

# 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 went into effect in 2007, which resulted in the most important local transportation tool for cities and counties in sixteen years – Transportation Benefit Districts (TBDs). Newly enacted 2010 legislation enhanced the TBD's authority.

TBDs are independent taxing districts that can impose an array of taxes or fees either through a vote of the people or through district board action. TBDs are flexible-- they allow cities and counties to work independently or cooperatively on addressing both local and regional transportation challenges.

## Frequently Asked Questions

### Background

In 1987, the Legislature created TBDs as an option for local governments to fund transportation improvements. In 2005, the Legislature amended the TBD statute to expand its uses and revenue authority. In 2007, the Legislature amended the TBD statute to authorize the imposition of vehicle fees and transportation impact fees without a public vote. In 2010, the Legislature amended the TBD statute again to clarify project eligibility, the use of impact fees, and sales tax expenditures, and make TBD governance more flexible.

### 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 RCW. The county or city proposing to create a TBD may include other counties, cities, port districts, or transit districts through interlocal agreements.

### Who governs the TBD?

The members of the legislative authority (county or city) proposing to establish a TBD serves as 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, or may be the governing body of a metropolitan planning organization if the TBD boundaries are identical to the boundaries of the metropolitan planning organization serving the district.

### 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 it may choose just to 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.

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

A TBD is an independent 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. Additionally, by being a separate legal and taxing entity, TBDs have more flexibility. For example, more than one type of jurisdiction can be part of a TBD and the boundaries can be less than countywide or citywide.

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

Yes. A county or city takes legislative action through the ordinance process to create a TBD. The ordinance must include a finding that the creation of a TBD is in the public's interest, describe the boundaries of the TBD, and specify the activities or functions to be implemented or funded by the district. The county or city ordinance creating the TBD may also specify and authorize what fees or revenues that the TBD may pursue. The TBD, acting in its own official capacity, has the authority to identify proposed fees or revenue options.

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

No. The governing body which creates a TBD 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, prior to spending the accumulated funds. 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.

**Does a TBD have to meet certain tests?**

There are three threshold tests for transportation improvements in a TBD: 1) the type of transportation improvement contained within the boundaries of the TBD, 2) whether the improvements are identified in any existing state, regional, county, city or eligible TDB jurisdiction's (port or transit) transportation plan and that the improvements are 3) necessitated by existing or reasonably foreseeable congestion levels. The definition of "congestion" does not have a set standard in law; each TBD has the discretion to tailor and make its own determination of congestion levels when implementing its TBD ordinance.

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

The definition of transportation improvements is broad. 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.

In developing criteria for a transportation improvement, it can include one or more of the following: 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.

Note: In 2010, cities within King County are specifically authorized to provide or contract for supplemental public transportation improvements to meet the mobility needs of the city, and may contract for such improvements with private and nonprofit entities and may also form public-private partnerships.

**If a jurisdiction uses the SEPA process to collect impact fees, would this preclude a TBD from using impact fees?**

No. However, the law requires the jurisdiction to provide a credit to commercial or industrial developments that are subject to SEPA, or transportation impact fees authorized under GMA. This is commonly called a "no double-dipping" provision.

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

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

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

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

### **TBD's have two revenue options that do not require voter approval, but are 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:**

When the Legislature revised the TBD authority in 2007 to enable councilmanic vehicle fees, it was intended to ensure a county-wide or regional approach for first consideration of this new option. That is why counties had the exclusive authority of the \$20 vehicle fee for the first six months

after enactment of the 2007 legislation. Today, a county that creates a countywide TBD (incorporated and unincorporated areas) and proposes to impose up to a \$20 non-voted vehicle fee should 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. The Legislative expectation is that if an interlocal agreement cannot be reached between a county and city or cities, the county is authorized to create a TBD and impose the fee only in the unincorporated area of the county.

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.

### **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.

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For example, if a city was the first to create a TBD and 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 within the city. As a result, no fee would be collected by the county TBD from vehicles registered within 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 within 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.

**If a county or city is considering the \$20 vehicle fee, how does a county or city estimate revenues?**

Currently, no TBD has been in effect for an entire year and therefore revenue estimates and histories are incomplete. What TBDs around the state have learned to date: vehicles per household calculations vary significantly around the state. Statistical data shows that there tends to be about one vehicle per person in rural areas and 0.8 vehicles per person in urban areas. Another factor to strongly consider is seasonality; vehicles sales are not evenly distributed throughout the year and this will affect monthly receipts. Finally, a city or county must understand and recognize that other factors such as people failing to register their vehicles, and data accuracy can affect actual revenues when compared to forecasted revenues.

**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. This is typically called a material change policy.

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.

**Who has imposed a TBD?**

The cities of Lake Forest Park, Edmonds, Des Moines, Olympia, Prosser, and Shoreline imposed the \$20 vehicle fee. Ridgefield and Sequim passed the 2/10% sales tax. Point Roberts and Liberty Lake formed TBD's prior to the legislative changes in 2005.

**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).