



PROSECUTING ATTORNEY | ANTHONY F. GOLIK

JOHN P. FAIRGRIEVE
Chief Deputy

SCOTT D. JACKSON
Chief Criminal Deputy

CHRISTOPHER HORNE
Chief Civil Deputy

SHARI JENSEN
Administrator

MEMORANDUM

DATE:	September 4, 2013
TO:	
FROM:	Chris Horne, Chief Civil Deputy
SUBJECT:	Bylaws of C-TRAN and the effect of Clark County relinquishing one voting position on the Board

Section 4.5 requires a quorum of five and four of the five must vote affirmatively to approve an action. A limitation is placed on the majority rule for voting Section 4.5.1 of the bylaws. This subsection provides that:

Three negative votes by the representatives of the City of Vancouver, or three negative votes by the representatives of Clark County, on any action to be taken by the governing board shall constitute a veto of that action; provided that such veto authority may be amended or deleted by resolution adopted by the governing board which resolution itself must be approved by vote of all members representing the City of Vancouver and Clark County. This veto authority shall not apply to any action taken by the Board in regard to the employment contract of the Executive Director on any provision contained therein including any ancillary agreements related thereto.

Currently if the three representatives from either Clark County or Vancouver vote no on a proposition before the Board the matter is denied. Conversely, less than three negative votes from both Clark County and Vancouver cause a proposition to be decided by the majority of voters assuming a quorum is present. The bylaws do not address the reason for the inability to generate three negative votes. The effect is the same whether the county abandons one voting position or the three Commissioners disagree; there can be no County veto.

The second clause of the first sentence describes the voting requirements for altering or deleting the veto authority: "provided that such veto authority may be amended or deleted by resolution adopted by the governing board which resolution itself must be approved by vote of all members representing the City of Vancouver and Clark County", nothing in this language discusses the relationship between this provision and the Board composition that is set out in a different section, 3.1. While it would be logical to amend the veto language of 4.5.1 to reflect a change in the Board composition, nothing in the bylaws compels such a result.

Nothing in the bylaws expressly requires the City and the County to maintain their veto capability. Similarly nothing expressly requires either the County or City to give up their veto authority. The only provisions touching this issue are subsection 3.4 and Section 6. Subsection 3.4 authorizes a majority of a special committee undertaking periodic reviews to change the composition of the Governing Board¹. However this subsection conflicts with Section 6 which only authorizes amendment to the Bylaws (which establishes the composition of the Board) by majority vote of the Board. Even Section 6 is expressly subject to the bylaws generally which presumably includes the potential for veto in subsection 4.5.1.

The complicated analysis discussed above only arises if a composition change is forced upon either the City or County. Nothing prevents either party from voluntarily giving up a voting position. There is also no requirement that the City abandon its veto power merely because the County gives up its veto authority. The same is true if the Vancouver gives up its veto power.

Counsel for C-TRAN has advised that the veto is so tied to the Bylaws that if either Vancouver or Clark County lose/give up a voting position, that veto rights are lost by both parties. While this may have been the intent of the parties, this requirement is nowhere written in the bylaws. A court interpreting the Bylaws will first interpret the words of the Bylaws. Unless the court concludes that the words are ambiguous, the court will not examine legislative intent regardless of how strong the legislative intent. Therefore, the opinion of C-TRAN counsel is very likely tied to his conclusion that a Board would find the Bylaws ambiguous.

¹ Every four years, a meeting shall be called for the review of the C-TRAN governing body, as provided in RCW 36.57A.055, as hereafter amended. At this meeting, members of the county legislative authority and the elected representative of each city within the C-TRAN boundaries shall review the composition of the C-TRAN Board and change the composition of the Board if the change is deemed appropriate. The majority of those present at the meeting constitutes a quorum. Twenty days' notice of the meeting shall be given by the Chief administrative officer of the C-TRAN Board.