



MEMORANDUM  
CITY ATTORNEY'S OFFICE

To: Attorneys for CTRAN Member Jurisdictions, and Counsel for CTRAN

From: Linda A. Marousek, Assistant City Attorney 

Re: PTIC Procedures

Date: 09 October 2015

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This memorandum raises two questions regarding implementation of procedures for the public transportation improvement conference (PTIC) process defined in RCW 36.57A.010(9), and set forth in RCW 36.57A.020 and RCW 36.57A.030. The statutes are at Attachment 1 for easy reference. The purpose of the memorandum is to identify the issues and begin the discussion, with the hope that we can avoid disagreement or delay later in the process. I do not believe that any party would be legally bound to any particular position by virtue of participation in this discussion.

1. Representation of County on the PTIC By One Selected Representative.

Mayor Higgins of Camas raised the question at the September 15, 2015 CTRAN open public meeting as to “whether the transportation improvement board will change after the number of Clark County councilors changes from three to five in January.” *Columbian*, September 15, 2015. My preliminary opinion, based upon the language of the statute, is that the County is entitled to a single representative on the PTIC.

The county legislative authority may convene a PTIC:

to be attended by an elected representative selected by the legislative body of each city, within such county, and by the county legislative authority.

RCW 36.57A.020 (emphasis added). This language allows “an elected representative” selected by each jurisdiction to serve on the PTIC. The number of representatives is *singular*: one representative selected by each jurisdiction. This is the interpretation that was adopted by the Pierce Transit PTBA when it redrew its boundaries in 2012 to exclude the City of Sumner. Attachment 2, 2d page, Paragraph 4.

Mayor Higgins, in questioning whether three or five County Councilors would participate in the PTIC, perhaps assumed that the PTIC body was identical to the recent composition review committee under RCW 36.57A.055. However, the composition review

committee, which does include all members of the County Council, uses different statutory language to require that result: “members of the county legislative authority and the elected representative of each city within the boundaries of the public transportation benefit area shall review the composition of the governing body of the benefit area.” RCW 36.57A.055. When the legislature uses different language in related statutes, it is presumed to intend a different meaning. *Lundberg ex rel. Orient Found. v. Coleman*, 115 Wash. App. 172, 177-78 (2002) (citing *City of Kent v. Beigh*, 145 Wash.2d 33, 45-46 (2001)). It does not appear that the legislative intent under RCW 36.57A.020 was to include all members of the County Council on the PTIC.

2. Authority of County Council to Terminate PTIC-Proposed Boundary Changes. If the PTIC adopts boundary changes for the PTBA, RCW 36.57A.030 gives the County Council final implementation authority. RCW 36.57A.030 is captioned “Establishment or change in boundaries of public transportation benefit area — Hearing — Notice — Procedure — Authority of county to terminate public transportation benefit area.” The law is well-settled that the caption is not the law, so closer examination of the text of the statute is necessary:

The county legislative authority of each county wherein a conference has established proposed boundaries of a public transportation benefit area, may by resolution, upon making a legislative finding that the proposed benefit area includes portions of the county which could not be reasonably expected to benefit from such benefit area or excludes portions of the county which could be reasonably expected to benefit from its creation, disapprove and terminate the establishment of such public transportation benefit area.

RCW 36.57A.030 (emphasis added). Because this statute applies to both establishment and modification of a PTBA, when the statute is used in connection with a modification process, the right of the County Council to “disapprove and terminate” should be read to disapprove and terminate “such” *boundary change* process. The language referring to disapproving and terminating “such” PTBA refers back to the “proposed boundaries” earlier in this long sentence. That means that it is only the modification of the “proposed boundaries” that is disapproved and terminated; that is, no change is made in the existing PTBA boundaries. The language does not allow the County Council to terminate the existing CTRAN PTBA.

This conclusion is supported by the fact that there is a *different* clear statutory process at RCW 36.57A.160 and RCW Chapter 53.48 for dissolution of the entire PTBA. There is no clear caselaw directly addressing the veto power of the County Commissioners over the modification process, but in *Fakkema v. Island County*, 106 Wn.2d 347, 351 (1986), the Washington Supreme Court did assume that the veto power applies to the boundary modification process as well. Pierce Transit’s 2012 boundary modification also assumed that the County had veto power. Attachment 2, 3d page, Paragraph 16.

**ATTACHMENT 1**  
**PTIC RCWs**

**36.57A.010**

**Definitions.**

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

- (1) "City" means an incorporated city or town.
- (2) "City council" means the legislative body of any city or town.
- (3) "Component city" means an incorporated city or town within a public transportation benefit area.
- (4) "County legislative authority" means the board of county commissioners or the county council.
- (5) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made by the office of financial management.
- (6) "Proof of payment" means evidence of fare prepayment authorized by a public transportation benefit area for the use of buses or other modes of public transportation.
- (7) "Public transportation benefit area" means a municipal corporation of the state of Washington created pursuant to this chapter.
- (8) "Public transportation benefit area authority" or "authority" means the legislative body of a public transportation benefit area.
- (9) "Public transportation improvement conference" or "conference" means the body established pursuant to RCW 36.57A.020 which shall be authorized to establish, subject to the provisions of RCW 36.57A.030, a public transportation benefit area pursuant to the provisions of this chapter.
- (10) "Public transportation service" means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems: PROVIDED, That nothing shall prohibit an authority from leasing its buses to private certified carriers or prohibit the authority from providing school bus service. "Public transportation service" includes passenger-only ferry service for those public

transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200.

### **36.57A.020**

#### **Public transportation improvement conference — Convening — Purpose — Multi-county conferences.**

The county legislative authority of every county with a population of forty thousand or more shall, and the legislative authority of every other county may, within ninety days of July 1, 1975, and as often thereafter as it deems necessary, and upon thirty days prior written notice addressed to the legislative body of each city within the county and with thirty days public notice, convene a public transportation improvement conference to be attended by an elected representative selected by the legislative body of each city, within such county, and by the county legislative authority. Such conference shall be for the purpose of evaluating the need for and the desirability of the creation of a public transportation benefit area within certain incorporated and unincorporated portions of the county to provide public transportation services within such area. In those counties where county officials believe the need for public transportation service extends across county boundaries so as to provide public transportation service in a metropolitan area, the county legislative bodies of two or more neighboring counties may elect to convene a multi-county conference. In addition, countywide conferences may be convened by resolution of the legislative bodies of two or more cities within the county, not to exceed one in any twelve month period, or a petition signed by at least ten percent of the registered voters in the last general election of the city, county or city/county areas of a proposed benefit area. The chair of the conference shall be elected from the members at large.

### **36.57A.030**

#### **Establishment or change in boundaries of public transportation benefit area — Hearing — Notice — Procedure — Authority of county to terminate public transportation benefit area.**

Any conference which finds it desirable to establish a public transportation benefit area or change the boundaries of any existing public transportation benefit area shall fix a date for a public hearing thereon, or the legislative bodies of any two or more component cities or the county legislative body by resolution may require the public transportation improvement conference to fix a date for a public hearing thereon. Prior to the convening of the public hearing, the county governing body shall delineate the area of the county proposed to be included within the transportation benefit area, and shall furnish a copy of such delineation to each incorporated city within such area. Each city shall advise the county governing body, on a preliminary basis, of its desire to be included or excluded from the transportation benefit area. The county governing body shall cause the delineations to be revised to reflect the wishes of such incorporated cities. This

delineation shall be considered by the conference at the public hearing for inclusion in the public transportation benefit area.

Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the area. The notice shall contain a description and map of the boundaries of the proposed public transportation benefit area and shall state the time and place of the hearing and the fact that any changes in the boundaries of the public transportation benefit area will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the effect of the formation of the proposed public transportation benefit area.

The conference may make such changes in the boundaries of the public transportation benefit area as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands, and may not delete a portion of any city. If the conference shall determine that any additional territory should be included in the public transportation benefit area, a second hearing shall be held and notice given in the same manner as for the original hearing. The conference may adjourn the hearing on the formation of a public transportation benefit area from time to time not exceeding thirty days in all.

Following the conclusion of such hearing the conference shall adopt a resolution fixing the boundaries of the proposed public transportation benefit area, declaring that the formation of the proposed public transportation benefit area will be conducive to the welfare and benefit of the persons and property therein.

Within thirty days of the adoption of such conference resolution, the county legislative authority of each county wherein a conference has established proposed boundaries of a public transportation benefit area, may by resolution, upon making a legislative finding that the proposed benefit area includes portions of the county which could not be reasonably expected to benefit from such benefit area or excludes portions of the county which could be reasonably expected to benefit from its creation, disapprove and terminate the establishment of such public transportation benefit area within such county.

# ATTACHMENT 2



## AGENDA BILL

MEETING DATE: Jan 10, 2012

**SUBJECT:**

**Pierce County Public Transportation Improvement Conference (PTIC)**

Presentation, Council Meeting

**PRESENTER:** Councilmember Hull

**APPROVED FOR AGENDA:**

**FISCAL IMPACT:**

Finance Director

Project:

City Manager

Dave Zabell

Revenue Source:

Amount Requested:

**SUMMARY / BACKGROUND:**

As was discussed at the December 13, 2011 regular City Council meeting, the Pierce Transit Board recently convened a Public Transportation Improvement Conference (PTIC). The purpose of initiating the PTIC is to review the current configuration of the Public Transit Benefit Area (PTBA) and consider the need and desirability of adjusting the PTBA boundaries. The City Council appointed Councilmember Hull to serve as the City of Fife's delegate to the PTIC.

The first meeting of the PTIC was held on December 16 with Councilmember Hull participating on behalf of the City. The PTIC meeting agenda is attached, as well as a PowerPoint presentation of the process now underway.

Councilmember Hull will brief the Council on the matter and solicit direction from the full Council on the City's official position.

**STAFF RECOMMENDATION / MOTION:**

City Council to provide direction to Fife PTIC Delegate Hull

**ALTERNATIVES:**

1. Not provide direction at this time and further observe the process.
2. Discontinue participation in the PTIC process. (Not recommended)

**ATTACHMENTS:**

1. November 15, 2011 letter from Pierce Transit
2. December 16, 2011 PTIC meeting agenda
3. PowerPoint Presentation by K&L Gates, of counsel to Pierce County Transit



November 15, 2011

This letter is to inform you that Pierce Transit's Board of Commissioners (*Pierce Transit*) approved a resolution at its November 14, 2011, Board meeting to convene a Public Transportation Improvement Conference (*PTIC*) as authorized by Ch. 36.57A RCW. The first meeting of the PTIC will be December 16, 2011, at 2:30 p.m. at the Puyallup Library, 324 South Meridian, Puyallup, WA 98371.

For your convenience, we offer the following general outline of the PTIC process. Necessarily, not all details are included and you should consult your legal counsel about the process. Further, since this letter constitutes Pierce Transit's 30 day written notice to you of the first PTIC meeting, you will need to designate your PTIC representative (*an elected official*) promptly in order to attend and participate in the first meeting (*see #4 below*).

1. Pierce Transit passes a resolution creating and convening a PTIC.
2. Pierce Transit sends a 30 day written notice of the first PTIC meeting to every jurisdiction (*including the County*) within the County.
3. Pierce Transit provides a 30 day public notice of the first PTIC meeting.
4. Prior to the first PTIC meeting, the County and jurisdictions must designate their representatives (*an elected official*).
5. At the first PTIC meeting, a chair will be elected from the members at large.
6. At the first PTIC meeting, the Conference will consider whether to propose revisions to the Public Transportation Benefit Area (*PTBA*) boundary.
7. At the first PTIC meeting the Conference may set a date for a public hearing. It will be assumed for this illustration that the Conference concludes a revision is appropriate. The public hearing must be publicly advertised for four consecutive weeks. Note below the date of this public hearing will be dependent on County and jurisdiction responses to the preliminary delineation discussed below.
8. Between the first PTIC meeting and the public hearing, a proposed revised boundary will be delineated based on the first meeting discussions. This preliminary delineation will be sent to the included County and jurisdictions.
9. The County and jurisdictions must then indicate affirmatively whether they wish to be included or excluded in the revised boundary.

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10. The preliminary delineation is then amended to reflect the statements of inclusion or exclusion.
11. The amended delineation, in the form of a map and a description of the proposed boundary will then be placed in the publicly advertised notice for the public hearing noted above.
12. A public hearing will be held on the date and at the place in the notice. "At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the effect of the formation of the proposed public transportation benefit area." RCW 36.57A.030.
13. The Conference may adjourn the public hearing from time to time, but not for a period to exceed 30 days in all.
14. The Conference may make reasonable and proper changes to the amended delineation, with certain restrictions. If new territory is added, then a second public hearing shall be held.
15. At the conclusion of the first public hearing (*or the second public hearing, if applicable*), the Conference may adopt a resolution delineating the new boundary.
16. Within 30 days of the established resolution, the County may reject the new boundary.
17. Within 60 days of the establishment of the new boundary, any city may withdraw.

Included with this letter is a sample resolution for your consideration in order to formally designate your representative for the PTIC. Naturally, you should consult your legal counsel as to the appropriate resolution form to be used.

Sincerely,



Treva Percival, Clerk of the Board  
Pierce Transit

cc: Pierce Transit Board of Commissioners  
City Clerk