

## Chapter Trans 4

## URBAN MASS TRANSIT OPERATING ASSISTANCE PROGRAM

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**Trans 4.01 Purpose and scope.** The purposes of this chapter are to establish the department of transportation's administrative interpretation of s. 85.20, Stats., and to prescribe administrative policies and procedures for implementing the urban mass transit operating assistance program.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. Register, May, 1982, No. 317, eff. 6-1-82.

**Trans 4.02 Definitions.** In this chapter:

(1) "Department" means the Wisconsin department of transportation.

(1m) "Eligible applicant" means a local public body in an urban area which is served by an urban mass transit system incurring an operating deficit.

(1r) "Joint-use facility" means a facility that is shared by the public transit operation and at least one other business.

(2) "Local public bodies" are defined to be:

(a) Counties, municipalities or towns, or agencies thereof;

(b) Transit or transportation commissions or authorities and public corporations established by law or by interstate compact to provide mass transportation services and facilities; or,

(c) Two or more of any such bodies acting jointly under s. 66.30, Stats.

(3) "Mass transit system" means an entity which provides the general public with passenger transportation services on a regular and continuing basis. The transportation services for the general public may be provided by buses, rail, shared-ride taxicabs or other conveyance. A mass transit system may provide specialized transportation services for elderly and disabled persons by operating a subsystem, or by contracting for such services with another agency. An agency which provides transportation services exclusively for a subgroup of the general public is not a "mass transit system" for purposes of this chapter.

(4) "Private provider" means a privately owned entity that owns facilities or revenue passenger vehicles used to provide transit service.

(5) "Public provider" means any provider of mass transit service not defined as a private provider.

(5m) "Revenue hours" means hours in which a mass transit vehicle is operating in revenue service, such as being available to pick up or discharge passengers.

(6) "Revenue passenger vehicle" means a vehicle used to transport revenue paying passengers on a mass transit system.

(6m) "Secretary" means the secretary of the Wisconsin department of transportation.

(7) "Shared-ride taxicab" means a taxicab legally able to simultaneously transport passengers having different origins or destinations.

(8) "Subsystem" means that part of a transit system which provides special services to elderly or disabled persons.

(8m) "Unlinked trip" means a trip beginning when a passenger boards the vehicle and ending when the passenger alights from the vehicle, even though the passenger may have to transfer to another vehicle to complete his or her journey.

(9) "Urban area" means any area that includes a city or village having a population of 2,500 or more or an area that includes 2 American Indian reservations and that is served by a mass transit

system operated by a transit commission. The department shall determine the population of a city or village within an urban area using the most recent estimates prepared by the department of administration.

(10) "Urban mass transit system" means a mass transit system providing at least two-thirds of its revenue miles of service within the boundaries of an urban area.

(11) "User-side subsidy" means financial assistance provided directly to a user of a mass transit system or of a subsystem thereof in the form of a voucher provided to the user by the local public body for use in payment of a fare, or a portion of a fare, for a trip taken on an urban transit system or eligible subsystem.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (1), (3) and (6), Register, May, 1982, No. 317, eff. 6-1-82; renum. (3) to (6) to be (10), (3), (9) and (8) and am. (3), cr. (4) to (7) and (11), Register, October, 1986, No. 370, eff. 11-1-86; am. (9), Register, August, 1989, No. 404, eff. 9-1-89; r. and recr. (9), Register, December, 1989, No. 408, eff. 1-1-90; cr. (intro.), am. (1), (3) and (8), Register, April, 1993, No. 448, eff. 5-1-93; renum. (1) to be (1m) and cr. (1), (1r), (5m), (6m) and (8m), Register, November, 2000, No. 539, eff. 12-1-00.

**Trans 4.03 Appropriateness of urban areas.** All urban areas shall be deemed appropriate for an urban mass transit system for purposes of receiving state aid, except that no city or village shall be deemed appropriate for a municipal bus transportation system unless the system is approved by action of its governing body and by referendum vote of its electorate pursuant to s. 66.065 (5), Stats.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; r. and recr. Register, May, 1982, No. 317, eff. 6-1-82; emerg. am. (2), eff. 11-18-83; am. (2), Register, April, 1984, No. 340, eff. 5-1-84; r. and recr. Register, December, 1989, No. 408, eff. 1-1-90.

**Trans 4.04 Project costs.** (1) Eligible project costs are limited to the operating expenses of an urban mass transit system, including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation services, license fees and lease expenses. For publicly owned mass transit systems, only the wages and fringe benefits of those employees whose activities are directly related to the day-to-day operation of the system shall be considered eligible project costs. If those employees do not work full time on transit, only that portion of their time spent on transit shall be considered. For services provided by private transportation providers operating under mass transit contracts, eligible project costs may include profit, return on investment, interest on short term debt obligation, and depreciation of facilities and capital equipment used directly for the provision of urban mass transit services, provided that the facilities and equipment were acquired without benefit of public financial assistance. If a facility is a joint-use facility, depreciation costs for only that portion of the facility used in the provision of urban mass transit services are eligible project costs. For shared-ride taxicab services provided by private transportation providers operating under mass transit system contracts, eligible project costs may include management fees.

(2) Eligible project costs may include the costs of user-side subsidies provided to disabled persons. User contributions to the user-side subsidy service are considered eligible project costs in accordance with s. 85.20 (3m) (b), Stats.

(4) (a) If urban mass transit service is provided under a local public body contract with a private provider chosen following advertisement for competitive bids, eligible project costs may

include profit, return on investment and depreciation of facilities and capital equipment used directly for the provision of urban mass transit services, provided that the facilities and equipment were acquired without benefit of public financial assistance. If a facility is a joint-use facility, depreciation costs for only that portion of the facility used in the provision of urban mass transit services are eligible project costs. If competitively bid, eligible project costs may only include costs associated with the bid accepted by the local public body. If transit services are competitively bid, no costs shall be eligible project costs unless the eligible applicant uses the competitive bid process set forth in par. (b). A contract awarded to a private provider following the competitive bid process may not exceed 5 years in length.

(b) Eligible applicants shall use the following competitive bid process:

1. An eligible applicant shall prepare a "request for qualifications" document. That document shall request expressions of interest from providers, shall describe essential provider qualifications and shall describe criteria for evaluating the provider qualifications. The eligible applicant shall send the request for qualifications document to all providers of passenger transportation services, either for the general public or for elderly or disabled persons, operating within the service area of the applicant. The eligible applicant shall also cause an appropriate notice of the request for qualifications to be published in a local newspaper of general circulation.

2. If only one qualified provider expresses interest in providing the eligible public transportation service, the eligible applicant may negotiate a contract with that provider. The negotiated contract shall be subject to the department's approval.

3. If 2 or more qualified providers express interest in providing the eligible public transportation service, the eligible applicant shall send each party a "request for proposal" document. The document shall describe the eligible public transportation service requirements and the criteria that shall be used in evaluating the bid proposals.

4. When a publicly owned mass transit system responds to a request for proposal issued by a local public body under s. Trans 4.04 (4) (b) 3., the cost proposal shall include an analysis of fully allocated costs that will be used as the basis for evaluating costs when ranking proposals. The analysis shall include all of the system's costs measured in accordance with generally accepted accounting principles, regardless of whether these costs are otherwise paid for through other public financial assistance, including operating subsidies and capital grants. When the public body which owns the mass transit system has prepared a cost allocation plan in accordance with United States office of management and budget circular A-87, or OMB circular A-87, costs of the mass transit system shall be allocated in accordance with that plan. When the mass transit system has not prepared a cost allocation plan in accordance with OMB circular A-87, costs which are allocable to the mass transit system shall be determined using the principles outlined in OMB circular A-87. Expenses of the mass transit system shall be allocated to segments of service considered using the following categories:

a. Costs that depend on the number of vehicle hours operated, including particular operators salaries and fringe benefits.

b. Costs that depend on the number of vehicle miles traveled, including fuel costs, maintenance costs and maintenance personnel salaries and fringe benefits.

c. Costs that depend on the maximum number of vehicles that are in service during the day, including administrative and capital costs.

**Note:** Copies of the OMB Circular A-87 may be obtained, without cost, by writing to the Division of Transportation Investment Management, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913. A copy of this document is also on file with the offices of the Secretary of State, and the Revisor of Statutes.

5. The "request for qualifications" and the "request for proposal" may be combined and sent to transportation providers as one document.

6. When a contract is awarded based on bids for purposes of state aids, the proposed costs shall be reduced by an allowance for operating and capital costs subsidized through other state and federal grants.

7. An eligible applicant shall establish an appropriate procedure for resolving bid proposal complaints and conflicts.

(c) If a local public body contracts for urban mass transit service with a private provider on the basis of negotiated procurement, eligible operating expenses may include as costs depreciation of facilities and capital equipment used directly for the provision of urban mass transit services, provided that the facilities and equipment were acquired without benefit of public financial assistance. If a facility is a joint-use facility, depreciation costs for only that portion of the facility used in the provision of urban mass transit services are eligible project costs.

(5) The following expenses are not eligible project costs:

(a) Depreciation and amortization, except as authorized by sub. (1).

(b) Taxes paid which are subject to rebate.

(c) Interest expense, except as authorized under sub. (1).

(d) Profit, except as authorized by sub. (1).

(e) Lease-purchase payments.

(f) Lease payments to a related party which are made under less than an arms-length agreement. Only actual eligible expenses of owning the property, including depreciation and taxes shall be allowed, as authorized under sub. (1).

(g) Lease payments for revenue passenger vehicles unless the situation exists necessitating a short-term lease. For purposes of this subsection, a short-term lease is defined to be of one year or less in duration. If the grantee is actively pursuing a federal grant to purchase vehicles, the eligibility of lease payments may be extended until such time as the purchased vehicles have been delivered.

(h) Entertainment costs.

(i) Fines and penalties.

(j) Bad debts.

(k) Charitable deductions.

(L) User-side subsidies, except as authorized by sub. (2).

(m) Payments to members of advisory committees, transit commissions or transit boards.

(n) Federal, state and local income taxes.

(o) Charter-related expenses. Such expenses shall be considered to be equal to the revenue received directly from the provision of charter service, except when charter revenues exceed 10% of the total annual operating revenues of the eligible mass transit system. When charter revenues exceed 10% of the total annual operating revenues of the eligible mass transit system, charter-related expenses shall be determined in accordance with a cost allocation plan approved by the department.

(p) Expenses related to contractual agreements for special planning studies.

(q) Indirect transit-related functions or activities of regional or local entities performed as a normal or direct aspect of general public administration.

(r) Expenses for contingencies or capital acquisitions, including contributions to a capital reserve account or fund. For purposes of determining eligible operating expenses, capital acquisitions are defined as the purchase of non-expendable personal property with a useful life of more than one year and an acquisition cost of \$1,000 or more per unit. A unit is defined as one or more like items. The cost of materials and supplies utilized in facility or vehicle repairs, regardless of cost, shall be considered as eligible

operating costs so long as such repairs involve replacement of existing items.

(s) For privately owned mass transit systems, the wages and fringe benefits of any public employees, except those employees involved in administration of the mass transit contract or in monitoring the performance of the private transportation provider.

(t) Fees imposed upon a contracted service provider by the recipient public body, such as taxi license fees.

(u) Return on investment, except as authorized by sub. (1). Return on investment shall be a fixed amount and may not exceed an amount calculated by applying the interest rate the secretary of the treasury specifies under 50 USC App. 1215 (b) (2) as applicable to the period ending on December 31 of the year prior to the project year to the net book value of the private transportation provider's equipment and facilities used in providing the contracted for transportation service.

(v) Expenses that are directly offset by revenues that may include, but are not limited to, expenses related to hauling freight or package delivery, cash discounts or refunds, tax rebates including fuel tax rebates, insurance proceeds and resale proceeds. Such expenses shall be considered to be equal to the revenue derived directly from their incidence.

(w) Franchise fees paid by the recipient public body to a private transportation provider.

(x) Expenses for the direct operation of private or public transit van pools, except public van pool administrative and marketing expenses associated with the public transit van pool program.

(y) Expenses that are paid for with federal transit administration capital funds authorized under 49 CFR § 53.

(z) For transit systems providing services outside of their jurisdictional boundaries, expenses related to services which duplicate those provided by another public transit system in terms of geographic area served, hours operated, frequency of service and passenger boarding and alighting locations. Decisions on duplication of service shall be made by the department, after consultation with the affected public bodies.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; r. and recr. (1), am. (2), (3) and (4), Register, May, 1982, No. 317, eff. 6-1-82; emerg. r. and recr. eff. 11-18-83; r. and recr. Register, April, 1984, No. 340, eff. 5-1-84; am. (1), renum. (2) to be (5) and am. (2) (a), (d) and (l), cr. (2) to (4), Register, October, 1986, No. 370, eff. 11-1-86; am. (5) (f) and (o), renum. (4), (5) (q), (r), (s) and (t) to be (4) (a), (5) (p), (q), (r) and (s) and am. (4) (a), cr. (4) (b) and (c) and (5) (t), (u), (v) and (w) and r. (5) (p), Register, August, 1989, No. 404, eff. 9-1-89; am. (2), (4) (b) 1 and (5) (r), cr. (5) (x), Register, April, 1993, No. 448, eff. 5-1-93; am. (1), (5) (a), (c), (d), (f), (l), (s) and (t), r. (3), renum. (4) (b) 4. and 5. to be (4) (b) 5. and 7. and cr. (4) (b) 4., 6. and (5) (y) and (z), Register, November, 2000, No. 539, eff. 12-1-00.

#### Trans 4.05 State share of eligible project costs.

(1) The department of transportation may audit all public and private providers of urban mass transit services receiving state aids under the urban mass transit operating assistance program. The audits shall be the basis for computing the maximum share of state and federal aids each eligible applicant can apply against operating deficits for each state aid contract period. If a private provider is a subsidiary corporation, the department of transportation may audit both the subsidiary and the parent corporation. The department shall conduct audits as follows:

(a) For all urban mass transit systems participating in the state aid program, except privately owned systems with which a local public body contracts for services on the basis of competitive bids, the department shall audit the actual operating revenues and operating expenses for each state aid contract period. Audits shall be conducted in accordance with generally accepted governmental auditing standards.

(b) For privately owned mass transit systems with which a local public body contracts for services on the basis of competitive bids, the department shall conduct contract compliance audits, except that the department may not conduct financial audits of the business records of the private provider. This provision shall apply only for years in which an actual dollar amount was bid. Years for which a definite percentage increase over first year costs

has been specified in the bid, or years in which costs are to be increased by the rate of inflation as measured by the consumer price index shall be considered years in which an actual dollar amount was bid.

(2) The state's share of eligible project costs shall be in accordance with s. 85.20 (4m), Stats.

(3) "Operating deficit" means the amount by which the total operating expenses incurred in the operation of a mass transit system exceeds the amount of operating revenues derived therefrom.

(4) "Operating revenues" means income accruing to a mass transit system by virtue of its operations, excluding any income derived from the sale of charter service or the hauling of freight.

(5) "Operating expenses" shall be determined in accordance with s. Trans 4.04.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; r. and recr. Register, May, 1982, No. 317, eff. 6-1-82; emerg. r. and recr. eff. 11-18-83; r. and recr. Register, April, 1984, No. 340, eff. 5-1-84; am. (1) (a) and (4), Register, October, 1986, No. 370, eff. 11-1-86; renum. (1), (2), (3), and (4) to be (2), (3), (4) and (5), cr. (1), Register, August, 1989, No. 404, eff. 9-1-89; am. (2) (intro) and (a), cr. (2) (c), Register, August, 1990, No. 416, eff. 9-1-90; am. (2) (a), Register, April, 1993, No. 448, eff. 5-1-93; am. (1) (b) and r. and recr. (2), Register, November, 2000, No. 539, eff. 12-1-00.

**Trans 4.06 Distribution of state aids.** (1) The department shall distribute the state appropriations for this program among eligible applicants in accordance with the procedures set forth in s. 85.20 (4m), Stats., and also in accordance with provisions of the annual state contract executed between the applicant and the department.

(2) Except as provided in sub. (3), each eligible applicant shall provide a local contribution, exclusive of user fees, toward operating expenses in an amount equal to at least 20% of all state allocations to that applicant under this chapter. No in-kind services, federal or state categorical financial aids or passenger revenues are allowed as part of the local contribution. No part of the local contribution may be paid by a private transportation provider contracting with the applicant public body. The local contribution shall be determined by audit and calculated by subtracting passenger revenues, federal aids and state aids from eligible operating expenses.

(3) Subsection (2) does not apply to an eligible applicant that is served exclusively by a shared-ride taxicab system.

(4) State aids shall be paid to a recipient on a quarterly basis. If the department's audit establishes that the state aid payment to a recipient has exceeded any limitation on the state's share of eligible project costs under s. 85.20, Stats., then the recipient shall refund to the department an amount sufficient to reduce the state aids to an amount that is in conformity with s. 85.20, Stats.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; r. and recr. Register, May, 1982, No. 317, eff. 6-1-82; emerg. am. (2), (3) and (4), eff. 11-18-83; am. (2), (3) and (4), Register, April, 1984, No. 340, eff. 5-1-84; am. (2) to (4), Register, October, 1986, No. 370, eff. 11-1-86; am. (2) and (3), renum. (4) to be (6) and am. cr. (4) and (5), Register, August, 1990, No. 416, eff. 9-1-90; am. (2) and (3), Register, April, 1993, No. 448, eff. 5-1-93; am. (4), Register, March, 1996, No. 483, eff. 4-1-96; am. (1), r. (2) and (3) and renum. and am. (4) to (6) to be (2) to (4), Register, November, 2000, No. 539, eff. 12-1-00.

**Trans 4.07 Application for state aids.** (1) Applications shall be made in a form and manner prescribed by the department. If more than one public body in a given urban area contributes assistance to a mass transit system, one public body should submit a single application on behalf of all participating local governments. The applicant public body, as well as all other participating local governments, shall assure that the required local shares of eligible project costs will be available.

**Note:** Standard application booklets are available from the Wisconsin Department of Transportation, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, P.O. Box 7913, Madison, Wisconsin 53707-7913.

(2) Applications for aids shall be submitted to the department no later than November 15 of the year immediately preceding the proposed project year. Applicants may request up to a 45-day extension of this due date and the department may grant such requests. No application received after January 1 of the project

year shall be funded unless the secretary of transportation determines that a later date is appropriate in order to properly respond to an emergency situation.

(3) Eligible applicants in "urbanized" areas shall submit a copy of their application to the appropriate metropolitan planning organization.

(4) For purposes of this chapter a "project year" is defined to be a calendar year. The assisted transit services may be operated for less than a calendar year.

(5) Costs for services not included in the application for state aids will not be eligible for funding until the following calendar year.

(6) An eligible applicant intending to submit an application to support a new mass transit system shall notify the department of the applicant's intention no later than April 15 of the even-numbered year to be eligible for funding in the next biennium.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (2), cr. (5) and (6), Register, July, 1981, No. 307, eff. 8-1-81; am. (1), r. (3), renum. (4) to (6) to be (3) to (5), Register, May, 1982, No. 317, eff. 6-1-82; am. (2), Register, October, 1986, No. 370, eff. 11-1-86; r. and recr. (5) and cr. (6), Register, November, 2000, No. 539, eff. 12-1-00.

**Trans 4.08 State aid contracts.** (1) For each calendar year, the department may execute an annual aid contract with each eligible applicant.

(2) State aid contracts may be terminated by either the department or the applicant under the following conditions:

(a) By the department, if the department determines that the purpose of the aid program as expressed in s. 85.20, Stats., is not being fulfilled, or if the recipient fails to comply with the terms and conditions of the state aid contract.

(b) By the recipient, if the recipient makes a formal application to the department to do so.

(3) A state aid contract may be terminated as provided in sub. (2) by giving written notice of intent to terminate, sent by certified mail, at least 30 calendar days prior to the proposed termination date.

(4) State aid contracts shall require that recipients do the following:

(a) Pay the operating deficit of the mass transit system;

(b) Provide reduced fare programs for elderly and disabled persons during nonpeak hours, except if the mass transit system is a shared-ride taxicab system. Reduced fares may not exceed one-half of the adult cash fare;

(c) Establish and maintain accounting procedures and documents as prescribed or approved by the department;

(d) Assure that the mass transit system will count "revenue passenger trips" in accordance with ch. Trans 3.

(e) Assure that the mass transit system will file any reports required by the department at a time and in a manner prescribed by the department. If any report is not filed as required, the department may withhold payments due a grant recipient until the report is filed in the manner and form prescribed;

(f) Assure that, if other local public bodies contribute assistance to the operation of the mass transit system, the state aids received are allocated among the contributors in accordance with any cost sharing agreement that is filed with the department. If no agreement is filed, the aids shall be distributed among the contributors in proportion to their contributions; and

(g) Assure that, if urban mass transit service is provided under a local public body contract with a private provider, the private provider shall permit the department to conduct audits of the private provider's business records as required by s. Trans 4.05 (1).

(5) Each state aid contract shall include an appendix entitled "Transit Management Plan." The "Transit Management Plan" shall describe for the contract year how the transit system will be operated, the amount of service which will be provided, the fares to be charged, steps to be taken to make the system operate more effectively and efficiently, and the procedures to be used for establishing revenue passenger trips for the system. Mass transit policy and management decisions made and actions taken during the contract period shall be in conformance with the "Transit Management Plan." Any proposed deviations from the "Transit Management Plan" shall be reported to the department and departmental concurrence secured prior to implementation. The department shall determine if a formal amendment to the "Transit Management Plan" is required. The department may also require the applicant to hold a public hearing on the proposed change prior to the department's determination on the proposal.

(6) If the recipient contracts for mass transit service with a privately owned system, the recipient shall execute a formal contract with the system. The contract shall be submitted to the department for review and approval prior to execution.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; r. and recr. Register, May, 1982, No. 317, eff. 6-1-82; emerg. r. and recr. (5), eff. 11-18-83; r. and recr. (5), Register, April, 1984, No. 340, eff. 5-1-84; am. (4) (b), (e) and (f), cr. (4) (g), Register, August, 1989, No. 404, eff. 9-1-89; am. (4) (b) and (e), Register, April, 1993, No. 448, eff. 5-1-93; am. (4) (b), Register, November, 2000, No. 539, eff. 12-1-00.

**Trans 4.09 Planning requirements.** As a condition of eligibility to receive state aids, an applicant shall comply with the following requirements:

(1) Prepare and submit annually to the department a 4-year transit development program, in the form and manner prescribed by the department.

(2) Establish annually service and performance goals for a 4-year period and assess the effectiveness of the applicant's mass transit system in relation to those goals. The goals shall be submitted to the department as a part of the application for state aids. At a minimum, systemwide goals shall be established for the following performance indicators:

(a) The ratio of passengers, as expressed in unlinked trips to service area population.

(b) The ratio of operating expenses to passengers, as expressed in unlinked trips.

(c) The ratio of operating expenses to revenue hours.

(d) The ratio of revenues to operating expenses.

(e) The ratio of passengers, as expressed in unlinked trips, to revenue hours.

(f) The ratio of revenue hours to service area population.

(3) Prepare and submit quarterly to the department a written report of system effectiveness in relation to the goals established under sub. (2). The reports are due within 60 days following the end of each calendar quarter. The eligible applicant shall also submit a copy of the report to the appropriate local governing body.

**History:** Cr. Register, May, 1982, No. 317, eff. 6-1-82; renum. to be (intro.) and (1), cr. (2) and (3), Register, August, 1990, No. 416, eff. 9-1-90; am. (2) (intro.), (a) to (c) and (e) and cr. (2) (f), Register, November, 2000, No. 539, eff. 12-1-00.

**Trans 4.10 Management performance audits.** The department shall conduct a management performance audit of all urban mass transit systems participating in the program at least once every 5 years. The department shall determine the scope of services for each audit in cooperation with the management of the mass transit system subject to the audit. This section does not apply to shared-ride taxicab systems.

**History:** Cr. Register, August, 1990, No. 416, eff. 9-1-90; am., Register, November, 2000, No. 539, eff. 12-1-00.