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Washington State
Department of Transportation

Transportation Benefit Districts Analysis and Report

Report to: Dennis Ingham, Assistant Secretary
TransAid Service Center
Washington State Department of Transportation

From: Bob Berg

Date: July 27, 1998

CONCERN

The reason for the production of this report stems from a concern about financing of transportation infrastructure capital improvements. With revenues either flat or declining in real terms, there is a concern that not all avenues to finance needed road, street, and bridge projects are being pursued. Transportation Benefit Districts ("TBD's") are a method by which infrastructure improvements can be planned, prioritized, funded, and built by either a local governmental entity on its own or in partnership with other stakeholders.

QUESTION

From the concern a question has emerged as to the complexities associated with the formation of a TBD and utilizing that process to finance needed infrastructure improvements. **"Are the requirements and mechanisms for forming a transportation benefit district and using its statutory authority so burdensome, confusing, and intricate so as to, from a practical effect, preclude the use of transportation benefit districts as a vehicle to fund transportation improvements?"**

SOURCES & REFERENCES

In examining this issue, research of the appropriate chapters of the Revised Code of Washington, and search (CD Law) for any relevant administrative rules (Washington Administrative Code) and any activities pertaining to legal review (Washington court decisions and Attorney General Legal opinions) was conducted. No court cases or attorney general legal opinions were located.

Information was also gathered regarding the experience in Lewis County which had the distinction along with the City of Centralia in establishing the first TBD in the state. In that TBD the partnership also included the Port of Centralia as well as private business interests in the Centralia area (although their involvement was on the periphery). Data was also gathered regarding the formation and operation of the Point Roberts Transportation benefit District.

Research also included in depth discussion relative to TBD's with WSDOT Transportation Economic Partnership Division Director Jerry Ellis (who, while in the state legislature had a great deal to do with the authorship of the TBD bill), Jay Armstrong of the County Administration Board, and Diane Carlson of the Association of Washington Cities.

LEGISLATIVE BACKGROUND

Transportation Benefit Districts were originally authorized by the Washington State Legislature in 1987 and are codified in Chapter 36.73 RCW. The legislative intent of the statute is to *"encourage joint efforts by the state, local governments, and the private sector to respond to the need for those transportation improvements on state highway, county roads, and city streets."* The statute continues advising that *"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..."* RCW 36.73.010 and concludes with the statement that *"The legislature also seeks to facilitate the equitable participation of the private developers whose developments may generate the need for those improvements in the improvement costs."*

TBD's may be formed by either a county or a city. The statute authorizing TBD's for cities is found in RCW 35.21.225 and 36.73.030. TBD's incorporating multiple jurisdictions are authorized as well. Should a county form a TBD, no city may be included unless it expressly approves. Likewise, should a city wish to establish a TBD, no unincorporated area may be included without the express permission of the county. Also other cities may not be included in a city generated TBD unless those other jurisdictions have given their express approval. Multiple TBD's are authorized within a county or a city. In addition the area contained inside a proposed TBD be *"...those areas which can reasonably be expected to benefit from the improvements funded by the district."* RCW 37.73.050 (2)

TBD's are formed by the appropriate legislative authority and in cases where multiple jurisdictions are involved, participation is defined by an executed intergovernmental agreement. The agreement would designate the lead agency for purposes of forming a multiple jurisdiction TBD.

The legislative authority (for the lead agency in multiple jurisdiction TBD's) established the district by ordinance pursuant and subsequent to a properly noticed public hearing. The ordinance establishing the TBD shall specify the *"functions or activities to be exercised or funded and establish the*

boundaries of the district." RCW 36.73.050 Additional public hearings are required to modify the boundaries, expand the activities, or dissolve the district once it has been created.

Prior to the establishment of a TBD, should the real property owners of sixty percent (60%) of the assessed valuation within the proposed district object to its formation, further TBD formation proceedings are terminated.

Once formed, a TBD is a "quasi-municipal corporation, an independent taxing 'authority' within the meaning of Article VII, section 1..... and a taxing 'district' within the meaning of Article VII, section 2 of the state Constitution." RCW 36.73.040. TBD's possess all of the usual and customary powers of a corporation for public purposes (hire staff, purchase services, hold real estate, enter into contracts, and sue or be sued) and "**public works contract limits applicable to the jurisdiction that established the district shall apply to the district**" RCW 36.73.040 (emphasis added).

TBD's, once created, have a great deal of flexibility. For example, they may "accept and expend or use gifts, grants or donations" RCW 36.73.110. TBD's may impose "impact fees" on the "construction or reconstruction of residential...commercial...industrial... or other building, building space, or appurtenance thereto, or reclassification of land..." RCW 36.73.120 if done in accordance with RCW 39.92 [Local Transportation Act]. There is a requirement that, in order to put such fees into effect, each city and county included in the TBD must approve the imposition of such fees.

Local Improvement Districts (LID's) are authorized within a TBD to "provide any transportation improvements it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements..." RCW 36.73.080

Cities counties, and WSDOT may "...give funds to transportation benefit districts for the purposes of financing street, road, or highway improvement projects." RCW 36.73.150 TBD's have eminent domain authority RCW 36.73.130, authority to contract for street and highway improvements, RCW 36.73.140 to "give credit for all or any portion of real property donation against an assessment, charge or other required financial contribution for transportation improvements within a transportation benefit district....," RCW 47.14.030 and to issue debt. RCW 36.73.070

Projects and improvement so identified as part of the TBD initial formation process or subsequent modification process, are eligible for all funding otherwise available to local governments.

Options for financing of improvements undertaken by and within a TBD are numerous, including

- Contributions from local governments RCW 36.73.150
- Contributions from WSDOT RCW 36.73.150
- Gifts and contributions from the private sector RCW 36.73.110
- Grants and low interest loans RCW 36.73.110 RCW 47.26.26
- Creation of an LID RCW 36.73.080

- Impact fees RCW 36.73.120
- Utilization of special assessments RCW 36.73.080 (1)
- Issuance of special assessment bonds RCW 36.73.080 (2)
- Issuance of general obligation bonds (non voted) RCW 36.73.070
- Annual excess levy (voted) RCW 36.73.060 (1)
- Issuance of general obligation bonds (voted) RCW 36.73.060 (2) RCW 36.73.070
- Border area fuel tax RCW 82.47.020

Certain limitations apply to the various financing options and many of the sources can be “mixed and matched” to be used as leverage for additional funding and financial participation.

HISTORY AND APPLICATION

There are only two known instances in this state where local jurisdictions have elected to utilize the provisions of chapter 36.73 RCW and form TBD's. One is the Point Roberts Transportation Benefit District, and the other is the Ford's Prairie Transportation Benefit District. The former still operates while the latter has been formally dissolved.

Ford's Prairie Transportation benefit District

Lewis County along with the city and port of Centralia decided in late 1990 to form a TBD to address local transportation concerns. The seminal event was the January 1990 flood in which access to Providence Hospital was cut off for several days due to the flooding Chehalis River. It was felt that alternate “dry” access to the hospital was needed and could be accomplished by the construction of a second bridge across the Chehalis River, a bridge which had been discussed for twenty years. The original impetus for the bridge was not hospital access but rather as an alternate to local traffic use of I-5 to travel from northwest to southwest Centralia.

In addition to the bridge, there were other transportation needs identified (improvements to Harrison Avenue, Borst Avenue, signalization of Mellen Street Interchange off ramps, and the perceived need for a north Centralia interchange facility). Projects were identified and placed in either a phase one or phase two category. The TBD was formed with the boundaries contiguous with the boundaries of the Centralia School District inside of Lewis County. A board was created consisting of two county commissioners, two city councilors, and one port commissioner to oversee the functions of the TBD. Funding was sought for the phase one projects identified when the TBD was formed.

Over twelve million dollars in phase one projects were identified with eight million in grant funding identified and secured. Over half of the phase one project costs were for the grade extension and new bridge structure. The package was submitted to the voters who approved the measure by 57%, short of the 3/5ths majority required. A second attempt to secure voter approval again resulted in a majority (but less than 60%) approving the issuance of general obligation bonds to finance the

remaining project costs. After that second attempt, no more work was done within the TBD context relative to the projects and the district was formally dissolved some months later.

Point Roberts Transportation Benefit District

The Point Roberts Transportation Benefit District was formed in 1992/1993 with the purpose of capturing fuel tax dollars made available under RCW 82.47.020, the border area motor vehicle fuel and special fuel tax. This tax provides that 1 cent per gallon tax may be imposed by a local jurisdiction (voter approval required). Eligible local jurisdictions include cities and towns within 10 miles of an international border crossing or transportation benefit districts that contain an international border crossing. Funds generated from the tax must be used for street construction and/or maintenance.

When the Whatcom County Council first formed the Point Roberts TBD, it was estimated that an amount of up to \$250,000 would be generated from the special tax. Since Point Roberts is unincorporated, the governing board of the TBD is the county council and no intergovernmental agreements were required to form the TBD. The boundaries of the TBD were to include the unincorporated area of Whatcom County "surrounded by water on three sides and by an international border on the fourth side" effectively limiting the district to the Point Roberts area exclusively. This to take advantage of the fuel tax option.

Funds from the special fuel tax were to be used to offset capital project costs in the TBD or to enhance those projects. Hopefully, capital work in the TBD would be accelerated. The funds generated were not to be used for maintenance and no special transportation plan for the TBD was prepared. Rather, the funds were to be an offset against projects identified within the TBD boundaries in the county six year transportation improvement plan.

Due to significant changes in the exchange rate, annual anticipated revenues of up to \$250,000 to the TBD fell far short of expectations. For 1994, border area fuel tax revenues to the TBD amounted to \$84,269 and those revenues declined to \$62,883 in 1995.

When the TBD was first formed, the county council formed a citizens' advisory committee to provide input into the process by which projects were prioritized within the district. There has been a decline in interest relative to the projects which directly corresponds to the drop off in the fuel tax revenues. The committee initially met monthly, then quarterly, and now an annual public meeting is held.

Currently the revenues generated for the Point Roberts TBD do not cover the costs of capital projects undertaken in the district. The county draws down special account to zero each year to offset project costs within the district.

The Point Roberts TBD functions more as an additional revenue source as opposed to an identifiable entity with a project list and a long term financing plan to implement the projects.

LEGAL ISSUES

There has been an issue relative to the constitutionality of a TBD to issues bonds. In a 1990 paper prepared by Sandra R. Driscoll, City Attorney for the City of Kent, she writes that "Certain questions have been raised by various bond counsel as to the constitutionality of the authority to issue bonds granted to the transportation benefit district by the legislature. There is some disagreement among the various bond counsel on this opinion, however. The issue is whether or not the exercise of ad valorem taxing authority would violate the constitutional requirement that the property taxes be uniform on the same class of property within the geographic limits of the authority levying the tax."

For TBD's where the governing body is the county legislative authority and where the TBD is less than "county wide," taxes for those inside the TBD could be higher than for those outside the TBD while all property in the county is under the jurisdiction of the county legislative authority. However, the legislation allows for multiple jurisdiction TBD's wherein the legislative authority is designated as part of the interlocal agreement authorizing the creation of the TBD. In addition, the legislation authorizing the creation of TBD's defines them as 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" RCW.36.73.040. It appears that bonds could be issued.

A second issue is relative to impact fees. The Transportation Benefit District Act specifically amended RCW 82.02.020 to exempt fees set forth by TBD's from limitations within that statute. It also specifically provides that those fees imposed by TBD's are not characterized as taxes.

A third issue deals with the activities of TBD's. Specifically, there has been discussion as to if district funds (other than voter approved general obligation bonds) may be used for maintenance purposes as opposed to capital purposes. It appears that if revenues other than voter approved bonds (contributions, grants, non voter approved debt, or voter approved annual excess ad valorem property tax) are used, the funds may be for either construction or maintenance.

A potentially unresolved issue relative to TBD's may lie in the governing body created pursuant to an interlocal agreement between a city (or cities) and a county (or counties). This issue would relate to the King County Metro "one person - one vote" issue wherein the representation of the governing board of a multiple jurisdiction TBD may or may not reflect (in terms of voting representation) the citizenry included within the TBD. (Example one community of 500 having one representative on the governing board while another city of 15,000 also has one voting member.) This issue may be moot but could also become important should large multi-jurisdictional TBD's be formed.

CONCLUSIONS

Transportation benefit districts appear to have value in the mix of potential sources of transportation funding. The formation of TBD's require cooperation and, to a certain extent, political will, given that the result of such action is most probably a partnership effort to fund identified infrastructure needs of the identified geographic region included in the TBD.

The statutes do not appear to be cumbersome or overly intricate or complicated relative to the formation and operation of TBD's. The requirements of a public process in which the activities of the proposed TBD and its boundaries are identified and made subject to public hearing is most appropriate and allows all those affected by governmental action to have input as a part of the process prior to the district being formed.

The financing for projects identified to be undertaken by a TBD include options which would require voter approval. Either the ad valorem excess one year levy or the sale of general obligation bonds (beyond the 3/8ths of 1% level) require voter approval. Both of these are tied to the property tax. This is a tough vote given the politics surrounding property taxes specifically and tax issues in general. Moreover, those public votes require a 60% majority to approve, a difficult number to achieve..

Transportation benefit districts may be a tough initiative to push from inside government. However, TBD's appear to be an effective vehicle for government to use to respond to citizen generated demands for transportation improvement within a specific geographic area.

Transportation benefit districts could serve to bridge some gaps between local county and city taxing options. Counties have the option (within defined parameters and processes) to implement a \$15 per motor vehicle license fee as well as a local fuel tax. Both of these options require action by the county legislative authority and leave no option of cities should the county legislative authority choose not to act. With the loss of the street utility option for cities, cities only have the commercial parking tax as a local revenues source which they can implement without the county taking action. There may be some advantage to allowing TBD's the ability to impose either the annual license fee or the local option fuel tax, or both.

RECOMMENDATIONS

Three recommendations are made relative to this issue. The are in the area of communication, education, and consideration of legislative changes relative to transportation benefit districts.

Communication

TransAid, in cooperation with the Washington Association of Counties (WSAC), the County Road Administration Board (CRAB), and the Association of Washington Cities (AWC) should ensure that all local agencies are aware of the availability of transportation benefit districts as a mechanism for financing transportation infrastructure improvements.

Education

TransAid, in cooperation with WSAC, CRAB, and AWC should educate local agencies as to the process by which transportation benefit districts are created, the challenges of creating such an entity, and the advantages/disadvantages of using a TBD approach to infrastructure financing. This education component could also serve to more fully develop potential legislative initiatives relative to this issue. A potential vehicle for such interaction would be the specific topic sessions at the WSAC and AWC conferences, specifically a forum or workshop involving elected officials and county/city engineers or public works directors.

Consideration of Legislative Changes

The following issues may be subject for consideration relative to legislative changes to the transportation benefit statute.

- Should the majority required to approve the sale of bonds (beyond the 3/8ths of 1%) remain at 60% or should a simple majority be required?
- Should transportation benefit districts be allowed to assess the \$15 per year license fee within its jurisdiction regardless of the county position on this issue (assuming all other requirements of this local options are followed)?
- Should transportation benefit districts be allowed to assess the local option fuel tax within its jurisdiction regardless of the county position on this issue (assuming all other requirements of this local options are followed)?
- Should any discrepancy pertaining to the one person - one vote issue be clarified?
- Should any question or concern regarding the taxing authority and issue surrounding TBD's as quasi-municipal corporations, an independent taxing authority, and a taxing district be clarified?

AWC may submit legislation in 1999 to provide additional funding authority relative to license fees and/or fuel taxes within transportation benefit districts.

SUMMARY

Transportation Benefit Districts appear to be a viable method of financing capital improvements within a defined geographic area. TBD's have flexibility. Funding alternatives that might not otherwise be available, and can serve to allow a community to directly affect their transportation system. Although there are certain steps that must be followed to form a TBD, those steps do not appear to be so "burdensome, confusing, and intricate so as to, from a practical effect, preclude the use of transportation benefit districts as a vehicle to fund transportation improvements."