

County Commissioner recommendations on changes to Articles and 4-Party Agreement

Updated: June 15, 2012

Summary: There are three items that have moderate to strong support from the County Commissioners that the 4-Parties and u196 representatives should discuss:

- 4-Party 12.b—fail of vote in any political subdivision
- Articles 4.04—restrictions on who can serve on the board, flexibility of appointing body
- Articles 10.1—who amends Articles?

Doc.	Section	Discussion
4-Party	<p>2.<u>Authority Formation</u>. The County, upon the AATA’s written request, will create a new Act 196 authority by approving, signing and filing articles of incorporation (“Articles”) in substantially the form attached as Exhibit A. Prior to the submission of any request by AATA to County to initiate formation of a public authority all of the following must occur:</p> <p>(i) AATA will publish details of the service and funding plan as shown in attached Exhibit B in newspaper(s) of general circulation in Washtenaw County, including the paper of record for each political subdivision, (ii) the Articles of Incorporation in the form presented for approval by the County shall be separately adopted by Ann Arbor and Ypsilanti by affirmative vote of the respective governing bodies. No transfer of assets to the New TA from AATA shall occur unless and until all contingencies stated in Section 4 of this Agreement and any and all conditions which may be established in the Articles of Incorporation have been met.</p> <p>2a. Upon creating the new Act 196 authority, the County shall send notice of such by registered mail to Clerk and the personal address of each individual board member for all political subdivisions in the county. Such notice, as shown in Exhibit C, shall detail the “opt out” mechanism and deadline.</p>	<p>BOC Straw Poll and Analysis: Important but not necessary to include in 4-Party.</p> <p>Action: BOC Chair and Legal Counsel will work on writing a BOC Resolution that includes:</p> <ul style="list-style-type: none"> • “Initiate formation” will be interpreted as “File articles of Incorporation” • Papers of record • Letters to local board members

4-Party	<p>8.f. Authority-wide voter approval before December 31, 2014, of a New TA Act 196 funding source adequate to fund ongoing operations of New TA. Any ballot question submitted to the voters of the City of Ann Arbor and/or the City of Ypsilanti shall clearly identify the new funding as additional to the existing millage and in Ypsilanti specifically authorize the continued collection and transfer of the full Charter Transportation millage to the new Act 196 TA. (INCLUDE PROPOSED BALLOT LANGUAGE: NEED THE SAME 100 CLEAR WORDS FOR EVERYBODY.)</p>	<p>BOC Straw Poll and Analysis: Important, but not required for Agreement.</p> <p>ACTION: NO IMMEDIATE ACTION Staff, Board, etc will work on this before a ballot initiative.</p>
4-Party	<p>12.a. <u>Automatic Termination</u>. This Agreement will terminate automatically if (i) Closing does not occur before December 31, 2015, or if (ii) after incorporation of the Authority and the expiration of the statutory withdrawal period from the public authority, the City of Ann Arbor is the only participating political subdivision in Washtenaw County in the New TA, or if (iii) after incorporation of the Authority and the expiration of the statutory withdrawal period from the public authority, less than one third (10 of 28) of the political subdivisions in Washtenaw County are participating. It is recognized by all the parties that if any either of these conditions occur the stated objectives of Act 196 and this Agreement will not have been met and the Agreement shall be null and void.</p>	<p>BOC Straw Poll and Analysis: Majority unsupportive of amendment. No need to consider further.</p> <p>Action: NONE</p>
4-Party	<p>12b. <u>Discretionary Dissolution or Withdrawal Conditions</u>. The Washtenaw County Board will also be allowed to dissolve the New TA if there is no Authority-wide voter approved funding passed before December 31, 2014, or voter approval passes Authority-wide but the same is defeated in any participating political subdivision the City of Ann Arbor before December 31, 2014. The City of Ann Arbor may also withdraw from the new TA Agreement using any of the methods authorized by MCL 124.458. In the event the City of Ann Arbor exercises any of the foregoing rights, the City of Ann Arbor may immediately terminate this agreement upon written notice to the other parties.</p>	<p>BOC Straw Poll and Analysis: Moderate support (3 yes, 2 no), and discussion desired. <i>This clause is very threatening to concept of regional cooperation.</i> There is some sense that because this is discretionary for the county, the new authority could remain intact. Legal counsel asks that if the 4-Party agreement is an appropriate document for this provision.</p> <p>Action: ASK COMMITTEE. AATA strongly prefers to leave un-amended. If amended, add second 2014 (in red).</p>

<p>Articles</p>	<p>SECTION 4.03 Add District Map</p>	<p>Action: Not a substantial change. AATA STAFF WILL UPDATE DOC</p>
<p>Articles</p>	<p>SECTION 4.04: RESIGNATIONS, VACANCIES, AND REMOVALS A director may resign at any time and such resignation shall become effective upon the Authority’s receipt of a written resignation notice, unless the notice specifies a later date. The Authority Board may, upon a 2/3rds vote of its other directors, remove a director prior to the expiration of that director’s term of office for persistent failure to perform the duties of that director’s office, gross misconduct in office, other reasons as specified in the bylaws, conviction of a felony involving extortion, or financial misconduct. A director may be removed from office with or without cause at any time by the same local body or process that appointed the director.</p>	<p>BOC Straw Poll and Analysis: Support for amendment by BOC. Concern that this is an unusual clause and could be abused by a board who does not like a particular director. Could possibly made more acceptable if “other reasons as specified in the bylaws” was removed. Clause would be helpful for board to be able to take action directly if there is a director who misses a high number of meetings without notice or commits gross misconduct, but there should be a high bar. Note: local appointing bodies will retain all their powers.</p> <p>Action: Legal counsel will research other boards that have a similar clause. ASK COMMITTEE.</p> <p>Q’s for legal counsel: IS THIS A SUBSTANTIVE CHANGE?</p>
<p>Articles</p>	<p>SECTION 4.06: BOARD QUALIFICATIONS All Authority directors shall be residents of a member political subdivision for the appointing local body Washtenaw County, at least eighteen years old, and shall be representative of public transportation interests as they exist in the County and other qualifications as detailed in the Bylaws of the Authority. Notwithstanding the above, any of these requirements may be waived by a governing body authorized to appoint directors under section 4.01 by resolution concurred in by not less than 2/3rds of that governing body’s directors. Directors may not hold office in violation of Michigan’s Incompatible Offices Act, MCLA 15.181-.185, or other similar law.</p>	<p>BOC Straw Poll and Analysis: Moderate support from BOC for both edits, but less support for director having to be a resident of a pol. subdivision vs. just Washtenaw County. There are substantial reasons for local governments to have choice and flexibility in selecting their members and original language should be maintained.</p> <p>Action: BOC chair will talk to individual board members.</p>

Articles	CHANGE second 4.06 to 4.07	Action: Not a substantial change. AATA STAFF WILL UPDATE DOC
Articles	<u>SECTION 6.03: STANDING</u> <u>Any member political subdivision shall be deemed to have proper and sufficient standing to file suit against the Authority or otherwise contest the Authority's actions.</u>	BOC straw Poll and Analysis: Little support from BOC. Ping brings up point about some communities being more litigious and automatically granting standing may not be appropriate Action: NONE
Articles	SECTION 7.03: TAX LEVY <u>Any question to the electors of the Authority that will result in an increase in revenue for the Authority shall be placed on the November ballot of an even numbered year.</u>	BOC straw Poll and analysis: Little support from BOC. Act 196 already limits ballot to once per year. Action: BOC chair will discuss with proposer.
Articles	SECTION 10.01: AMENDMENTS These Articles of Incorporation may be amended only upon <u>approval of each member political subdivision a two-thirds (2/3) vote of the directors appointed and serving on the Authority.</u> All amendments must comply with applicable state and federal laws. All amendments to the Articles of Incorporation become effective only after they are executed jointly by the Chairperson and by the Secretary of the Board of the Authority, filed with the recording officer of the Washtenaw County Clerk, and filed and published in the same manner as the original Articles of Incorporation.	BOC Straw Poll and analysis: Moderate support from BOC (3-2). Needs more details, debate over which body is most appropriate to amend articles (County, participating political subdivisions, or board). Cities have indicated that they prefer the board itself to amend (with a high bar to act) and that as the County has no monetary involvement they should not amend. Action: ASK COMMITTEE
Articles	SECTION 10.02: DISSOLUTION OF THE AUTHORITY The Authority may be dissolved in accordance with the provisions of Act 196 and as provided for in Section 12 of the Public Transportation Agreement referenced in section 3.01. If the City of Ann Arbor is the only political subdivision in the County remaining within the Authority after the expiration of the statutory 30-day withdrawal period, the Authority shall be dissolved. <u>If less than one third (10 of 28) of the political</u>	BOC Straw Poll and Analysis: Majority unsupportive of amendment. No need to consider further. Action: NONE

	<p><u>subdivisions in the County remain after the expiration of the statutory 30-day withdrawal period, the Authority shall be dissolved.</u> The dissolution action shall provide for the effective date of such dissolution and shall include provisions for the distribution of all assets and for the settlement of all debts and liabilities of the Authority and the provision for continued transportation services to Ann Arbor and Ypsilanti. Notice of such dissolution shall be executed jointly by the Chairperson and by the Secretary of the Board of the Authority, filed with the recording officer of the Washtenaw County Clerk, and filed and published in the same manner as the original Articles of Incorporation.</p>	
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