

Wisconsin Department of Transportation

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The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

June 9, 2000

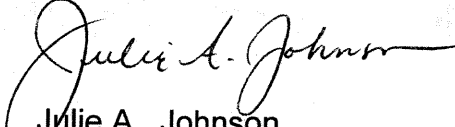
The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 4 & 8**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 00-015

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **00-015**, relating to the **state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.** The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,


Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Judy Robson/Representative Glenn Grothman/
Ernie Wittwer/Linda Lovejoy/Richard Martin

CR 00-015

The Wisconsin Department of Transportation proposes an order to repeal TRANS 4.04(3), 4.06(2) and (3), 8.03(2)(b) and 8.05; renumber TRANS 4.02(1), 4.04(4)(b)4. and 5., and 8.03(2)(a)1., 2., 4. and 5.; renumber and amend TRANS 4.06(4) to (6), 8.02(2) and 8.03(2)(a)(intro.) and 3.; amend ch. TRANS 4.04(1), (4)(a), (5)(a), (c), (d), (f), (L), (s) and (u), 4.05(1)(b), 4.06(1), 4.07(1)(note), 4.08(4)(b), 4.09(2)(intro.), (a) to (c) and (e), 4.10, 8.01, 8.02(4), (7) and (10), 8.03(intro.), (1)(b) and (3), and 8.04; repeal and recreate TRANS 4.05(2) and 4.07(5); and create TRANS 4.02(1), (1r), (5m), (6m) and (8m), 4.04(4)(b)4. and 6., and (5)(y) and (z), 4.07(6), 4.09(2)(f), and 8.02(2) and (11m), relating to the state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

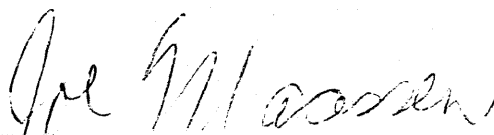
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1) and 227.11(2), Stats.

STATUTES INTERPRETED: s. 85.20, Stats.

General Summary of Proposed Rule. Ch. Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wis. Act 9 requires the Department to amend ch. Trans 4 by adding a section that requires that cost proposals submitted by a mass transit system in response to a request for proposals issued by a public body for the procurement of transit services to be funded under the state urban transit operating assistance program must include an analysis of fully allocated costs. The analysis must include all of the publicly owned system's costs, including operating subsidies and capital grants. This analysis shall be the basis for evaluating costs when ranking proposals.

A mass transit system prepares its cost allocation plan in accordance with the United States Office of Management and Budget Circular A-87. Section 7 of the rule references this document. Consent has been given by the offices of the Attorney General and the Revisor of Statutes to incorporate this document by reference.

In addition, this rule making will clarify existing provisions of ch. Trans 4 as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

These changes consist of the following:

- Removes language relative to state aid distribution that is contradictory to current statutory language.
- Modifies the definition of eligible expenses to include return on investment, short term interest and management fees for private transportation providers.
- Clarifies the required competitive bid process for private providers contracting with public bodies and allows public bodies sponsoring shared-ride taxicab systems to charge administrative expenses.
- Prohibits paying for expenses that are already paid for with Federal Transit Administration capital funds.
- Prohibits using state aid to pay for expenses related to services which duplicate those provided by another public transit system.
- Specifies that management performance audits will be conducted for bus systems only.
- Specifies that the cost of services not included in the annual state aid application will not be eligible for aid until the following year.

- Requires that a community planning to implement a new mass transit system notifies the Department by April 15 of even-numbered years in order to be eligible for aid under s. 85.20, Stats., in the upcoming biennium.
- Eliminates the necessity of submitting the original program application to the appropriate transportation district office.
- Modifies performance indicators to agree with those recommended by the Transit Advisory Council in 1997.
- Revises sections to make the rule easier to follow.

Chapter Trans 8 establishes the Department's administrative interpretation of the Governor's apportionment under the Federal Transit Assistance Section 5307 formula grant program for urbanized area transit systems and prescribes administrative policies and procedures for implementing the program. The amendments to ch. Trans 8 will clarify existing provisions of the rule as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

These amendments include:

- Changes all references to Section 9 of the Urban Mass Transportation Act of 1964 to Section 5307;
- Changes all references to Trans 4 to agree with current version;
- Defines "capitalized maintenance costs" and specifies how they can be funded;
- Adds wording to clarify that combined federal and state operating assistance may be limited by s. 85.20, Stats.;
- Changes the date by which the Department is required to provide projections of federal and state funding levels to recipients to as soon as possible after October 1;
- Specifies that capital projects required to comply with the Americans with Disabilities Act can be funded at up to 90% of costs;
- Eliminates the mandatory priority rank order for funding capital projects if available funding for a given year is not sufficient to fund all projects;
- Removes the language that allows for a second distribution of operating assistance if all capital needs have been met;
- Repeals s. Trans 8.05 which calls for the Department to review the policies and procedures established in the rule annually; and
- Eliminates obsolete terminology in various parts of the rule.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Hearing-impaired individuals may contact the

Department using TDD (608) 266-3351. Alternative formats of the proposed rule will be provided to individuals at their request.

PART 2
TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 85.20, Stats., relating to the state public transit operating assistance program, and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.

SECTION 1. Trans 4.02(1) is renumbered Trans 4.02(1m).

SECTION 2. Trans 4.02(1), (1r), (5m), (6m) and (8m) are created to read:

Trans 4.02(1) "Department" means the Wisconsin department of transportation.

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

(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.

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

(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.

SECTION 3. Trans 4.04(1) is amended to read:

Trans 4.04(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.

SECTION 4. Trans 4.04(3) is repealed.

SECTION 5. Trans 4.04(4)(a) is amended to read:

Trans 4.04(4)(a) If urban mass transit service is provided under a ~~local public body contract with~~ between a local public body and 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, the provider shall be selected through a

competitive procurement process. Eligible applicants shall follow this competitive process not less than once every 5 years. When competitively bid, eligible project costs may only include costs associated with the bid accepted by the local public body. If
When 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 be a single-year contract, or a multi-year contract with a maximum duration of 5 years. Contracts that are awarded that are not based on
competitive bids shall be executed using a negotiated method of procurement.

SECTION 6. Trans 4.04(4)(b)4. is renumbered Trans 4.04(4)(b)5.

SECTION 7. Trans 4.04(4)(b)4. is created to read:

Trans 4.04(4)(b)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.

SECTION 8. Trans 4.04(4)(b)5. is renumbered Trans 4.04(4)(b)7.

SECTION 9. Trans 4.04(4)(b)6. is created to read:

Trans 4.04(4)(b)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.

SECTION 10. Trans 4.04(5)(a), (c), (d), (f), (L), (s) and (u) are amended to read:

Trans 4.04(5)(a) Depreciation and amortization, except as authorized by sub. ~~(4)~~
(1).

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

(d) Profit, except as authorized by sub. ~~(4)~~ (1).

(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. ~~(4)~~ (1).

(L) User-side subsidies, except as authorized by ~~subs. sub. (2) and (3)~~.

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

(u) Return on investment, except as authorized by sub. ~~(4)~~ (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 services.

SECTION 11. Trans 4.04(5)(y) and (z) are created to read:

Trans 4.04(5)(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.

SECTION 12. Trans 4.05(1)(b) is amended to read:

Trans 4.05(1)(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, ~~and shall~~ 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.

SECTION 13. Trans 4.05(2) is repealed and recreated to read:

Trans 4.05(2) The state's share of eligible project costs shall be in accordance with s. 85.20(4m), Stats.

SECTION 14. Trans 4.06(1) is amended to read:

Trans 4.06(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.

SECTION 15. Trans 4.06(2) and (3) are repealed.

SECTION 16. Trans 4.06(4) to (6) are renumbered Trans 4.06(2) to (4) and amended to read:

Trans 4.06(2) Except as provided in sub. ~~(5)~~ (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 ~~(4)~~ (2) does not apply to an eligible applicant that is served exclusively by a shared-ride ~~taxi~~ 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. ~~Trans 4.05(2)~~ 85.20, Stats., then the recipient shall refund to the department an amount sufficient to reduce the state aid to an amount that is in conformity with s. ~~Trans 4.05(2)~~ 85.20, Stats.

SECTION 17. Trans 4.07(1)(note) is amended to read:

TRANS 4.07(1) NOTE: Standard application forms booklets are available from the ~~DOT Transit~~ Wisconsin Department of Transportation, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, P. O. Box ~~7914~~ 7913, Madison, Wisconsin 53707-7913.

SECTION 18. Trans 4.07(5) is repealed and recreated to read:

Trans 4.07(5) Costs for services not included in the application for state aids will not be eligible for funding until the following calendar year.

SECTION 19. Trans 4.07(6) is created to read:

Trans 4.07(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.

SECTION 20. Trans 4.08(4)(b) is amended to read:

Trans 4.08(4)(b) Provide reduced fare programs for elderly and disabled persons during nonpeak hours, except if the mass transit system is a shared-ride ~~taxi~~ taxicab system. Reduced fares may not exceed one-half of the adult cash fare;

SECTION 21. Trans 4.09(2)(intro.), (a) to (c) and (e) are amended to read:

Trans 4.09(2)(intro.) 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 ~~must~~ shall be established for the following performance indicators:

(a) The ratio of ~~operating expenses to total miles~~ passengers, as expressed in unlinked trips to service area population.

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

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

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

SECTION 22. Trans 4.09(2)(f) is created to read:

Trans 4.09(2)(f) The ratio of revenue hours to service area population.

SECTION 23. Trans 4.10 is amended to read:

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.

SECTION 24. Trans 8.01 is amended to read:

Trans 8.01 Purpose and scope. The purpose of this chapter is to prescribe the policies and procedures which the department of transportation acting on behalf of the governor will use for the distribution of federal funds apportioned to the state of

Wisconsin for ~~1987 and subsequent years~~ for mass transit assistance to urbanized areas of under 200,000 population. This program is authorized by section ~~9 of the Urban Mass Transportation Act of 1964, as amended~~ 5307 of the Transportation Equity Act for the 21st Century, Public Law 105-178.

SECTION 25. Trans 8.02(2) is renumbered Trans 8.02(2r) and amended to read:

Trans 8.02(2r) "Eligible recipient" means local public bodies in urbanized areas under 200,000 population who have been designated as recipients of federal section ~~9~~ 5307 funds by the secretary of the department of transportation acting on behalf of the governor.

SECTION 26. Trans 8.02(2) and (2m) are created to read:

Trans 8.02(2) "Capitalized maintenance costs" are costs associated with vehicle and facility related maintenance which a mass transit system has classified as capital costs as allowed by TEA 21. A mass transit system shall classify capitalized maintenance costs identically under both the federal section 5307 program and the state operating assistance program authorized under s. 85.20, Stats.

(2m) "Department" means the Wisconsin department of transportation.

SECTION 27. Trans 8.02(4), (7) and (10) are amended to read:

Trans 8.02(4) "Federal section ~~9~~ 5307 funds" means all federal funds apportioned to the state for distribution by the governor for urban mass transit operating assistance and capital projects in urbanized areas under 200,000 population.

(7) "Operating deficit" has the meaning given in s. Trans ~~4.05(2)~~ 4.05(3).

(10) "Operating revenues" has the meaning given in s. Trans ~~4.05(3)~~ 4.05(4).

SECTION 28. Trans 8.02(11m) is created to read:

Trans 8.02(11m) "TEA 21" means the federal transportation equity act for the 21st century of 1998.

SECTION 29. Trans 8.03(intro.) and (1)(b) are amended to read:

Trans 8.03 Distribution of federal aids. (intro.) The governor's annual apportionment of federal section 9 5307 funds shall be distributed as follows:

(1)(b) The department of transportation shall provide to each eligible recipient projections of the amount of state and federal funds for operating assistance which will be allocated to each recipient for the next project year ~~no later than~~ as soon as possible after October 1 and once state and federal budgeted amounts are known along with reasonable estimates of the operating assistance needs of affected mass transit systems. The projections ~~will~~ shall be based on the best information available at the time. ~~Revised projections shall be provided to each eligible recipient within 10 days following publication of the urban mass transportation administration's official section 9 apportionments in the federal register.~~

SECTION 30. Trans 8.03(2)(a)(intro.) is renumbered Trans 8.03(2)(intro.) and amended to read:

Trans 8.03(2)(intro.) Funds apportioned to the governor and not allocated for operating assistance under sub. (1) shall be made available on an annual basis to eligible recipients to cover up to 80% of the cost of capital projects, or 90% of the costs if the project is required to comply with the Americans with Disabilities Act, included in the final program of projects submitted by each recipient to the secretary of the United States department of transportation as required by 49 USC 1607a(e)(2). In any project year in which requests for capital assistance exceed available funds, ~~the following rank order of priority shall be used for distribution until all funds available are committed the~~

rank order of priorities shall be established by the department in consultation with the eligible recipient. Annually, the rank order shall consider age, condition, transit service needs and urgency among other factors. The rank order shown below may be used, or it may be modified, until all funds available are distributed:

SECTION 31. Trans 8.03(2)(a)1. to 5. are numbered Trans 8.03(2)(a) to (e) and, as renumbered, Trans 8.03(2)(c) is amended to read:

Trans 8.03(2)(c) Projects to purchase and install passenger amenities such as shelters and bus ~~stops~~ stop signs.

SECTION 32. Trans 8.03(2)(b) is repealed.

SECTION 33. Trans 8.03(3) is amended to read:

Trans 8.03 (3) Any uncommitted balances of the governor's apportionment after capital assistance needs are met under sub. ~~(2)(a) shall be available to all eligible applicants for operating assistance beyond the 70% limitation initially imposed in sub. (1) (a), not to exceed 50% of the operating deficit or the federally imposed operating assistance cap. Any uncommitted balances available after this additional operating assistance distribution~~ (2) or any unexpended balances from previous years under this section shall be carried forward to the following year.

SECTION 34. Trans 8.04 is amended to read:


Trans 8.04 Report requirements. All eligible recipients receiving a grant of federal section ~~9~~ 5307 funds shall maintain books and records in the manner required by the department and shall make periodic and special reports as required by the department or by applicable federal regulations.

SECTION 35. Trans 8.05 is repealed.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 9 day of June, 2000.


TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL STAFF



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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-015

AN ORDER to repeal Trans 4.04 (3), 4.06 (2) and (3), 8.03 (2) (b) and 8.05; to renumber Trans 4.04 (4) (b) 4. and 5., 8.02 (9), (11) and (12) and 8.03 (2) (a) 1., 2., 4. and 5.; to renumber and amend Trans 4.02 (3), 4.06 (4) to (6), 8.02 (2), (6) to (8) and (10) and 8.03 (2) (a) (intro.); to amend chapter Trans 4 (title), 4.01, 4.02 (1), (5), (6) and (9) to (11), 4.03, 4.04 (1), (2), (4) (a) and (c) and (5) (a), (c), (d), (f), (L), (o), (s) and (u), 4.05 (1), (3) and (4), 4.06 (1), 4.07 (1) and (2), 4.08 (4) (a), (b) and (d) to (g), (5) and (6), 4.09 (2) (intro.), (a) to (c) and (e), 4.10, 8.01, 8.02 (1), (3) and (4), 8.03 (intro.), (1) (b) and (3) and 8.04; to repeal and recreate Trans 4.05 (2) and 4.07 (5); and to create Trans 4.04 (4) (b) 4. and 6. and (5) (y) and (z), 4.07 (6), 4.09 (2) (f) and 8.02 (2), relating to the state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.

Submitted by **DEPARTMENT OF TRANSPORTATION**

01-18-00 RECEIVED BY LEGISLATIVE COUNCIL.

02-14-00 REPORT SENT TO AGENCY.

RS:RJC;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

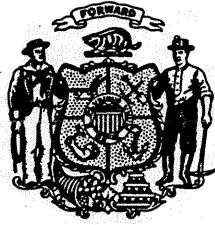
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 00-015

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section Trans 4.02 (9) modifies the definition of the term "urban area" and provides, among other things, that an "urban area" is an area deemed appropriate by the department. However, it appears that s. 85.20 (1) (k), Stats., provides that an urban area must include a city or village having a population of 2,500 or more, or an area that includes two or more American Indian reservations. Under what authority may the department deem another area an "urban area"?

2. Form, Style and Placement in Administrative Code

a. The added language in s. Trans 4.04 (4) (a) provides for a competitive procurement process. Is this the process referred to in par. (b)? If so, an appropriate cross-reference should be provided. In addition, the rule provides that eligible applicants must follow the competitive process not less than once every five years. Must this process be followed every time a contract is let, or just at least once every five years? Although the rule goes on to provide that a contract may not exceed five years, it appears to be implied that the contract could be for less than five years. Thus, the frequency requirement of the competitive bid process should be clarified.

b. In s. Trans 4.06 (3), the notation "Sub." should be replaced by the word "Subsection" since it begins the sentence.

c. SECTION 37 of the rule indicates that it renumbers s. Trans 8.02 (12) as sub. (12). Should it be renumbered sub. (11)?

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section Trans 4.04 (5) (y) refers to "federal transit administration capital funds." What are these funds? Can a cross-reference to an appropriate federal statute or regulation be included in the rule to better identify these funds?

b. Section Trans 4.05 (2) provides that the state share of eligible costs must be in accordance with s. 85.20, Stats. Is it possible to provide a more precise statutory citation within s. 85.20, Stats.?

c. Section Trans 4.06 (1) refers to the "state aid contract." Is this the state aid contract referred to in s. Trans 4.08? In any event, an appropriate cross-reference or other clarifying material should be provided to better identify the "state aid contract."

d. The treatment clause of SECTION 40 incorrectly refers to s. Trans 803.02 (2) (c). The reference should be to s. Trans 8.03 (2) (c).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The term "TRANS" in the title of s. Trans 4.01 should not be in all capital letters.

b. In s. Trans 4.01, and elsewhere throughout the rule, the term "department of transportation" is changed to the term "department." However, it does not appear that for purposes of ch. Trans 4 or 8, the term "department" is defined. If "department" is going to be used alone, the definitional portion of the rule ought to define the term. See also the use of the term "secretary" in s. Trans 4.07 (2).

c. In s. Trans 4.04 (1), and elsewhere throughout the rule, the term "public body contracts" is used. It is presumed that this term refers to a contract with a public body, although this interpretation is not entirely clear from the rule itself. Would it be possible to change the phrase "providers operating under public body contracts" to "providers operating under contracts with a public body"? If not, the term "public body contracts" should be better defined.

In addition, s. Trans 4.04 (1) also refers to a "joint-use facility." What is this? The term should be better defined in the rule.

d. Throughout the rule, the term "mass transit" is changed to "public transit." However, in the newly created s. Trans 4.04 (4) (b) 4., the term "mass transit" is used on numerous occasions. Should the term "mass transit" in this provision be changed to "public transit"? There is a larger question. Why is the term altered when the statute continues to use the phrase "mass transit"?

e. In s. Trans 4.05 (1) (b), it appears that the word “and” between the words “audits” and “~~shall~~ may” should be changed to the phrase “except that the department.” In addition, the last sentence of par. (b) is confusing. Does the sentence mean that in other years the department may conduct financial audits of the business records of the private provider? Also, what does it mean to have “an actual dollar amount bid”? The rule should be clarified.

f. Section Trans 4.09 (2) (a) to (e) introduce two new terms to the rule: “unlinked trips” and “revenue hours.” These terms, however, are not defined. In addition, their meaning is not readily apparent from the text of the rule. To enhance the rules clarity, these terms should be defined.

g. The final sentence of s. Trans 4.10 should be clarified and simplified as follows: “This section does not apply to shared-ride taxi systems.” Also, what is a “shared-ride taxi system”?

h. In s. Trans 8.02 (2), “TEA 21” is used. However, this term is not defined. It should be. In addition, the first clause of the second sentence should be deleted. Accordingly, the second sentence should begin: “A transit system shall classify” Finally, the word “these” should be replaced by “capitalized maintenance.”

i. Should the word “long” in s. Trans 8.03 (1) (b) be changed to “along”? The word “will” in the second sentence of that paragraph should be changed to “shall.”

j. To help clarify the provision, it appears that the word “or” should be inserted before “90%” in s. Trans 8.03 (2) (intro.). In addition, the provision states that the “rank order” will be determined by the department, and need not be reflective of the order provided for in the existing rule. If some other “rank order” is determined, how will individuals learn of it? Will it be published? The rule should be clarified.

PART 4
CR 00-015

ANALYSIS OF FINAL DRAFT OF TRANS 4 & 8

(a) **Need for Amended Rule.** Ch. Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized by s. 85.20, Stats. 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 by adding a section that requires that cost proposals submitted by a publicly-owned transit system in response to a request for proposals issued by a public body for the procurement of transit services to be funded under the state urban transit operating assistance program must include an analysis of fully allocated costs. The analysis must include all of the publicly-owned system's costs, including operating subsidies and capital grants. This analysis shall be the basis for evaluating costs when ranking proposals.

In addition, the rule making will clarify existing provisions of both ch. Trans 4 and Trans 8, as well as eliminate obsolete provisions and incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on February 14, 2000. Wisconsin Coach Lines, Inc., provided the only testimony received at the hearing. In addition, Wisconsin Coach Lines provided written comments which were accepted as a part of the hearing record. Following are the comments submitted by Wisconsin Coach Lines and the Department's response to each comment, some of which have resulted in modifications to the rule text:

1. Improper meeting notice for the public hearing. The public hearing on February 14, 2000 covered both permanent rule changes to chs. Trans 4 and 8 as well as the ch. Trans 4 emergency rule implementing a fully allocated cost methodology, as required in Section 1834 of 1999 Wis. Act 9. The Department followed proper notice procedures for both the emergency rule and the permanent rule public hearing pursuant to s. 227.17 and 227.24, Stats. Additionally, the Department allowed Wisconsin Coach Lines an additional 30 days to respond to the proposed rule changes.

2. Opposition to requiring contracts with private transportation providers to be competitively bid at least once every five years. The concept of competition has long been a cornerstone of governmental procurement. Competitive procurement is sound public policy, and virtually all other state programs require competitive bidding when procuring services from a private vendor. All federal transit aid programs require competitive bidding at least once every five years. Requiring competitive bids for state contracts also assures that a program dynamic is not created to discourage use of federal dollars. Consequently, no changes are made in this provision.

3a. Request to include the words “publicly owned” and the “public body which owns” in the first and third sentences of s. Trans 4.04(4)(b)4 as contained in the statutes. The text has been modified to include the words “publicly owned” and “the public body which owns” in the first and third sentences of Trans 4.04(4)(b)4, as recommended by Wisconsin Coach Lines.

3b. Opposition to referencing OMB Circular A-87 as a guide to cost allocation and a suggestion to reference instead “Fully Allocated Cost Analysis, Guidelines for Public Transit Providers” published in 1987 by the Federal Urban Mass Transportation Administration. No changes to the rule text were made relative to this comment from Wisconsin Coach Lines. OMB Circular A-87 is a federal rule that governs all federal procurements, including the procurement of services with Federal Transit Administration (FTA) grants. The document suggested by Wisconsin Coach Lines was never a rule, but only a suggested guidance which is now obsolete and no longer used by the FTA.

4. Request to add the words “for purposes of state aids” following “when a contract is awarded based on bids” in the first sentence of s. Trans 4.04(4)(b)6. This change, as Wisconsin Coach Lines has suggested, has been made to the rule text.

5a. Opposition to the addition of ineligible expenses under s. Trans 4.04(5)(y), “expenses that are paid for with FTA capital funds.” No change to the rule text has been made. While Wisconsin Coach Lines contends that this change would only impact private operators, it has a potential impact on all transit systems receiving federal aid under the FTA Section 5307 program, since all systems can now capitalize their maintenance costs. The intent is to prevent “double-dipping,” i.e., to prevent systems from recouping 80% of the cost under the federal program, and 45% of the same costs under the state operating assistance program, thus receiving more than 100% of cost reimbursement.

5b. Opposition to the addition of ineligible costs under s. Trans 4.04(5)(z) “for transit systems providing services outside of their jurisdictional boundaries. Expenses related to services which duplicate those provided by another public transit system.” Wisconsin Coach Lines characterized this change as an “additional barrier to inter-government cooperation.” To the contrary, the intent is to encourage intergovernmental cooperation and planning before implementing new transit services in a fragmented manner that may leave some areas with no service and provide far more service than necessary to other areas. Funding two transit systems that are providing the same service is not an efficient use of state resources. Wisconsin Coach Lines also questions the definition of “duplication,” and who makes the decision. In response to their comments, s. Trans 4.04(5)(z) was modified to read: “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.

6. Opposition to requiring financial audits for years in which an actual dollar amount wasn't bid. The intent of this proposed change is to prevent a vendor from "low-balling" a bid in the first year, with the intention of covering any losses incurred through larger out-year costs. Based on the Wisconsin Coach Lines comment, however, s. Trans 4.05(1)(b) has been modified by adding the following sentence at the end: "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." It should be noted that if a vendor is anticipating unusual cost increases in an out-year that were not included in the bid price, costs for that year can still be negotiated on a line-item basis. As a negotiated procurement, however, final expenses would be subject to audit.

(c) List of Persons who Appeared or Registered at Public Hearing. Persons appearing/registering at the hearing are as follows:

Michael J. Pjevach, President, Wisconsin Coach Lines, Inc., 1520 Arcadian Avenue, Waukesha, WI 53186—spoke in opposition and for information.

Michael Hansen, Consultant, Wisconsin Coach Lines, Inc., 1520 Arcadian Avenue, Waukesha, WI 53186—spoke in opposition and for information.

Tom Dieckelman, Vice President, Wisconsin Coach Lines, Inc., N25W22564 Graywood Court, Waukesha, WI 53186—registered in opposition and for information.

(d) Response to Legislative Council Recommendations. Response to the Legislative Council's recommendations are as follows:

1. **Statutory Authority.** The intent is to clarify statutory language, not change it. The Department's definition reflects an effort to recognize those locations in Wisconsin appropriate for regional transportation systems.

2. **Form, Style and Placement in Administrative Code.** a. This recommendation has been adopted. Trans 4.04(4)(a) has been modified to require use of the competitive bid process defined in s. Trans 4.04(4)(b). Language has been added to make it clear that contracts awarded following a competitive bid may be single-year contracts or multi-year contracts with a maximum duration of five years, and that contracts may be awarded, in years two through five, to a vendor initially selected through a competitive bid process, that are not based on competitive bids. Such contracts shall be executed using a negotiated method of procurement.

b. The recommendation of the Council has been adopted.

c. A decision has been made not to amend this section.

3. Adequacy of References to Related Statutes, Rules and Forms.

a. Council recommendation has been adopted. Reference has been expanded to read: "federal capital funds authorized under 49 CFR § 53."

b. Council recommendation has been adopted. Reference has been expanded to read: s. 85.20(4)(m), Stats.

c. Council recommendation has been adopted. Language has been changed to read: "annual state contract executed between the applicant and the department."

d. The Council recommendation has been adopted.

4. Clarity, Grammar, Punctuation and use of plain Language

a. The Council's recommendation has been addressed.

b. The Council's recommendation has been adopted. "Department" and "secretary" have been defined in the definitions section of the rules.

c. Council recommendation has been adopted. Council's suggested replacement language for "public body contracts" has been incorporated, and "joint-use facility" is defined as a facility which is shared by the public transit operation and at least one other business.

d. The change from "mass transit " to "public transit" will not be made.

e. Trans 4.05(1)(b) has been modified as recommended by the Legislative Council.

f. "Unlinked trips" and "revenue hours" have been defined in the definitions section of the rule.

g. Trans 4.10 has been modified in accordance with recommendation of the Council.

h. Trans 8.02(2) has been modified to reflect all Council recommendations.

i. Council recommended changes have been made to the text. Trans 8.03(2) has been modified to incorporate council suggestions, and to clarify how "other rank order" is determined.

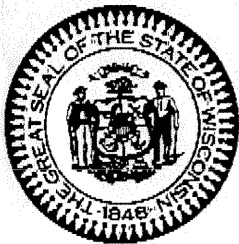
(e) **Final Regulatory Flexibility Analysis.** This proposed rule will have no adverse impact on small businesses.



*** ACTIVITY REPORT ***

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CONNECTION ID	
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DAVID BRANDEMUEHL
State Representative
49th Assembly District

July 19, 2000

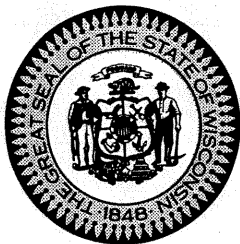
Secretary Terrence Mulcahy
 Department of Transportation
 4802 Sheboygan Avenue, Rm. 120B
 P.O. Box 7910
 Madison, Wisconsin 53707-7910

Dear Secretary Mulcahy:

I write to request a meeting on Clearinghouse Rule 00-015, relating to the state public transit operating assistance program; to the use of fully allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population. The Assembly Committee on Transportation rule review period ends on July 20, 2000 and we would thus need to meet by mid-August. Thank you for your time and attention to this matter.

Sincerely,

David A. Brandemuehl
 Chairman, Assembly Committee on Transportation



DAVID BRANDEMUEHL

State Representative
49th Assembly District

July 19, 2000

Secretary Terrence Mulcahy
Department of Transportation
4802 Sheboygan Avenue, Rm. 120B
P.O. Box 7910
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Sincerely,

A handwritten signature in cursive script, appearing to read "David".

David A. Brandemuehl
Chairman, Assembly Committee on Transportation

Cc: Members, Assembly Transportation Committee
Bill Ford
Bob Cook
Ken Stigler
Speaker Jensen

Committee Memberships:

Transportation (Chair); Education; Highway Safety; Natural Resources; Urban & Local Affairs; Rustic Roads Board; Transportation Projects Commission

Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-1170 • Rep.Brandemuehl@legis.state.wi.us

Home: 13081 Pine Road • Fennimore, Wisconsin 53809 • (608) 822-3776

Toll-Free: (888) 872-0049 • Fax: (608) 282-3649

SENT VIA: Fax 1-608-266-0658
Original mailed

March 14, 2000

Mr. Richard A. Martin
Wisconsin Department of Transportation
Bureau of Transit and Local Roads
Room 951, P.O. Box 7913
Madison, WI 53707-7913

RE: The amendment of ch. Trans 4, Wisconsin Administrative Code

Dear Mr. Martin,

The purpose of this letter is to respond to the proposed changes in ch Trans 4. At the public hearing I attended, the department agreed to allow all interested parties until March 15th (30 days) to respond to the proposed changes.

Needless to say, as a private sector bus operator I am opposed to most of the proposed changes. In the last state budget, the legislature included the fully allocated cost methodology, a provision to level the playing field for private companies. The legislature instructed the department to initiate rule making related to the fully allocated cost methodology, which I was prepared to address. Why did the department feel the necessity to make all of the other proposed changes related to provisions in ch Trans 4 which truly only affect private operators? **It appears as the department is responding to favorable private sector legislation by targeting the private sector in its rule making process.**

Specifically, the following are my comments regarding the proposed changes to ch Trans 4 and the department's rule making process:

1. **Meeting Notice** - I have a concern regarding the improper meeting notice for the public hearing I attended on February 14, 2000. The notice I received (see attached) stated "... to consider the amendment of ch. Trans 4, Wisconsin Administrative Code, relating to requiring the use of fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process." When I arrived at the public hearing a different notice was handed out which addressed numerous changes to ch Trans 4, in addition to the "use of fully allocated cost methodology." I was prepared

for the public hearing based upon the notice I received, not based upon the notice handed out at the hearing. Why was the original notice that I received issued? I never received the revised notice until I walked into the public hearing.

2. **Section 9** – Amended ch Trans 4.04(4)(a) to require that when a public body, contracts with a private provider, the provider must be selected through a competitive procurement process. I find it interesting that this revision is included. First, why does this provision only apply to “private providers”? What about public providers – shouldn’t they be required to truly competitively bid all of their services not just the management contracts? Why is this change even being proposed? This change should be eliminated. As you know, our company has an annual contract with the City of Racine. This contract is only an annual contract as it is negotiated with the City of Racine. Ultimately, our state operating assistance is limited to the audited operating costs we incur in providing the transit services, similar to public operators. Now the department wants to treat the private operator different from the public operator by requiring all private operator contracts by bid. Why?
3. **Section 11** – The copy of the proposed rules I received had the words “publicly owned” in the first sentence and “the public body which owns” in the third sentence manually crossed out. Obviously this is in error as the budget clearly refers to public operators. In addition, the proposed rule references the OMB circular A-87 – “Cost Principles for State, Local and Indian Tribal Governments” as the basis for developing a cost allocation plan. I believe that the basis for fully allocated cost analysis should be the U.S. Department of Transportation, “Fully Allocated Cost Analysis, Guidelines for Public Transit Providers” published in April, 1987. This USDOT document specifically addresses the application of fully allocated cost principles as they apply to transit services. The OMB circular A-87 purpose, according to the circular itself is: “This circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).” Why not use a document that specifically deals with fully allocated costs in the transit business?
4. **Section 13** – The words “for purposes of State Aids” should be added in front of “the proposed costs shall ...”
5. **Section 15** – I oppose the addition of point (y). This only impacts the private operator. Also, I strongly oppose the addition of (z). This appears to be an additional barrier to inter-government cooperation. Who decides what is duplication? Does anyone consider the impact on the users (practical application of transfers versus direct service)? Does the express versus local nature of a service come-in to play? Why does this provision only apply to systems outside of their jurisdictional boundaries? Does this only apply to new routes or existing routes? In addition, shouldn’t the efficiency measures address any problems? I believe the local jurisdictions (i.e. Ozaukee, Washington, Waukesha, Racine and Kenosha counties) should have the ability to establish common sense routes to best service their transit

customers. Thus, this section should be eliminated.

6. **Section 16** – At the public hearing I asked a question regarding the change in the wording of ch Trans 4.05(1)(b) from shall not to may not. The department indicated that this was a grammatical change only. Also, the department added, “This provision shall apply only for years in which an actual dollar amount was bid.” So a private operator will have to incur the cost of financial audits if the bid does not specify future year costs. What about bid contracts that have formula rate escalation clauses? Also, how does a private operator address the cost of fuel (which is a commodity) in future contract years? I believe that this sentence should be removed or changed to better address formula increases and commodity cost protections (i.e. fuel).

The department’s proposed rule is anti-private operator. I am confident that the department will consider my comments and modify the proposed rule changes to Trans 4. Increased private operator involvement in the state transit program is critical to an efficient and effective state transit program.

Very truly yours,

WISCONSIN COACH LINES, INC.

Michael J. Pjevach
President

Cc: Speaker Scott R. Jensen
Governor Tommy Thompson
Michael Hansen, Consultant

July 19, 2000

Mr. Scott R. Jensen
Assembly Speaker
State Capital – Room 211 West
P.O. Box 8952
Madison, WI 53708

RE: CR00-015 (Revision of TRANS 4)

Dear Speaker Jensen,

I am writing regarding CR00-015, which addresses the Department of Transportation's administrative rule - Trans 4. As you are aware, I attended the public hearing held on February 14, 2000 and formally responded to the Department in a letter dated March 14, 2000. I have attached a copy of this letter for your reference.

Based upon the Department's revisions to the administrative rule, I have one remaining issue with the proposed administrative rule. Specifically, I believe that the Department continues to single out private contractors with the proposed change in the wording of Trans 4.04(4)(a). This section of the administrative rule deals with the allowed methods of procurement with private operators. Please refer to the second point in my March 14th letter. Either the Department should require **all** (both public and private operators) contracts be competitively bid or continue to allow for negotiated contracts with private operators (which is allowed for public operators – most transit systems in the State). The public's interest is protected in the negotiated private contract scenario as State Operating Assistance is based upon audited costs. If the Department elects to **competitively bid all** transit services, it should be based upon truly private contracting operation of routes versus just the management contracts.

I appreciate you and your staff's assistance with this matter. Please feel free to call me at (262) 542-8861 ext. 154 if you would like to discuss my concern further.

Very truly yours,

WISCONSIN COACH LINES, INC.

Michael J. Pjevach
President

Cc: Mr. Michael Hansen, Consultant

Attachment: March 14, 2000 Letter to Mr. Richard Martin