

- Modifies the definition of eligible expenses to include return on investment, short term interest and management fees for private transportation providers.
- Changes the definitions of "urban area" and "urban mass transit system" to eliminate ambiguity.
- Clarifies the required competitive bid process for private providers contracting with public bodies and allows public bodies sponsoring shared-ride taxi 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.
- Eliminates obsolete language relating to user-side subsidy programs.
- 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 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.

**Initial Regulatory Flexibility Analysis.** This proposed rule will have no adverse impact on small businesses.

**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.

### 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.** Chapter Trans 4 (title) is amended to read:

URBAN ~~MASS~~ PUBLIC TRANSIT OPERATING ASSISTANCE PROGRAM

**SECTION 2.** Trans 4.01 is amended to read:

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

**SECTION 3.** Trans 4.02(1) is amended to read:

Trans 4.02(1) "Eligible applicant" means a local public body in an urban area which is served by an urban ~~mass~~ public transit system incurring an operating deficit.

**SECTION 4.** Trans 4.02(3) is renumbered 4.02(5m) and amended to read:

Trans 4.02(5m) "~~Mass~~ Public 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~~ public 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~~ public transit system" for purposes of this chapter.

**SECTION 5.** Trans 4.02(5), (6) and (9) to (11) are amended to read:

Trans 4.02(5) "Public provider" means any provider of ~~mass~~ public transit service not defined as a private provider.

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

(9) "Urban area" means any area that ~~includes~~ is a city or village having a population of 2,500 or more or an area deemed appropriate for regional transit by the department or an area that includes 2 American Indian reservations and that is served by a ~~mass~~ public transit system operated by a transit commission. The department shall determine the population of a city or village within an urban area by using the most recent estimates prepared by the department of administration.

(10) "Urban ~~mass~~ public 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, except that the department may waive this provision if the area is a part of an approved transit plan.

(11) "User-side ~~subsidy~~ payment" means financial assistance provided directly to a user of a ~~mass~~ public 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.

**SECTION 6.** Trans 4.03 is amended to read:

**TRANS 4.03 Appropriateness of urban areas.** All urban areas shall be deemed appropriate for an urban ~~mass~~ public 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.

**SECTION 7.** Trans 4.04(1) and (2) are amended to read:

Trans 4.04(1) Eligible project costs are limited to the operating expenses of an urban ~~mass~~ public transit system, including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation services, license fees and lease expenses. For publicly owned ~~mass~~ public 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 public body 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 public 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 public transit services are eligible project costs. For shared-ride taxi services provided by private transportation providers operating under public body contracts, eligible project costs may include management fees.

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

**SECTION 8.** Trans 4.04(3) is repealed.

**SECTION 9.** Trans 4.04(4)(a) is amended to read:

Trans 4.04(4)(a) If urban ~~mass~~ public 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, the provider must be selected through a competitive procurement process. Eligible applicants must follow this competitive process not less than once every five years. When competitively bid, eligible project costs may only include costs associated with the bid accepted by the local public body. #~~ 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.

**SECTION 10.** Trans 4.04(4)(b)4. is renumbered Trans 4.04(4)(b)5.

**SECTION 11.** 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 publicly owned 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 public body shall be allocated in accordance with that plan. When the public body which owns 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 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 12.** Trans 4.04(4)(b)5. is renumbered Trans 4.04(4)(b)7.

**SECTION 13.** Trans 4.04(4)(b)6. is created to read:

Trans 4.04(4)(b)6. When a contract is awarded based on bids, the proposed costs shall be reduced by an allowance for operating and capital costs subsidized through other state and federal grants.

**SECTION 14.** Trans 4.04(4)(c), (5)(a), (c), (d), (f), (L), (o), (s) and (u) are amended to read:

Trans 4.04(4)(c) If a local public body contracts for urban ~~mass~~ public 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~~ public 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~~ public transit services are eligible project costs.

(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~~ payments, except as authorized by ~~sub. sub.~~ sub. (2) and ~~(3)~~.

(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~~ public transit system. When charter revenues exceed 10% of the total annual operating revenues of the eligible ~~mass~~ public transit system, charter-related expenses shall be determined in accordance with a cost allocation plan approved by the department.

(s) For privately owned ~~mass~~ public transit systems, the wages and fringe benefits of any public employees, except those employees involved in administration of the public 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 15.** 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.



(z) For transit systems providing service outside their jurisdictional boundaries, expenses related to services which duplicate those provided by another public transit system.

**SECTION 16.** Trans 4.05(1) is amended to read:

Trans 4.05(1) The department ~~of transportation~~ may audit all public and private providers of urban ~~mass~~ public transit services receiving state aids under the urban ~~mass~~ public 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~~ public 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~~ public 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~~ 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.

**SECTION 17.** 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, Stats.

**SECTION 18.** Trans 4.05(3) and (4) are amended to read:

Trans 4.05(3) "Operating deficit" means the amount by which the total operating expenses incurred in the operation of a ~~mass~~ public transit system exceeds the amount of operating revenues derived therefrom.

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

**SECTION 19.** 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 state aid contract.

**SECTION 20.** Trans 4.06(2) and (3) are repealed.

**SECTION 21.** 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)~~ Sub. (2) does not apply to an eligible applicant that is served exclusively by a shared-ride taxi 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 22.** Trans 4.07(1) and (2) are amended to read:

Trans 4.07(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~~ public 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 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.**

(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.

**SECTION 23.** 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 24.** Trans 4.07(6) is created to read:

Trans 4.07(6) An eligible applicant intending to submit an application to support a new 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 25.** Trans 4.08(4)(a), (b), (d) to (g), (5) and (6) are amended to read:

Trans 4.08(4)(a) Pay the operating deficit of the ~~mass~~ public transit system;

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

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

(e) Assure that the ~~mass~~ public 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~~ public 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~~ public 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~~ Public 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~~ public 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.

**SECTION 26.** 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~~ public 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 27.** Trans 4.09(2)(f) is created to read:

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

**SECTION 28.** 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~~ public 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 transit system subject to the audit. Shared-ride taxi systems shall be exempt from this audit requirement.

**SECTION 29.** 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~~ public 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 21<sup>st</sup> Century, Public Law 105-178.

**SECTION 30.** Trans 8.02(1) is amended to read:

Trans 8.02(1) "Capital project" means the acquisition, construction, reconstruction and improvement of facilities, vehicles and equipment for use in the provision of an eligible ~~urban mass~~ public transit system.

**SECTION 31.** Trans 8.02(2) is renumbered Trans 8.02(2m) and amended to read:

(2m) "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 32.** Trans 8.02(2) is created to read:

Trans 8.02(2) "Capitalized maintenance costs" are costs associated with vehicle and facility related maintenance which a transit system has classified as capital costs as allowed by TEA 21. Federal guidelines allow for these costs to be classified as either operating or capital, however, a transit system shall classify these costs identically under both the federal section 5307 program and the state operating assistance program authorized under s. 85.20, Stats.

**SECTION 33.** Trans 8.02(3) and (4) are amended to read:

Trans 8.02(3) "Eligible urban ~~mass~~ public transit system" means a ~~mass~~ transit system operating or designated to operate in urbanized areas of less than 200,000 population.

(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.

**SECTION 34.** Trans 8.02(6) to (8) are renumbered Trans 8.02(11), (6) and (7), respectively, and amended to read:

Trans 8.02(11) "~~Mass~~ Public transit system" has the meaning given in s. Trans ~~4.02(4)~~ 4.02(5m).

(6) "Operating assistance" means ~~a subsidy to pay~~ payment of a part of the operating deficit of an eligible urban ~~mass~~ public transit system.

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

**SECTION 35.** Trans 8.02(9) is renumbered Trans 8.02(8).

**SECTION 36.** Trans 8.02(10) is renumbered Trans 8.02(9) and amended to read:

Trans 4.02(9) "Operating revenues" has the meaning given in s. Trans ~~4.05(3)~~ 4.05(4).

**SECTION 37.** Trans 8.02(11) and (12) are renumbered Trans 8.02(10) and (12).

**SECTION 38.** 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 long with reasonable estimates of the operating assistance needs of affected transit systems. The projections will 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 39.** 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, 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 transit community. 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 40.** Trans 8.03(2)(a)1. to 5. are numbered Trans 8.03(2)(a) to (e) and, as renumbered, Trans 803.02(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 41.** Trans 8.03(2)(b) is repealed.

**SECTION 42.** 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 43.** 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 44.** Trans 8.05 is repealed.

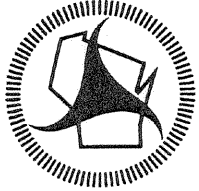
**(END OF RULE TEXT)**

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**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 18 day of January, 2000.

  
CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation



DEC 10 1999

## Wisconsin Department of Transportation

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Tommy G. Thompson  
Governor

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The Honorable Judy Robson  
Senate Chairman  
Joint Committee for Review  
of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin 53702

December 9, 1999

The Honorable Glenn Grothman  
Assembly Chairman  
Joint Committee for Review  
of Administrative Rules  
15 North, State Capitol  
Madison, Wisconsin 53702

RE: **ORDER ADOPTING EMERGENCY RULE ON TRANS 4**, relating to the **use of fully allocated costs in the competitive bid process**

Gentlepersons:

Enclosed is a copy of the above-referenced emergency rule for your information. Pursuant to sec. 227.24(1)(c), Stats., the rule will take effect upon publication in the *Wisconsin State Journal*, scheduled for December 12, 1999. Notwithstanding s. 227.24(1)(c), the emergency rule will remain in effect until July 1, 2000, or the date on which the permanent rule takes effect, whichever is sooner, pursuant to 1999 Wis. Act 9, section 9150(2bm)(b).

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson  
Paralegal

Enclosure

cc: Mike Goetzman  
Alice Morehouse  
Ernie Wittwer  
Richard Martin

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The Wisconsin Department of Transportation Adopts an Emergency Order to renumber TRANS 4.04(4)(b)4. and 5., and create TRANS 4.04(4)(b)4. and 6., relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process.

**NOTICE OF EMERGENCY  
RULE HEARING**

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**NOTICE**

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NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 85.20(3) and 227.11(2), Stats., interpreting s. 85.20, Stats., the Department of Transportation will hold a public hearing on **Monday, February 14, 2000**, at the Hill Farms State Transportation Building, **Room 994**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the amendment of ch. Trans 4, Wisconsin Administrative Code, relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process..

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter no later than 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

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The Wisconsin Department of Transportation Adopts an Emergency Order to renumber TRANS 4.04(4)(b)4. and 5., and create TRANS 4.04(4)(b)4. and 6., relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process.

**ORDER ADOPTING  
EMERGENCY RULE**

**Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** ss. 85.16(1), 85.20(3) and 227.11(2), Stats.

**STATUTE INTERPRETED:** s. 85.20, Stats.

**General Summary of Emergency Rule.** Chapter 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, section 9150(2bm), requires the Department to adopt an emergency rule to amend Chapter 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.

Pursuant to 1999 Wis. Act 9, section 9150(2bm)(b), the Department is not required to provide evidence that the rule is necessary for the preservation of the public peace, health, safety or welfare, and is not required to provide a finding of emergency.

**Initial Fiscal Estimate.** No fiscal effect is anticipated from the promulgation of this proposed rule.

**Initial Regulatory Flexibility Analysis.** This proposed rule has no significant impact on small businesses.

**Copies of Emergency Rule and Contact Person.** Copies of this emergency rule are available without cost upon request by writing to Richard A. Martin, Department of Transportation, Division of Transportation Investment Management, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, Room 933, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Alternate formats of the proposed rule will be

provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351.

---

**TEXT OF EMERGENCY RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 85.20(3) and 227.11(2), Stats., the department of transportation hereby amends ch. Trans 4, Wisconsin Administrative Code, interpreting s. 85.20, Stats., relating to the use of fully allocated costs in the competitive bid process.

**SECTION 1.** Trans 4.04(4)(b)4. is renumbered Trans 4.04(4)(b)5.

**SECTION 2.** 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 publicly owned 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 public body shall be allocated in accordance with that plan. When the public body which owns 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 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.

**SECTION 3.** Trans 4.04(4)(b)5. is renumbered Trans 4.04(4)(b)7.

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


Trans 4.04(4)(b)6. When a contract is awarded based on bids, the proposed costs shall be reduced by an allowance for operating and capital costs subsidized through other state and federal grants.

**(END OF RULE TEXT)**

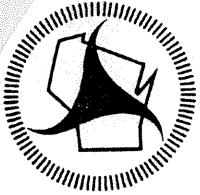
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**Effective Date.** This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this 7 day of December, 1999.

  
\_\_\_\_\_  
CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation

DEC 10 1999



## Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

Office of General Counsel  
4802 Sheboygan Ave., Rm. 115B  
P.O. Box 7910  
Madison, WI 53707-7910

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: ogc.exec@dot.state.wi.us

December 9, 1999

The Honorable Douglas LaFollette  
Secretary of State  
30 West Mifflin Street  
9th Floor  
Madison, Wisconsin 53703

RE: **ORDER ADOPTING EMERGENCY RULE ON TRANS 4**

Dear Mr. LaFollette:

Enclosed for filing, pursuant to §§ 227.20(1) and 227.24(3), Stats., is a certified copy of the above-referenced emergency administrative rule relating to the **use of fully allocated costs in the competitive bid process**. The rule will take effect upon publication in the Wisconsin State Journal (s. 227.24(1)(c)), scheduled for December 12, 1999. Notwithstanding s. 227.24(1)(c), this emergency rule will remain in effect until July 1, 2000, or the date on which the permanent rule takes effect, whichever is sooner, pursuant to 1999 Wis. Act 9, section 9150(2bm)(b).

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson  
Paralegal

Enclosure

cc: All Members of the Legislature  
Donald J. Schneider, Senate Chief Clerk  
Charles R. Sanders, Assembly Chief Clerk  
Mike Goetzman  
Alice Morehouse  
Ernie Wittwer  
Richard Martin



**CERTIFICATE**

STATE OF WISCONSIN )  
 ) ss.  
DEPARTMENT OF TRANSPORTATION )

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the attached emergency rule relating to the **use of fully allocated costs in the competitive bid process**, was duly approved and adopted by this Department on the 7 day of December, 1999.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 7 day of **December**, 1999.

*Charles H. Thompson*  
\_\_\_\_\_  
CHARLES H. THOMPSON  
Secretary

DEC 03 1999



**Wisconsin Department of Transportation**  
**Office of General Counsel**  
 (608) 266-8810 [Phone]  
 (608) 267-6734 [FAX]

James S. Thiel  
 Joe Measen  
 Barbara Bird  
 Ailyn Lopez  
 Mike Kemala  
 Fred Wiener  
 John Sobolik

## MEMORANDUM

Date: December 3, 1999

To: Senator Judy Robson/ATTN: David Austin  
 Representative Glenn Grothman/ATTN: Steve Krieser

From: Jewels Johnson  
 Administrative Rules Coordinator  
 Office of General Counsel

Re: **AN ORDER ADOPTING EMERGENCY RULE AMENDING TRANS 4,  
 Wisconsin Administrative Code**

Pursuant to the January 27, 1989 memo written by the JCRAR co-chairs to all rule making agencies, it is requested that advance notice be given when promulgating emergency rules. Accordingly, the Wisconsin Department of Transportation provides you with this advance notification of its intent to promulgate the attached draft of emergency rule amending ch. Trans 4, relating to the **use of fully allocated costs in the competitive bid process**. This emergency rule is mandated by 1999 Wis. Act 9. Pursuant to section 9150(2bm)(b) of the Act, the Department is not required to provide evidence that the rule is necessary for the preservation of the public peace, health, safety or welfare, and is not required to provide a finding of emergency.

This emergency rule is scheduled for publication on Sunday, December 12, 1999. If you have any questions about this emergency rule, feel free to contact Richard Martin, Bureau of Transit and Local Roads, at 266-6812.

JJ/dim

cc: Richard Martin

Post-it® Fax Note	7671	Date	12/3/99	# of pages	4
To	DAVID AUSTIN	From	Jewels Johnson		
Co./Dept.	SEN. ROBSON OFFICE	Co.	DOT		
Phone #	6-2253	Phone #	7-3703		
Fax #	7-5171	Fax #			

# DRAFT

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation Adopts an Emergency Order to renumber TRANS 4.04(4)(b)4. and 5., and create TRANS 4.04(4)(b)4. and 6., relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process.

## ORDER ADOPTING EMERGENCY RULE

### Analysis Prepared by the Wisconsin Department of Transportation

**STATUTORY AUTHORITY:** ss. 85.16(1), 85.20(3) and 227.11(2), Stats.

**STATUTE INTERPRETED:** s. 85.20, Stats.

**General Summary of Emergency Rule.** Chapter 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, section 9150(2bm), requires the Department to adopt an emergency rule to amend Chapter 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.

Pursuant to 1999 Wis. Act 9, section 9150(2bm)(b), the Department is not required to provide evidence that the rule is necessary for the preservation of the public peace, health, safety or welfare, and is not required to provide a finding of emergency.

**Initial Fiscal Estimate.** No fiscal effect is anticipated from the promulgation of this proposed rule.

**Initial Regulatory Flexibility Analysis.** This proposed rule has no significant impact on small businesses.

**Copies of Emergency Rule and Contact Person.** Copies of this emergency rule are available without cost upon request by writing to Richard A. Martin, Department of Transportation, Division of Transportation Investment Management, Bureau of Transit and Local Roads, 4802 Sheboygan Avenue, Room 933, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Alternate formats of the proposed rule will be

**DRAFT**

provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351.

---

**TEXT OF EMERGENCY RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 85.20(3) and 227.11(2), Stats., the department of transportation hereby amends ch. Trans 4, Wisconsin Administrative Code, interpreting s. 85.20, Stats., relating to the use of fully allocated costs in the competitive bid process.

**SECTION 1.** Trans 4.04(4)(b)4. is renumbered Trans 4.04(4)(b)5.

**SECTION 2.** 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 publicly owned 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 public body shall be allocated in accordance with that plan. When the public body which owns 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

**DRAFT**

outlined in OMB circular A-87. Expenses of the 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.

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Trans 4.04(4)(b)6. When a contract is awarded based on bids, the proposed costs shall be reduced by an allowance for operating and capital costs subsidized through other state and federal grants.

**(END OF RULE TEXT)**

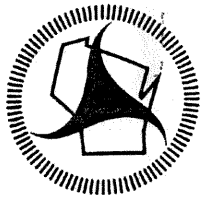
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**Effective Date.** This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this \_\_\_\_ day of  
December, 1999.

---

**CHARLES H. THOMPSON**  
Secretary  
Wisconsin Department of Transportation



## Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

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Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: [ogc.exec@dot.state.wi.us](mailto:ogc.exec@dot.state.wi.us)

JUL 22 REC'D

July 21, 1999

Mr. Gary L. Poulson, Deputy Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street  
Suite 800  
Madison, Wisconsin 53703

**RE: STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 4**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 4.  
Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the  
Administrative Register.

Sincerely,

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

Julie A. Johnson  
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director  
Senator Judy Robson, Co-Chair/JCRAR  
Representative Glenn Grothman, Co-Chair/JCRAR  
Sandy Beaupre  
Mike Goetzman  
Jim Van Sistine  
Dick Martin

## **STATEMENT OF SCOPE**

### **Description of the Objective of the Proposed Rule-Making:**

Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes the administrative policies and procedures for implementing the State Urban Mass Transit Operating Assistance Program authorized under s. 85.20, Stats. The purpose of this rule making is to correct portions of the rule that are currently in conflict with statute, as well as to incorporate changes to reflect current program policy. This rule making will also clarify existing provisions of the rule and revise portions to improve readability.

### **PROPOSED AMENDMENT 1** **DEFINITION OF URBAN AREA**

#### **Description of Objective of the Amendment:**

Amend s. Trans 4.02(9) to modify the definition of "urban area." An urban area is currently defined as an area that includes a city or village with a population of 2,500 or more. The definition would be changed to read that an urban area is a city or village with a population of 2,500 or more.

#### **Description of Existing Policies Relevant to the Amendment:**

A literal interpretation of the current definition of "urban area" would allow a County that includes a city or village with a population of at least 2,500 to use state aid to fund a countywide public transit system that served primarily rural areas. Statutory intent and current policy limit the use of state aid to funding systems in urban areas, disallowing services provided in the rural portions of counties.

### **PROPOSED AMENDMENT 2** **DEFINITION OF URBAN MASS TRANSIT SYSTEM**

#### **Description of Objective of the Amendment:**

Amend s. Trans 4.02(10) to expand the definition of "urban mass transit system" to include approved regional transit systems.

#### **Description of Existing Policies Relevant to the Amendment:**

For the past several years, WISDOT's policy has been to encourage the development of regional transit services that link urban centers within our large metropolitan areas. This amendment would allow the use of state aids to fund such services.

**PROPOSED AMENDMENT 3**  
**PROJECT COSTS**

**Description of Objective of the Amendment:**

Amend s. Trans 4.04 to allow as eligible costs for private providers of shared-ride taxi services operating under contract to a public body, interest on short-term debt and management fees.

**Description of Existing Policies Relevant to the Amendment :**

When this rule was originally drafted, its provisions were geared to publicly owned and operated urban transit systems. There are currently 35 privately owned shared-ride taxi systems participating in the program. WISDOT policy for the past several years has been to recognize these costs as necessary costs of doing business for private providers. This amendment will bring the rule into conformance with current policy.

**PROPOSED AMENDMENT 4**  
**USER-SIDE SUBSIDIES FOR SHARED-RIDE TAXI SYSTEMS**

**Description of Objective of the Amendment**

Repeal s. Trans 4.04(3) which allows as eligible expenses, the cost of general public user-side subsidies for shared-ride taxi systems.

**Description of Existing Policies Relevant to the Amendment**

The concept of user-side subsidies for the general public on a system-wide basis is unworkable and obsolete. The concept is dependent upon the ability to develop precise estimates of not only expenses, but also passengers. Any error in estimating either of these factors could result in a substantial unfunded operating deficit, which would be the liability of the private provider. No private provider would be willing to take such a risk, and no shared-ride taxi system has ever operated under user-side provisions.

**PROPOSED AMENDMENT 5**  
**COMPETITIVE BIDDING**

**Description of Objective of the Amendment**

Amend s. Trans 4. 04(4)(a) to require that all services provided by a private contractor be competitively bid at least once every five years.



**Description of Existing Policies Relevant to the Amendment:**

Existing federal rules require that all urban transit services provided by private contractors, and receiving federal aid, must be competitively bid at least once every five years. While Ch. Trans 4 allows for competitive bidding, it does not require it. This is good public policy and would bring guidelines of the state program into conformance with federal guidelines.

**PROPOSED AMENDMENT 6**  
**WAGES AND FRINGE BENEFITS OF PUBLIC EMPLOYEES**

**Description of Objective of the amendment:**

Amend s. Trans 4.04(5)(s) to allow wages and fringe benefits of public employees as eligible expenses for those employees involved in administration of the public transit contract with a private transportation provider, or in monitoring the performance of a private transportation provider.

**Description of Existing Policies Relevant to the Amendment:**

WISDOT policy has been to allow these costs as eligible since the mid 1980s when the program began funding shared-ride taxi systems operated by private transportation providers operating under contract to public bodies. This amendment merely brings the rule into conformance with existing policy and places federal and state programs in sync with each other.

**PROPOSED AMENDMENT 7**  
**EXPENSES PAID FOR WITH FEDERAL CAPITAL DOLLARS**

**Description of Objective of the Amendment:**

Amend s. Trans 4.04(5) to clarify that any expense that is paid for with Federal Transit Administration capital funds is not eligible under the state operating assistance program.

**Description of Existing Policies Relevant to the Amendment:**

Over the past several years, the allowable use of Federal Transit Administration capital funds has been expanded to cover many expenses previously designated as "operating costs." WISDOT policy has been to not fund capital expenses. This amendment further clarifies WISDOT policy on this issue.

**PROPOSED AMENDMENT 8**  
**DUPLICATION OF SERVICE**

**Description of Objective of the Amendment:**

Amend s. Trans 4.04(5) for transit systems providing service outside their jurisdictional boundaries to make ineligible expenses related to services which duplicate those provided by another public transit system.

**Description of Existing Policies Relevant to the Amendment:**

While logic would dictate that the state operating assistance program would not pay two operators to provide the same service in the same geographic area, the administrative rule currently doesn't address the issue. In the past few years, the issue has arisen in the La Crosse urbanized area. Department policy established as a result is that the program will not fund expenses for duplicative services. This amendment codifies this policy.

**PROPOSED AMENDMENT 9**  
**COMPETITIVE BID IN RELATION TO FINANCIAL AUDITS**

**Description of Objective of the Amendment:**

Amend s. Trans 4.05(1)(b) to clarify conditions under which a transit system is exempted from a financial audit because the service was competitively bid.

**Description of Existing Policies Relevant to the Amendment:**

Currently, s. Trans 4.05(1)(b) excludes a transit system from the financial audit requirement if the public body contracts for services with a private transportation provider on the basis of competitive bids. Oftentimes a private provider is awarded a multiyear contract when an actual dollar amount was bid for only the first year. The amendment would allow the exemption from audit only for years in which an actual dollar amount was bid.

**PROPOSED AMENDMENT 10**  
**STATE SHARE AND DISTRIBUTION OF STATE AIDS**

**Description of Objective of the Amendment:**

Amend ss. Trans 4.05 and 4.06 to eliminate provisions that are in conflict with s. 85.20, Stats. These provisions relate to the state share of operating costs, and the methodology for distribution of state aids.

**Description of Existing Policies Relevant to the Amendment:**

Currently, ss. Trans 4.05 and 4.06 contain language which duplicates what was contained in s. 85.20, Stats., prior to the 1995 State Budget Act. Since the state share and distribution methodology are always contained in the statute, this amendment would remove the obsolete language and replace it with statutory references. The specific language would no longer be duplicated in Ch. Trans 4 or in state-aid contracts, which would eliminate the necessity of updating the rule every time a change is made to s. 85.20, Stats.

**PROPOSED AMENDMENT 11**  
**COST OF SERVICES NOT IN APPLICATION**

**Description of Objective of the Amendment:**

Amend s. Trans 4.07(2) to specify that the cost of services not included in an annual application for state aid under s. 85.20 will not be eligible for funding until the following year.

**Description of Existing Policies Relevant to the Amendment:**

Current policy is to not allow amendments after the application has been finalized. However, this policy has not been formally incorporated in a rule.

**PROPOSED AMENDMENT 12**  
**NEW SYSTEMS**

**Description of Objective of the Amendment:**

Add a section under s. Trans 4.07 to state that any community planning to implement a new transit system would have to notify WISDOT no later than April 15<sup>th</sup> of even-numbered years in order to be eligible for aid under s. 85.20 in the upcoming biennium.

**Description of Existing Policies Relevant to the Amendment:**

This is a new policy for promoting stability in transit-aid levels for existing systems. It would also provide the Legislature with more accurate projections of total eligible operating expenses when determining the level of funding to set for the state-aid program for the next biennium.

**PROPOSED AMENDMENT 13**  
**REPEAL TRANS 4.07(5)**

**Description of the Objective of the Amendment**

Section Trans 4.07(5) currently requires an applicant to submit the original of its application to the appropriate transportation district office of the Department. This policy was changed several years ago to expedite the application process.

**Description of Existing Policies Relevant to the Amendment**

Currently, the original application is submitted to the Department's Public Transit Section, with a copy sent to the appropriate Transportation District Office. Since this information is included in an annual application booklet, there is no need to duplicate it in the administrative rule.

**PROPOSED AMENDMENT 14**  
**MODIFY PERFORMANCE INDICATORS**

**Description of the Objective of the Amendment**

Amend s. Trans 4.09(2)(a) to (e) to reflect the performance indicators recommended by The Transit Advisory Council in 1997.

**Description of Existing Policies Relevant to the Amendment**

The Department has adopted the Transit Advisory Council's recommended set of performance indicators and is currently using these indicators in the conduct of statutorily required management performance audits.

**PROPOSED AMENDMENT 15**  
**MANAGEMENT PERFORMANCE AUDITS**

**Description of the Objective of the Amendment**

Section Trans 4.10 would be amended to specify that the Department shall conduct management performance audits of bus systems participating in the state-aid program, excluding shared-ride taxi systems.

**Description of Existing Policies Relevant to the Amendment**

The Department currently does not conduct management performance audits of shared-ride taxi systems. The Department has neither the staff nor the funds required to conduct these audits, and after analyzing the potential impact, has determined that the audits would add little value, and certainly would not be cost effective.

**PROPOSED AMENDMENT 16**  
**ELIMINATION OF THE TERM "MASS TRANSIT"**

**Description of Objective of the Amendment:**

Amend all sections of Ch. Trans 4 containing a reference to "mass transit" by replacing the term with "urban public transit."

**Description of Policies Relevant to the Amendment:**

The term "mass transit" is obsolete and misleading. The state operating assistance program funds public transit service in 60 Wisconsin communities. The majority of these systems (35) are shared-ride taxi systems operating in small communities, and most of the rest are bus systems operating in medium sized and smaller cities. The term "urban public transit" more accurately reflects the types of systems participating in the program.

**PROPOSED AMENDMENT 17**  
**ELIMINATION OF THE TERM "SUBSIDY / SUBSIDIES"**

**Description of the Objective of the Amendment:**

Amend all sections of Ch. Trans 4 containing a reference to "subsidy/subsidies" by replacing the term with "payment/payments."

**Description of Policies Relevant to the Amendment:**

The term "subsidy/subsidies" is obsolete and has negative connotations. The term "payment/payments" does not change the meaning, but eliminates the negative connotation.

**PROPOSED AMENDMENT 18**  
**TECHNICAL AMENDMENTS**

**Description of Objective of the Amendment:**

There are a number of references in the existing rule that are no longer accurate and need to be updated.

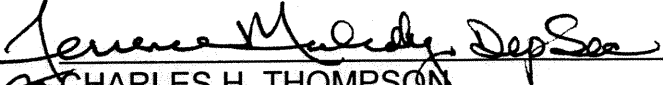
**Statutory Authority for the Rule:**

ss. 85.16(1), 85.20 and 227.11(2), Stats.

**Estimate of the Amount of Time That State Employees Will Spend Developing the Rule and of other Resources Necessary to Develop the Rule:**

200 person hours

Signed at Madison, Wisconsin, this 21 day  
of July, 1999.

  
\_\_\_\_\_  
300 CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation



# Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

Office of General Counsel  
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Telephone: 608-266-8810  
FAX: 608-267-6734  
E-Mail: [ogc.exec@dot.state.wi.us](mailto:ogc.exec@dot.state.wi.us)

July 21, 1999

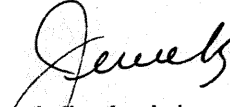
Mr. Gary L. Poulson, Deputy Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street  
Suite 800  
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 8**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 8. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,

  
Julie A. Johnson  
Paralegal

Enclosures

cc: Richard G. Chandler/DOA State Budget Director  
Senator Judy Robson, Co-Chair/JCRAR  
Representative Glenn Grothman, Co-Chair/JCRAR  
Sandy Beaupre  
Mike Goetzman  
Jim Van Sistine  
Dick Martin

## STATEMENT OF SCOPE

### **Description of the Objective of the Proposed Rule Making:**

Chapter Trans 8 prescribes 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 public transit assistance to urbanized areas of under 200,000 population. The primary purpose of this rule making is to update the rule to conform with the provisions of TEA 21, s. 85.20, Stats., and Chapter Trans 4, Wis. Admin. Code. In addition, portions of the rule are being changed to reflect current Department policy.

### **PROPOSED AMENDMENT 1** **CHANGED PROGRAM DESIGNATION**

#### **Description of Objective of the Amendment:**

Change all references to Section 9 of the Urban Mass Transportation Act of 1964, as amended, to Section 5307.

#### **Description of Existing Policies Relevant to the Amendment**

The section designation of all Federal Transit Administration programs was changed following passage of the Intermodal Surface Transportation Efficiency Act of 1991.

### **PROPOSED AMENDMENT 2** **REFERENCES TO TRANS 4**

#### **Description of Objective of the Amendment:**

Change references to Trans 4 to agree with numbering in the current version of Trans 4.

#### **Description of Existing Policies Relevant to the Amendment:**

Chapters Trans 4 and Trans 8 are being amended simultaneously. The intent is to ensure that all cross references match.



**PROPOSED AMENDMENT 3**  
**CAPITALIZED MAINTENANCE COSTS**

**Description of Objective of the Amendment:**

Under s. Trans 8.02, add a definition of "capitalized maintenance costs."

**Description of Existing Policies Relevant to the Amendment:**

TEA 21 allows a transit system to capitalize all vehicle and facility related maintenance expenses, and fund them with an 80% federal share. However, if these expenses are capitalized, they are no longer considered as operating expenses, and may not be funded with operating assistance.

**PROPOSED AMENDMENT 4**  
**NOTIFICATION OF FUNDING LEVELS**

**Description of Objective of the Amendment:**

Section Trans 8.03(1)(b) currently requires WISDOT to provide each eligible recipient with 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 October 1. This amendment would change the language to read "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 transit systems."

**Description of Existing Policies Relevant to the Amendment:**

Providing recipients with reasonably accurate projections of state and federal aid is dependent upon federal, state and local budget processes. Since the state budgets on a biennial basis, and the state fiscal year is July 1 through June 30, state aids are usually known prior to October 1. However, the federal government budgets on an annual basis, and the federal fiscal year is October 1 through September 30, and local governments also budget annually, and operate on a January 1 through December 31 fiscal year. Oftentimes the required federal and local budget information is not available until after October 1.

**PROPOSED AMENDMENT 5**  
**ADA RELATED COSTS**

**Description of Objective of the Amendment:**

Amend s. Trans 8.03(2)(a) to stipulate that capital projects undertaken to comply with the Americans with Disabilities Act are fundable at up to 90% of costs.

**Description of Existing Policies Relevant to the Amendment:**

The current rule is not in sync with federal regulations. This provision was included in the federal Intermodal Surface Transportation Efficiency Act of 1991.

**PROPOSED AMENDMENT 6**  
**PRIORITY ORDER FOR FUNDING CAPITAL NEEDS**

**Description of Objective of the Amendment:**

Amend s. Trans 8.03(2) to eliminate the mandatory priority rank order for funding capital projects if available funding in a given year is insufficient to fund all projects. The priority rank order would be replaced with the following language: "In any project year in which requests for capital assistance exceed available funds, the rank order of priorities shall be established in consultation with the transit community. Annually, the rank order shall consider age, condition, transit service needs and urgency among other factors." The current rank order may be used, or it may be modified, until all funds available are distributed.

**Description of Existing Policies Relevant to the Amendment:**

The rank order currently specified in s. Trans 8.03(2) has never been used to distribute funds. Current policy is to consult with all potential grantees to determine the most urgent needs. This will vary every year, and may be based on availability of operating assistance, age and condition of equipment to be replaced, anticipated start dates of new service, availability of local matching share and other factors.

**PROPOSED AMENDMENT 7**  
**SECOND DISTRIBUTION OF OPERATING ASSISTANCE**

**Description of Objective of the Amendment:**

Amend s. Trans 8.03(3) to remove the language that provides for a second distribution of operating assistance if all capital needs have been met.

**Description of Existing Policies Relevant to the Amendment:**

The federal transit programs have been substantially restructured since this rule has last been amended, by ISTEA in 1991 and by TEA 21 in 1998. Currently Section 5307 funds are awarded to the Governor as a block grant to be used to meet both operating assistance and capital needs of Wisconsin's twelve urbanized areas with populations of between 50,000 and 200,000. Current policy is to provide combined state and federal operating assistance sufficient to cover 60% of operating costs and utilize the balance to fund capital projects. Any unused balance would be carried over to the next year

**PROPOSED AMENDMENT 8**  
**ELIMINATION OF THE TERM "MASS TRANSIT"**

**Description of Objective of the Amendment:**

Amend all sections of ch. Trans 8 containing a reference to "mass transit" by replacing the term with "public transit."

**Description of Policies Relevant to the Amendment:**

The term "mass transit" is obsolete and misleading. The state operating assistance program funds public transit service in 60 Wisconsin communities. The majority of these systems (35) are shared-ride taxi systems operating in small communities, and most of the rest are bus systems operating in medium sized and smaller cities. The term "urban public transit" more accurately reflects the types of systems participating in the program.

**PROPOSED AMENDMENT 9**  
**ELIMINATION OF THE TERM " SUBSIDY / SUBSIDIES"**

**Description of the Objective of the Amendment:**

Amend all sections of ch. Trans 8 containing a reference to "subsidy/subsidies" by replacing the term with "payment/payments."

**Description of Policies Relevant to the Amendment:**

The term "subsidy/subsidies" is obsolete and has negative connotations. The term "payment/payments" does not change the meaning, but eliminates the negative connotations.

**PROPOSED AMENDMENT 10**  
**ANNUAL REVIEW**

**Description of Objective of the Amendment:**

Repeal s. Trans 8.05 which calls for the Department to review the policies and procedures established in the rule annually.

**Description of Existing Policies Relevant to the Amendment:**

This section adds no meaningful substance to the rule. WISDOT will continue to review the rule as federal rules and regulations change, and amend accordingly.

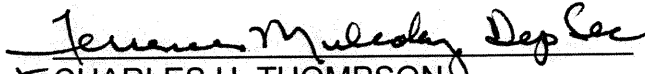
**Statutory Authority for the Rule:**

ss. 85.16 (1) and 227.11 (2), Stats.

**Estimate the Amount of Time State Employees Will Spend Developing the Rule and of other Resources Necessary to Develop the Rule:**

100 hours

Signed at Madison, Wisconsin, this 21 day of July,  
1999.

  
~~for~~ CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation