, the number one priority in the “Washington Transportation Plan for 2007-2026” adopted by the Washington Transportation Commission is to preserve and extend prior investments in existing transportation facilities and the services they provide to people and commerce; and

WHEREAS, the “Washington Transportation Plan for 2007-2026” identifies in Section II that there is no more fundamental transportation investment than existing system preservation – keeping the physical infrastructure in safe and efficient operating condition; and

WHEREAS, the investment principles from the Puget Sound Regional Council “Destination 2030 Metropolitan Transportation Plan for the Central Puget Sound Region” states that the first priority should be to maintain, preserve, make safe, and optimize existing transportation infrastructure and services and Regional Transportation Policy 8.3 identifies the importance of maintaining and preserving the existing urban and rural transportation systems in a safe and usable state; and

WHEREAS, the City has limited transportation funding to pay for necessary transportation preservation and maintenance; and

WHEREAS, the funding dedicated for the preservation and maintenance of the City’s transportation infrastructure has been dramatically reduced due to the 2003 loss of King County Local Vehicle License fees (28% revenue reduction) and the ongoing annual decrease in Gas Tax revenues (0.8% annual reduction for past seven years); and

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WHEREAS, while dedicated revenues have decreased, the ongoing annual costs to preserve and maintain the City's transportation infrastructure continue to rise leaving the City unable to continue to adequately preserve and maintain the City's transportation infrastructure; and

WHEREAS, Chapter 36.73 RCW provides for the establishment of transportation benefit districts and for the levying of additional revenue sources for transportation improvements within the district that are consistent with existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels; and

WHEREAS, RCW 35.21.225 authorizes the City Council to establish a transportation benefit district subject to the provisions of Chapter 36.73 RCW; and

WHEREAS, the City desires to form a Transportation Benefit District which includes the entire City of Lake Forest Park as the boundaries currently exist; and

WHEREAS, prior to establishing a Transportation Benefit District, the City Council shall conduct a public hearing upon proper notice, which shall describe the functions and purposes of the proposed Transportation Benefit District; and

WHEREAS, the City provided notice of and conducted the public hearing on the proposed establishment of a Transportation Benefit District in accordance with RCW 36.73.050; and

WHEREAS, the City Council of the City of Lake Forest Park finds it to be in the best interests of the City to establish a citywide Transportation Improvement District for the preservation and maintenance of the City's transportation infrastructure consistent with Chapter 36.73 RCW, to protect the City's long-term investments in that infrastructure, to reduce the risk of transportation facility failures and improve safety, to continue optimal performance of the infrastructure over time, and to avoid more expensive infrastructure replacements in the future; and

WHEREAS, the City Council of the City of Lake Forest Park shall establish a governing body for the Transportation Benefit District comprised of the City Council acting in an ex officio and independent capacity; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Purpose. The purpose of this Ordinance is to establish a Transportation Benefit District pursuant to RCW 35.21.225 and RCW 36.73, as the City Council finds it is in the public interest to provide adequate levels of funding for the purposes of ongoing transportation improvements that preserve and maintain the transportation infrastructure of the City of Lake Forest Park, consistent with Chapter 36.73 RCW.

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**Section 2.** Creation of New City Code Chapter Providing for Formation of a Transportation Benefit District. The City of Lake Forest Park adopts a new chapter to the Lake Forest Park Municipal Code, 12.35 entitled “Transportation Benefit District”, which is set forth as follows:

**12.35.010 Establishing Transportation Benefit District.** There is created a transportation benefit district with geographical boundaries comprised of the corporate limits of the City as they currently exist or as they may exist following future annexations.

**12.35.020 Governing Board.**

A. The governing board of the transportation benefit district shall be the Lake Forest Park City Council acting in an ex officio and independent capacity, which shall have the authority to exercise the statutory powers set forth in Chapter 36.73 RCW.

B. The treasurer of the transportation benefit district shall be the City Finance Director.

C. The board shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1).

D. The board shall issue an annual report, pursuant to the requirements of RCW 36.73.160(2).

**12.35.030 Transportation Improvements Funded.** The funds generated by the transportation benefit district shall be used for transportation improvements that preserve and maintain the transportation infrastructure of the City, consistent with the requirements of Chapter 36.73 RCW, ~~and shall be used primarily for improvements to principal arterials of regional significance in the City necessitated by existing or reasonably foreseeable congestion levels on those arterials.~~ The transportation improvements funded by the district shall preserve and maintain the City's previous investments in the transportation infrastructure, reduce the risk of transportation facility failure, improve safety, continue the cost-effectiveness of the City's infrastructure investments, and continue the optimal performance of the transportation system.

~~**12.35.040 Establishment of Vehicle License Fee Revenue Source.** The board shall have the authority to establish an annual vehicle fee in the amount of \$20, consistent with RCW 36.73.065, to be collected by the Washington Department of Licensing on qualifying vehicles, set forth in RCW 82.80.140 and Chapters 36.73 and 46.16 RCW.~~

**12.35.050 Dissolution of District.** The transportation benefit district shall be dissolved when all indebtedness of the district has been retired and when all of the district's anticipated responsibilities have been satisfied.

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**Section 3. Severability.** Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 4. Effective Date.** This ordinance shall take effect after publication and posting as provided by law.

PASSED BY A MAJORITY VOTE of the members of the City of Lake Forest Park City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

APPROVED:

\_\_\_\_\_  
David R. Hutchinson, Mayor

ATTESTED:

\_\_\_\_\_  
Susan Stine, City Clerk

Introduction: September 11, 2008

Final Action:

Posted:

Published:

**Chapter 36.73 RCW  
TRANSPORTATION BENEFIT DISTRICTS**

**RCW SECTIONS**

- [36.73.010](#) Intent.
- [36.73.015](#) Definitions.
- [36.73.020](#) Establishment of district by county or city -- Participation by other jurisdictions.
- [36.73.030](#) Establishment of district by city.
- [36.73.040](#) General powers of district.
- [36.73.050](#) Establishment of district -- Public hearing -- Ordinance.
- [36.73.060](#) Authority to levy property tax.
- [36.73.065](#) Taxes, fees, charges, tolls.
- [36.73.070](#) Authority to issue general obligation bonds, revenue bonds.
- [36.73.080](#) Local improvement districts authorized -- Special assessments -- Bonds.
- [36.73.090](#) Printing of bonds.
- [36.73.100](#) Use of bond proceeds.
- [36.73.110](#) Acceptance and use of gifts and grants.
- [36.73.120](#) Imposition of fees on building construction or land development.
- [36.73.130](#) Power of eminent domain.
- [36.73.140](#) Authority to contract for street and highway improvements.
- [36.73.150](#) Department of transportation, counties, cities, and other jurisdictions may fund transportation improvements.
- [36.73.160](#) Transportation improvement projects -- Material change policy -- Annual report.
- [36.73.170](#) Completion of transportation improvement -- Termination of district operations -- Termination of taxes, fees, charges, and tolls -- Dissolution of district.
- [36.73.900](#) Liberal construction.

**RCW 36.73.010**

**Intent.**

The legislature finds that the citizens of the state can benefit by cooperation of the

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public and private sectors in addressing transportation needs. This cooperation can be fostered through enhanced capability for cities, towns, and counties to make and fund transportation improvements necessitated by economic development and to improve the performance of the transportation system.

It is the intent of the legislature to encourage joint efforts by the state, local governments, and the private sector to respond to the need for those transportation improvements on state highways, county roads, and city streets. This goal can be better achieved by allowing cities, towns, and counties to establish transportation benefit districts in order to respond to the special transportation needs and economic opportunities resulting from private sector development for the public good. The legislature also seeks to facilitate the equitable participation of private developers whose developments may generate the need for those improvements in the improvement costs.

[2005 c 336 § 2; 1987 c 327 § 1.]

### NOTES:

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

### RCW 36.73.015

#### Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "District" means a transportation benefit district created under this chapter.

(2) "City" means a city or town.

(3) "Transportation improvement" means a project contained in the transportation plan of the state or a regional transportation planning organization. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high-capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

[2006 c 311 § 24; 2005 c 336 § 1.]

### NOTES:

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Findings -- 2006 c 311: See note following RCW [36.120.020](#).

Effective date -- 2005 c 336: "This act takes effect August 1, 2005." [2005 c 336 § 26.]

**RCW 36.73.020**

**Establishment of district by county or city -- Participation by other jurisdictions.**

(1) The legislative authority of a county or city **may** establish a transportation benefit district within the county or city area or within the area specified in subsection (2) of this section, for the purpose of acquiring, constructing, improving, providing, and funding a transportation improvement within the district that is consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels. The transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway. However, if deemed appropriate by the governing body of the transportation benefit district, a transportation improvement may be owned by a participating port district or transit district, unless otherwise prohibited by law. Transportation improvements shall be administered and maintained as other public streets, roads, highways, and transportation improvements. **To the extent practicable, the district shall consider the following criteria when selecting transportation improvements:**

- (a) Reduced risk of transportation facility failure and improved safety;
- (b) Improved travel time;
- (c) Improved air quality;
- (d) Increases in daily and peak period trip capacity;
- (e) Improved modal connectivity;
- (f) Improved freight mobility;
- (g) Cost-effectiveness of the investment;
- (h) Optimal performance of the system through time; and

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(i) Other criteria, as adopted by the governing body.

(2) Subject to subsection (6) of this section, the district may include area within more than one county, city, port district, county transportation authority, or public transportation benefit area, if the legislative authority of each participating jurisdiction has agreed to the inclusion as provided in an interlocal agreement adopted pursuant to chapter [39.34](#) RCW. However, the boundaries of the district need not include all territory within the boundaries of the participating jurisdictions comprising the district.

(3) The members of the legislative authority proposing to establish the district, acting ex officio and independently, shall constitute the governing body of the district: PROVIDED, That where a district includes area within more than one jurisdiction under subsection (2) of this section, the district shall be governed under an interlocal agreement adopted pursuant to chapter [39.34](#) RCW. However, the governing body shall be composed of at least five members including at least one elected official from the legislative authority of each participating jurisdiction.

(4) The treasurer of the jurisdiction proposing to establish the district shall act as the ex officio treasurer of the district, unless an interlocal agreement states otherwise.

(5) The electors of the district shall all be registered voters residing within the district.

(6) Prior to December 1, 2007, the authority under this section, regarding the establishment of or the participation in a district, shall not apply to:

(a) Counties with a population greater than one million five hundred thousand persons and any adjoining counties with a population greater than five hundred thousand persons;

(b) Cities with any area within the counties under (a) of this subsection; and

(c) Other jurisdictions with any area within the counties under (a) of this subsection.

[2006 c 311 § 25; 2005 c 336 § 3; 1989 c 53 § 1; 1987 c 327 § 2.]

**NOTES:**

Findings -- 2006 c 311: See note following RCW [36.120.020](#).

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Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

Severability -- 1989 c 53: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 53 § 5.]

Transportation benefit district tax authority: RCW [82.47.020](#).

**RCW 36.73.030**

**Establishment of district by city.**

See RCW [35.21.225](#).

**RCW 36.73.040**

**General powers of district.**

(1) A transportation benefit district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(2) A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district apply to the district.

(3) To carry out the purposes of this chapter, and subject to the provisions of RCW [36.73.065](#), a district is authorized to impose the following taxes, fees, charges, and tolls:

(a) A sales and use tax in accordance with RCW [82.14.0455](#);

(b) A vehicle fee in accordance with RCW [82.80.140](#);

(c) A fee or charge in accordance with RCW [36.73.120](#). However, if a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. Developments consisting of less than twenty residences are exempt from the fee or charge under RCW [36.73.120](#); and

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(d) Vehicle tolls on state routes or federal highways, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. The department of transportation shall administer the collection of vehicle tolls authorized on state routes or federal highways, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose, only with approval of the transportation commission, or its successor, the tolls in amounts sufficient to implement the district's transportation improvement plan.

[2005 c 336 § 4; 1989 c 53 § 3; 1987 c 327 § 4.]

### NOTES:

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

Severability -- 1989 c 53: See note following RCW [36.73.020](#).

### RCW 36.73.050

#### Establishment of district -- Public hearing -- Ordinance.

(1) The legislative authorities proposing to establish a district, or to modify the boundaries of an existing district, or to dissolve an existing district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the proposed district. Subject to the provisions of RCW [36.73.170](#), the legislative authorities shall make provision for a district to be automatically dissolved when all indebtedness of the district has been retired and anticipated responsibilities have been satisfied. This notice shall be in addition to any other notice required by law to be published. The notice shall, where applicable, specify the functions or activities proposed to be provided or funded, or the additional functions or activities proposed to be provided or funded, by the district. Additional notice of the hearing may be given by mail, by posting within the proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the legislative authorities shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the district.

(2)(a) Following the hearing held pursuant to subsection (1) of this section, the

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legislative authorities may establish a district, modify the boundaries or functions of an existing district, or dissolve an existing district, if the legislative authorities find the action to be in the public interest and adopt an ordinance providing for the action.

(b) The ordinance establishing a district shall specify the functions and transportation improvements described under RCW [36.73.015](#) to be exercised or funded and establish the boundaries of the district. Subject to the provisions of RCW [36.73.160](#), functions or transportation improvements proposed to be provided or funded by the district may not be expanded beyond those specified in the notice of hearing, unless additional notices are made, further hearings on the expansion are held, and further determinations are made that it is in the public interest to so expand the functions or transportation improvements proposed to be provided or funded.

[2007 c 329 § 3; 2005 c 336 § 5; 1987 c 327 § 5.]

### NOTES:

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

### RCW 36.73.060

#### Authority to levy property tax.

(1) A district may levy an ad valorem property tax in excess of the one percent limitation upon the property within the district for a one-year period whenever authorized by the voters of the district pursuant to RCW [84.52.052](#) and Article VII, section 2(a) of the state Constitution.

(2) A district may provide for the retirement of voter-approved general obligation bonds, issued for capital purposes only, by levying bond retirement ad valorem property tax levies in excess of the one percent limitation whenever authorized by the voters of the district pursuant to Article VII, section 2(b) of the state Constitution and RCW [84.52.056](#).

[2005 c 336 § 6; 1987 c 327 § 6.]

### NOTES:

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

### RCW 36.73.065

#### Taxes, fees, charges, tolls.

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(1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of the transportation improvement or improvements proposed by the district and the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements.

(2) Voter approval under this section shall be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW [36.73.015](#).

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed under this chapter once the taxes, fees, charges, or tolls take effect, unless authorized by the district voters pursuant to RCW [36.73.160](#).

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district the following fees and charges:

(i) Up to twenty dollars of the vehicle fee authorized in RCW [82.80.140](#); or

(ii) A fee or charge in accordance with RCW [36.73.120](#).

(b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.

(c)(i) A district solely comprised of a city or cities shall not impose the fees or charges identified in (a) of this subsection within one hundred eighty days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the one hundred eighty-day period; or

(ii) A district solely comprised of a city or cities identified in RCW [36.73.020\(6\)\(b\)](#) shall not impose the fees or charges until after May 22, 2008, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

(5) If the interlocal agreement in RCW [82.80.140\(2\)\(a\)](#) cannot be reached, a

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district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to twenty dollars of the vehicle fee authorized in RCW [82.80.140](#).

[2007 c 329 § 1; 2005 c 336 § 17.]

### NOTES:

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

### RCW 36.73.070

#### Authority to issue general obligation bonds, revenue bonds.

(1) To carry out the purposes of this chapter and notwithstanding RCW [39.36.020](#)(1), a district may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter-approved general obligation indebtedness, equal to one and one-half percent of the value of taxable property within the district, as the term "value of taxable property" is defined in RCW [39.36.015](#). A district may additionally issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW [39.36.015](#), when authorized by the voters of the district pursuant to Article VIII, section 6 of the state Constitution, and may also provide for the retirement thereof by excess property tax levies as provided in RCW [36.73.060](#)(2). The district may, if applicable, submit a single proposition to the voters that, if approved, authorizes both the issuance of the bonds and the bond retirement property tax levies.

(2) General obligation bonds with a maturity in excess of forty years shall not be issued. The governing body of the district shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

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(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the district may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. The district may also pledge any other revenues that may be available to the district.

(4) In addition to general obligation bonds, a district may issue revenue bonds to be issued and sold in accordance with chapter [39.46](#) RCW.

[2005 c 336 § 7; 1987 c 327 § 7.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.080**

**Local improvement districts authorized -- Special assessments -- Bonds.**

(1) A district may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and administered, and assessments shall be made and collected, in the manner and to the extent provided by law to cities and towns pursuant to chapters [35.43](#), [35.44](#), [35.49](#), [35.50](#), [35.51](#), [35.53](#), and [35.54](#) RCW. However, the duties devolving upon the city or town treasurer under these chapters shall be imposed upon the district treasurer for the purposes of this section. A local improvement district may only be formed under this section pursuant to the petition method under RCW [35.43.120](#) and [35.43.125](#).

(2) The governing body of a district shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special

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assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the district has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the district arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the district has created. The district issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection (2) shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by a district for real property or property right donations made pursuant to RCW [47.14.030](#).

(4) The governing body may establish, administer, and pay money into a local improvement guaranty fund, in the manner and to the extent provided by law to cities and towns under chapter [35.54](#) RCW, to guarantee special assessment bonds issued by the district.

[2005 c 336 § 8; 1987 c 327 § 8.]

### NOTES:

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

### **RCW 36.73.090** **Printing of bonds.**

Where physical bonds are issued pursuant to RCW [36.73.070](#) or [36.73.080](#), the bonds shall be printed, engraved, or lithographed on good bond paper and the manual or facsimile signatures of both the treasurer and chairperson of the governing body shall be included on each bond.

[1987 c 327 § 9.]

### **RCW 36.73.100** **Use of bond proceeds.**

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(1) The proceeds of any bond issued pursuant to RCW [36.73.070](#) or [36.73.080](#) may be used to pay costs incurred on a bond issue related to the sale and issuance of the bonds. These costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, and other similar activities.

(2) In addition, proceeds of bonds used to fund capital projects may be used to pay the necessary and related engineering, architectural, planning, and inspection costs.

[2005 c 336 § 9; 1987 c 327 § 10.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.110**

**Acceptance and use of gifts and grants.**

A district may accept and expend or use gifts, grants, and donations.

[2005 c 336 § 10; 1987 c 327 § 11.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.120**

**Imposition of fees on building construction or land development.**

(1) Subject to the provisions in RCW [36.73.065](#), a district may impose a fee or charge on the construction or reconstruction of commercial buildings, industrial buildings, or on any other commercial or industrial building or building space or appurtenance, or on the development, subdivision, classification, or reclassification of land for commercial purposes, only if done in accordance with chapter [39.92](#) RCW.

(2) Any fee or charge imposed under this section shall be used exclusively for transportation improvements constructed by a district. The fees or charges imposed must be reasonably necessary as a result of the impact of development, construction, or classification or reclassification of land on identified transportation needs.

(3) If a county or city within the district area is levying a fee or charge for a

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transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district.

[2007 c 329 § 4; 2005 c 336 § 11; 1988 c 179 § 7; 1987 c 327 § 12.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

Severability -- Prospective application -- Section captions -- 1988 c 179: See RCW [39.92.900](#) and [39.92.901](#).

**RCW 36.73.130**

**Power of eminent domain.**

A district **may** exercise the power of eminent domain to obtain property for its authorized purposes in the same manner as authorized for the city or county legislative authority that established the district.

[2005 c 336 § 12; 1987 c 327 § 13.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.140**

**Authority to contract for street and highway improvements.**

A district has the same powers as a county or city to contract for street, road, or state highway improvement projects and to enter into reimbursement contracts provided for in chapter [35.72](#) RCW.

[2005 c 336 § 13; 1987 c 327 § 14.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.150**

**Department of transportation, counties, cities, and other jurisdictions may fund transportation improvements.**

The department of transportation, counties, cities, and other jurisdictions **may** give funds to districts for the purposes of financing transportation improvements under

[this chapter.](#)

[2005 c 336 § 14; 1987 c 327 § 15.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.160**

**Transportation improvement projects -- Material change policy -- Annual report.**

(1) The district governing body shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan. The policy must at least address material changes to cost, scope, and schedule, the level of change that will require governing body involvement, and how the governing body will address those changes. At a minimum, in the event that a transportation improvement cost exceeds its original cost by more than twenty percent as identified in a district's original finance plan, the governing body shall hold a public hearing to solicit comment from the public regarding how the cost change should be resolved.

(2) A district shall issue an annual report, indicating the status of transportation improvement costs, transportation improvement expenditures, revenues, and construction schedules, to the public and to newspapers of record in the district.

[2005 c 336 § 18.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.170**

**Completion of transportation improvement -- Termination of district operations -- Termination of taxes, fees, charges, and tolls -- Dissolution of district.**

Within thirty days of the completion of the construction of the transportation improvement or series of improvements authorized by a district, the district shall terminate day-to-day operations and exist solely as a limited entity that oversees the collection of revenue and the payment of debt service or financing still in effect, if any and to carry out the requirements of RCW [36.73.160](#). The district shall accordingly adjust downward its employees, administration, and overhead

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expenses. Any taxes, fees, charges, or tolls imposed by the district terminate when the financing or debt service on the transportation improvement or series of improvements constructed is completed and paid and notice is provided to the departments administering the taxes. Any excess revenues collected must be disbursed to the participating jurisdictions of the district in proportion to their population, using population estimates prepared by the office of financial management. The district shall dissolve itself and cease to exist thirty days after the financing or debt service on the transportation improvement, or series of improvements, constructed is completed and paid. If there is no debt outstanding, then the district shall dissolve within thirty days from completion of construction of the transportation improvement or series of improvements authorized by the district. Notice of dissolution must be published in newspapers of general circulation within the district at least three times in a period of thirty days. Creditors must file claims for payment of claims due within thirty days of the last published notice or the claim is extinguished.

[2005 c 336 § 19.]

**NOTES:**

Effective date -- 2005 c 336: See note following RCW [36.73.015](#).

**RCW 36.73.900**

**Liberal construction.**

The rule of strict construction does not apply to this chapter, and this chapter shall be liberally construed to permit the accomplishment of its purposes.

[1987 c 327 § 16.]

## Transportation Benefit District ([Chapter 36.73 RCW](#)) Checklist

This checklist is informational only and cannot replace a review of applicable statutes. It is intended to highlight many of the important considerations when creating a Transportation Benefit District (TBD). We encourage you to seek legal advice when creating a TBD.

### Elements of Creating a TBD:

- Are you **Eligible** to create a TBD?
- Are the TBD **Boundaries** consistent with the revenue options to be imposed?
- Do you need an **Interlocal Agreement**?
- Is the TBD funding **Qualifying Transportation Improvements**?
- Have you conducted the proper **Notice & Public Hearings**?
- Have you identified the proper **Revenue Options**?
- Have you adopted the proper **Ordinance**?
- Is the **Administration** of the TBD in place?
- Have you notified the **Appropriate Revenue Collection Agencies**?

### Eligibility

With the exception of King, Pierce, and Snohomish county and their respective cities, all other counties and cities may currently create a TBD if the revenue options are subject to a public vote.

King, Pierce and Snohomish counties and their respective cities within the counties are not eligible to create a TBD until December 1, 2007.

If you intend to create a TBD to impose the up to \$20 vehicle fee, there are several dates to consider:

| <b>All counties except King, Pierce and Snohomish</b> |  |  |
|---|--|--|
| July 22, 2007 to January 18, 2008                     | County only  | Note: A county may waive this exclusive authority and allow a city to proceed by adopting a resolution to that effect. |
| January 19, 2008                                      | All 36 counties and cities within the 36 counties. |  |

| <b>King, Pierce and Snohomish County Eligibility</b> |                         |   |
|--|-------------------------|---|
| December 1, 2007 to May 22, 2008                     | County only             | Note: King, Pierce, or Snohomish County may waive this exclusive authority and allow a city to proceed by adopting a resolution to that effect. |
| May 23, 2008   | All counties and cities |   |

### Boundaries

The ordinance establishing the TBD must include the boundaries of the district. All of the transportation improvements to be funded by the TBD must be located within the TBD boundaries. Additionally, what boundaries you choose affects the revenue options of the TBD.

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- If the revenue options will be subject to a public vote, the boundaries can be less than the boundaries of the participating jurisdictions.
- If the revenue options will not be subject to a public vote, the boundaries must be:
  - Countywide; or
  - Citywide; or
  - Unincorporated Countywide (but only after a countywide TBD has failed; see ***Interlocal Agreement*** below)

### Interlocal Agreement

An interlocal agreement is required in two instances:

- If the TBD will include two or more jurisdiction (county and city, two cities, a city and a port, transit, etc.), an interlocal agreement, adopted pursuant to Chapter 39.34 RCW, is required between the participating jurisdiction.
- If a county creates a TBD for the purpose of imposing the up to \$20 vehicle fee, the county must first attempt to adopt a countywide fee to be shared with the cities within the county according to an interlocal agreement. There are no requirements about what the interlocal agreement should contain, but it should be adopted pursuant to Chapter 39.34 RCW. Sixty percent of the cities representing seventy five percent of the incorporated population in which the fee will be collected must enter into the interlocal agreement for it to be effective.
- If an interlocal agreement cannot be reached, a county may create a TBD that includes only the unincorporated portion of the county.

### Qualifying Transportation Improvements

A TBD exists solely for the purpose of acquiring, constructing, improving, providing, and funding “transportation improvements” within the district. The ordinance establishing the TBD must specify those transportation improvements. To be a qualifying transportation improvement:

- The improvement must be located within the boundaries of the TBD.
- The improvement is necessitated by existing or reasonably foreseeable congestion levels.
- The improvement is contained in a state or regional transportation plan.
- When selecting the improvement, the governing board must consider the following criteria, to the extent practical:
  - Reduced risk of transportation facility failure and improved safety;
  - Improved travel time;
  - Improved air quality;
  - Increases in daily and peak period trip capacity;
  - Improved modal connectivity;
  - Improved freight mobility;
  - Cost-effectiveness of the investment;
  - Optimal performance of the system through time; and
  - Other criteria, as adopted by the governing body.

Remember that statutory definition of a “transportation improvement” is quite broad and includes state, regional, and local transportation facilities such as:

- New or existing highway of statewide significance;
- Principal arterials of regional significance;
- High capacity transportation;
- Public transportation;

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- Transportation demand management; or
- Other transportation projects and programs of regional or statewide significance (as defined or amended into the respective regional or state plans).

## Notice & Public Hearings

The creation of a TBD and any actions taken by the TBD's governing board thereafter must follow notice and public hearings. These items are specifically mentioned in the TBD statute:

### Notice

- The jurisdiction creating the TBD must publish a notice of a hearing to establish a TBD at least once, ten days or more before the proposed hearing in a newspaper of general circulation within the proposed TBD. This notice is in addition to any other notice required by law.
- The notice must specify the transportation improvements to be provided or funded by the TBD.

### Public Hearing

- The jurisdiction proposing to create a TBD must hold a public hearing. The legislative authority of the jurisdiction must hear objections from any person affected by the creation of the TBD.

## Revenue Options

- TBD's have several revenue options, all of which can be subject to voter approval and two are not required to be subject to voter approval.

TBD's revenue options subject to voter approval:

1. Property taxes – a 1-year excess levy or an excess levy for capital purposes;
2. Up to 0.2% sales and use tax;
3. Up to \$100 annual vehicle fee per vehicle registered in the district; and
4. Vehicle tolls.

**Please Note:** There are exemptions or unique requirements when using the vehicle fee or vehicle tolls.

TBD's have two revenue options *not subject to voter approval, but subject to other conditions*:

1. Annual vehicle fee up to \$20. This fee is at the time of vehicle renewal and cannot be used to fund passenger only ferry-service improvements.
2. Transportation impact fees on commercial and industrial buildings. Residential buildings are excluded. In addition, a county or city must provide a credit for a commercial or industrial transportation impact if the respective county or city has already imposed a transportation impact fee.

**Please Note:** This is an option only. A county or city still has the option of placing either the annual fee of up to \$20 or the impact fees to the vote of the people as an advisory vote or an actual requirement of imposition.

## Ordinance

The creation of a TBD must be through an ordinance. The ordinance must include:

- A finding that the creation of a TBD must be in the public's interest;

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- The boundaries of the TBD;
- A specific description of the transportation improvement or improvements proposed by the district; and
- The proposed taxes, fees, charges, and the range of tolls imposed by the TBD to raise revenue to fund the improvement or improvements. Depending on the revenue option chosen, the ordinance may need to include additional information such as statutory exemptions and credits for the vehicle fee, the date in which the sales and use tax will be effective, the date in which the property tax excess levy will be put to the voters, etc.

If the revenue options will be put to a public vote, the ordinance should also include when the vote will occur. A vote can be at any general or special election.

## **Administration**

Administration of the TBD is relatively simple. The legislative authority proposing to establish the TBD is the TBD's governing body. If additional jurisdictions are part of the TBD through an interlocal agreement, the TBD governing body must have at least five members, including at least one elected official from each of the participating jurisdictions. Members are acting ex officio and independently on the TBD governing board. The treasurer of the legislative authority proposing to establish the TBD must act as the ex officio treasurer of the TBD. However, there are some specific on-going requirements of the TBD.

- The TBD must develop a material change policy to address major plan changes that affect the delivery or the ability to finance the plan. The policy must include a public hearing to solicit comments on how the cost changes should be resolved should transportation improvement costs exceed its original cost by more than 20%.
- The TBD must issue an annual report indicating the status of transportation improvement costs, transportation improvement expenditures, revenues, and construction schedules to the public and to newspapers of record in the district.
- If the TBD proposes functions or transportation improvements that are expanded beyond those specified in the original notice of hearing establishing the TBD, the TBD must go through the notice, public hearing, and ordinance process again.

## **Appropriate Revenue Collecting Agencies**

Each of the TBD revenue options are collected and administered by different agencies. Each agency has its own requirements to comply with before collection can begin.

- Property taxes are administered by the county assessor and treasurer. Contact the appropriate county officials to determine the timeline/process for collecting this tax.
- The sales and use tax is administered by the Department of Revenue (DOR). The sales and use tax cannot be imposed for a period exceeding 10 years (unless reauthorized by the voters for another period not to exceed 10 years). A new sales tax cannot be collected until DOR receives 75 days notice and the new tax will begin on the first day of January, April, July or October. Thereafter, DOR will remit the proceeds to the TBD monthly.
- The vehicle fee is administered by the Department of Licensing (DOL). The fee cannot be collected until 6 months after the fee is authorized by voters or the TBD governing board. There are a several vehicles types (snowmobiles, farm equipment, etc.) that are exempt from the fee. The fee is collected by DOL on vehicle renewals, remitted to the State Treasurer who will then remit the proceeds to the TBD monthly.

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- Vehicle tolls are administered by the Department of Transportation when imposed on state routes or federal highways. The TBD must administer collection of tolls on city streets or county roads. However, in both instances, the Washington State Transportation Commission must approve, set, and impose the tolls and the amount of tolls is limited to the amount sufficient to implement the TBD's transportation improvement finance plan.
- Transportation impact fees on commercial and industrial buildings/developments are administered by the TBD. If this fee is imposed, it is important to contact the counties and cities within the TBD because if a county or city has already imposed a transportation impact fee, the TBD may not impose the fee on that building/development.



# Transportation Benefit District Legislation in Effect

Through the cooperative efforts of the Association of Washington Cities (AWC) and the Washington State Associations of Counties (WSAC), significant legislation will go into effect on July 22, which results in the most important local transportation tool for cities and counties in sixteen years – Transportation Benefit Districts (TBDs). They are independent taxing districts that can impose an array of taxes or fees either through a vote of the people or through council action. TBDs are flexible: they allow cities and counties to work cooperatively on addressing both regional and local transportation challenges.

## Frequently Asked Questions

### Background

In 1987, the Legislature created Transportation Benefit Districts (“TBD”) as an option for local governments to fund transportation improvements. Since 2005, the Legislature has amended the TBD statute to expand its uses and revenue authority. Most recently, the Legislature amended the TBD statute to authorize the imposition of vehicle fees and transportation impact fees without a public vote. The purpose of these materials is to help you better understand TBDs.

### What is a Transportation Benefit District (TBD)?

A TBD is a quasi-municipal corporation and independent taxing district created for the sole purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district.

### Who may create a TBD?

The legislative authority of a county or city may create a TBD by ordinance following the procedures set forth in Chapter 36.73. The county or city proposing to create the TBD may include other counties, cities, port districts, or transit districts through interlocal agreements.

However, King, Pierce, and Snohomish counties, and the cities within those counties cannot create a TBD until December, 1, 2007.

### Who governs the TBD?

The members of the legislative authority (county or city) proposing to establish the TBD is the governing body of the TBD. The legislative authority is acting ex officio and independently as the TBD governing body. If a TBD includes additional jurisdictions through interlocal agreements, then the governing body must have at least five members, including at least one elected official from each of the participating jurisdictions.

### Why create a TBD if the county or city legislative authority is the governing board?

A TBD is a legal creature. Although a TBD has many of the powers of a county and city (impose taxes, eminent domain powers, can contract and accept gifts, etc.), - it is a separate taxing district, which is important for property tax purposes. Additionally, by being a separate legal and taxing creature, TBDs are flexible. For example, more than one type of jurisdiction can be part of a TBD and the boundaries can be less than countywide or citywide.

### Can a TBD be created without imposing fees or proposing voter approved revenue options?

No. The creation of a TBD must be through an ordinance. The ordinance must include a finding that the creation of a TBD is in the public’s interest, the boundaries of the TBD, a description of the transportation improvement or improvements proposed by the district, and the proposed taxes, fees, charges, etc. the TBD will impose to raise revenue to fund the identified improvement or improvements.

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### **Are TBD revenues required to be spent as they are collected?**

No. The governing body must develop a plan that specifies the transportation improvements to be provided or funded by the TBD. As part of this plan, the TBD's governing board can indicate if the funds will be used immediately, or if they will be collected for a specified period. Typically, funds that are collected for a specified period before being expended are used to fully fund large projects, when bonding, or serve as a match for state or federal funds that may only become available in a specified time frame.

### **What are the boundaries of a TBD?**

The boundaries of a TBD may be less than the boundaries of those jurisdictions participating in the TBD. For example, a county or city may choose to have the TBD boundaries identical with the county or city, or just include a portion of the county or city. However, if a TBD chooses to exercise the tax authority that does not require a public vote (e.g. vehicle and impact fees), the boundaries of the TBD must be countywide, citywide, or unincorporated countywide.

### **What transportation improvements can be funded by a TBD?**

A TBD can fund any transportation improvement contained in any existing state or regional transportation plan that is necessitated by existing or reasonably foreseeable congestion levels. This can include maintenance and improvements to city streets, county roads, state highways, investments in high capacity transportation, public transportation, transportation demand management and other transportation projects identified in a regional transportation planning organization plan or state plan.

### **Can a TBD fund maintenance and preservation activities?**

Yes. A TBD may fund the operation, maintenance, and preservation of the programs and facilities noted above. Additionally, maintenance and preservation activities are noted in many state and regional transportation plans. For

example, preservation of existing transportation facilities is the number one priority within the Washington State Transportation Plan. Eliminating the backlog of asphalt pavement projects and maintaining chip seal paving, along with many other maintenance and preservation activities, are specifically noted as priorities in that Plan.

However, keep in mind that any transportation improvement also needs to be "necessitated by existing or reasonably foreseeable congestion levels". Consequently, not every street, road, transit program, etc. will qualify as a transportation improvement.

### **If the TBD transportation improvements must be in a state or regional plan, does that mean only state and regional roads such as arterials, can be funded?**

No. The TBD statute originally limited the use of funds for city streets and county roads to 40% of funds generated. That limitation was removed to make TBD an option for purely locally determined activities. For example, both the Washington State Transportation Plan, 2007-2026 State transportation plan ([www.wsdot.wa.gov/NR/rdonlyres/083D185B-7B1F-49F5-B865-C0A21D0DCE32/0/FinalWTPI11406\\_nomaps.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/083D185B-7B1F-49F5-B865-C0A21D0DCE32/0/FinalWTPI11406_nomaps.pdf)) and the Puget Sound Regional Council's Destination 2030 Update at page 62 ([www.psrc.org/projects/mtp/pubs/D2030plan5.07.pdf](http://www.psrc.org/projects/mtp/pubs/D2030plan5.07.pdf)) note that adequate maintenance, preservation, and expansion of local roads are an important element of the "system" and that new local options should be put to this purpose.

### **What if the transportation improvements are not currently in an existing state or regional plan?**

We suggest that you work with your Regional Transportation Planning Organization (RTPO) to incorporate your proposed improvements into the RTPO's plan. As noted above, most RTPO's and the state plan have already identified a broad range of local transportation improvements as priorities.

*continued*

## From Lake Forest Council agenda packet for October 9,2008

### What revenue options do TBD's have?

TBD's have several revenue options subject to voter approval:

1. Property taxes – a 1-year excess levy or an excess levy for capital purposes;
2. Up to 0.2% sales and use tax;
3. Up to \$100 annual vehicle fee per vehicle registered in the district; and
4. Vehicle tolls.

Please Note: There are exemptions or unique requirements when using the vehicle fee or vehicle tolls.

TBD's have two revenue options not subject to voter approval, but subject to additional conditions:

1. Annual vehicle fee up to \$20. This fee is collected at the time of vehicle renewal and cannot be used to fund passenger only ferry-service improvements.
2. Transportation impact fees on commercial and industrial buildings. Residential buildings are excluded. In addition, a county or city must provide a credit for a commercial or industrial transportation impact if the respective county or city has already imposed a transportation impact fee.

Please Note: Foregoing a vote is an option only. A county or city still has the option of placing either the annual fee of up to \$20 or the impact fees to the vote of the people as an advisory vote or an actual requirement of imposition.

### What are the additional conditions required to impose revenue options not subject to voter approval?

To impose either fee, the TBD's boundaries must be countywide or citywide, or if applicable, in the unincorporated county.

**Vehicle Fees:** A county that creates a TBD to impose up to a \$20 vehicle fee must first attempt to impose a countywide fee to be shared with cities by interlocal agreement. Sixty percent (60%) of the cities representing seventy-five (75%) of the incorporated population must approve the interlocal agreement for it to be effective. If an interlocal agreement cannot be reached, the county is authorized to create a TBD and impose the fee only in the unincorporated area of the county.

In addition, credits must be provided for previously imposed TBD vehicle fees. Credits are not required for voter approved vehicle fees.

**Commercial and Industrial Transportation Impact Fees:** A TBD that is either countywide or citywide must provide a credit for a commercial or industrial transportation impact fee if the respective county or city has already imposed a transportation impact fee. This is commonly called a "no double-dipping" provision.

### What are the effective dates to impose revenue options not subject to voter approval?

| <b>All counties except King, Pierce and Snohomish</b> |   |
|---|---|
| July 22, 2007 to January 18, 2008                     | County only<br>Note: A county may waive this exclusive authority and allow a city to proceed by adopting a resolution to that effect. |
| January 19, 2008                                      | All 36 counties and cities within the 36 counties.  |

| <b>King, Pierce and Snohomish County Eligibility</b> |  |
|--|--|
| December 1, 2007 to May 22, 2008                     | County only<br>Note: King, Pierce, or Snohomish County may waive this exclusive authority and allow a city to proceed by adopting a resolution to that effect. |
| May 23, 2008   | All counties and cities  |

*continued*

## From Lake Forest Council agenda packet for October 9,2008

### **If we create a countywide TBD for the up to \$20 vehicle fee, how is the revenue distributed to cities?**

The revenue must be shared according to the interlocal agreement. The law does not prescribe what the interlocal agreement contains. Consequently, the revenue can be shared by population, number of vehicles within each jurisdiction, project list, a combination of these, or whatever the county and cities can reach agreement on.

### **What happens if a city imposes the up to \$20 vehicle fee and then the county imposes a countywide fee without voter approval?**

The law requires TBDs to provide a credit for vehicle fees previously imposed by a TBD.

For example, if a City was the first to create a TBD to impose a \$20 vehicle fee and subsequently its County creates a countywide TBD imposing a \$20 vehicle fee, the County TBD must provide a \$20 credit against its fee for vehicles registered in the City. As a result, no fee would be collected by the County TBD from vehicles registered in the City. Additionally, the City would not be part of the interlocal agreement with the County or be included in the number/percentages needed for the interlocal agreement to be effective.

However, if in the same example, the City TBD imposed only \$10 of the \$20 vehicle fee and the County TBD imposed a countywide \$20 vehicle fee, only a \$10 credit would be provided for vehicles registered in the City. The County TBD would collect \$10 from vehicles registered in the City. Consequently, the County TBD would need to include the City in the interlocal agreement discussions and the City is included in the number/percentages needed for the interlocal agreement to be effective.

### **What other requirements should I be aware of?**

Revenue rates, once imposed, may not be increased, unless authorized by voter approval.

If project costs exceed original costs by more than 20 percent, a public hearing must be held to solicit public comment regarding how the cost change should be resolved.

The TBD must issue an annual report to include the status of project costs, revenues, expenditures, and construction schedules.

The TBD must be dissolved upon completion of the project(s) and the payment of debt service.

### **Checklist**

For a checklist that highlights many of the important considerations when creating a Transportation Benefit District (TBD), please see [www.awcnet.org/tbd](http://www.awcnet.org/tbd).

Eligibility requirements vary. For additional questions on Transportation Districts, please contact AWC staff Ashley Probart at [ashleyp@awcnet.org](mailto:ashleyp@awcnet.org) Sheri Sawyer at [sheris@awcnet.org](mailto:sheris@awcnet.org).