

CR 88-188

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CERTIFICATE

STATE OF WISCONSIN)
) s.s.
DEPARTMENT OF TRANSPORTATION)

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records certify that the annexed rule, relating to operating assistance for urban mass transit systems, was duly approved and adopted by this department on July 13th, 1989.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original and of the whole of the 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 13th day of July, 1989.

Donald H. Jungbrenner, Deputy
for RONALD R. FIEDLER, P.E.
Secretary

9-1-89

OFFICE OF THE SECRETARY

IN THE MATTER OF THE AMENDMENT OF TRANS 4,	:	ORDER
WISCONSIN ADMINISTRATIVE CODE, RELATING TO THE	:	ADOPTING
URBAN MASS TRANSIT OPERATING ASSISTANCE PROGRAM :	:	RULE
	:	

Analysis Prepared by the Wisconsin Department of Transportation

Authority for the rule. The Wisconsin Legislature created s. 85.20, Stats., to provide financial assistance to local public bodies for the preservation and improvement of existing urban mass transit systems in Wisconsin and to encourage their effective and efficient operation. This aid program became effective on August 5, 1973. Under s. 85.20(3), Stats., the Department of Transportation is directed to administer the program, including receiving applications for operating assistance, executing contracts with aid recipients and auditing operating revenues and expenses of participating urban mass transit systems. Under sec. 85.16(1) and sec. 227.11(2), Stats., the Department has general authority to adopt rules to interpret and implement the duties imposed by sec. 85.20(3), Stats.

General Summary of the Rule. The Wisconsin Department of Transportation proposes an order to repeal Trans 4.04(5)(p); to renumber Trans 4.04(5)(q), (r), (s) and (t) and Trans 4.05 (1), (2), (3), and (4); to amend Trans 4.02(9), 4.04(5)(f) and (o), 4.08(4)(b), (e) and (f); and to create Trans 4.04(4)(b) and (c), 4.04(5)(t), (u), (v) and (w), 4.05(1) and 4.08(4)(g), relating to the administration of a state aid program for urban mass transit systems.

The proposed amendments to Trans 4, Wis. Admin. Code fall into three general categories: those which bring the existing rule into conformity with changes in s. 85.20, Stats. enacted by 1987 Wisconsin Act 399; those which clarify existing procedures used by the Department of Transportation in granting and administering state aid contracts; and those which interpret the requirements of s. 85.20, Stats. In the first category, Trans 4.02(9) is amended to reflect the change in s. 85.20(1)(k) reducing the minimum population size of cities or villages in urban areas from 5,000 to 2,500. Trans 4.04(4) is amended to reflect changes in s. 85.20(1)(g) which permits depreciation as an expense for private contractors selected following a competitive bidding procedure only if the assets were not acquired with public financial assistance. Trans 4.04(4)(c) is created to reflect the change in s. 85.20(1)(g) which for the first time permits depreciation to be reported as an expense by private contractors selected using negotiated procurement procedures if the assets were not acquired with public financial assistance. Trans 4.05(1) is created to conform

with new s. 85.20(3)(cm), Stats., which provides that audits of private service providers selected by competitive bidding procedures will be limited to audits of performance as shown by service provided. Trans 4.04(4)(b) is created to define what procedures must be followed by municipalities in order for their procurement process to be accepted as a competitive bid procedure for purposes of s. 85.20, Stats.

In the second category, Trans 4.04(5) is amended to clarify what costs are not considered eligible expenses for calculating the maximum share of state aid to which a recipient will be entitled. Trans 4.04(5)(f) is amended to provide that lease payments may be eligible expenses only to the extent that they would be eligible if the leased property were owned; Trans 4.04(5)(o) is amended to clarify how the amount of ineligible charter-related expenses will be calculated; Trans 4.04(5)(t) is created to provide that regulatory fees paid by a contractor to a recipient public body are not eligible expenses; Trans 4.04(5)(u) is created to define the extent to which return on investment may be claimed as an expense; Trans 4.04(5)(v) is created to state the present department accounting and auditing practice which establishes that the amount of ineligible expenses which are directly offset by revenues shall be considered equal to the revenues generated; and Trans 4.04(5)(w) is created to provide that franchise fees paid by the recipient to a private transportation provider are not eligible expenses. Trans 4.04(5)(p) is repealed since it is covered by the more general language of new section Trans 4.04(5)(v). Trans 4.08(4)(g) is created to clarify that the department shall be provided access to the business records of contracted service providers necessary to perform required audits.

In the third category, Trans 4.08(4)(b) is amended to set forth the Department of Transportation's interpretation of s. 85.20(3)(b)2, Stats. The new provision states that reduced fare programs are not required of shared ride taxi systems which by their nature do not have peak and nonpeak hours of operation.

Fiscal Estimate. The proposed rule has no fiscal impact independent of s. 85.20, Stats. which it interprets and implements. 1987 Wisconsin Act 399 amended the definition of urban area from that of an area which includes a city or village having a population of 5,000 or more to that of an area which includes a city or village having a population of 2,500 or more. The effect of this change is to increase the number of local public bodies eligible to apply for state aid under s. 85.20, Stats. There are currently 14 cities with populations between 2,000 and 5,000 which have a shared-ride taxi system operating in the community. Assuming that two-thirds, or nine, of these municipalities apply for state aid and that each has average annual operating expenses of \$50,000, there would be an increase of \$168,750.00 in the amount of state funds expended under the mass transit operating assistance program in the current biennium and annually thereafter. (The maximum share of state aid under s. 85.20(4m)(em)1, Stats., is 37.5% of the operating expenses of the applicant's mass transit

system.) This is a minimal fiscal impact relative to the funding level of the program. Current participants will receive state aids equal to approximately \$45 million in 1988. An increase of \$168,750.00 for nine additional recipients in small urban areas amounts to an increase of less than one-third of one percent.

The effect of the statutory amendment will also correspondingly increase the revenues of those small cities that are now eligible to apply for state aid. Based on the same assumptions stated above, increases in revenues of \$18,750.00 would be expected for each of nine new aid recipients. Since there are sufficient funds in the current appropriation to absorb the small expected increase in total aid under the program, there will be no reduction in aid levels for local governments in urban areas of 5,000 or more which are already receiving aid under the program.

Preparation. This analysis was prepared by Attorney Barbara Bird of the Department's Office of General Counsel. (608-266-8810)

Rule Text

Pursuant to the authority vested in the state of Wisconsin, department of transportation, by s. 85.16(1) and s. 227.11(2), Stats., the department of transportation hereby repeals, renumbers, amends and creates provisions in the administrative rule interpreting s. 85.20, Stats., as follows:

SECTION 1. Trans 4.02(9) is amended to read:

Trans 4.02(9) "Urban Area" means any area that includes a city or village having a population of ~~5,000~~ 2,500 or more that is appropriate, in the department's judgement, for an urban mass transit system. The department will determine the population of a city or village within an urban area using the most recent estimates prepared by the department of administration.

SECTION 2. Trans 4.04(4) is renumbered 4.04(4)(a) and amended to read:

Trans 4.04(4)(a) If urban mass transit service is provided under a local public body contract with a private provider chosen following advertisement for competitive bids, eligible project costs may include profit ~~or~~, return on investment and ~~may include~~ 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. ~~In these circumstances, if~~ If competitively bid, eligible project costs may only include costs associated with the bid accepted by the local public body. If transit services are competitively bid, no costs shall be eligible project costs unless the ~~bid process and all bids received are approved by the department prior to the award of a contract to the private provider~~ 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 five years in length.

SECTION 3. Trans 4.04(4)(b) is created to read:

Trans 4.04(4)(b) Eligible applicants shall use the following competitive bid process:

1. An eligible applicant shall prepare a "request for qualifications" document. That document shall request expressions of interest from providers, shall describe essential provider

qualifications and shall describe criteria for evaluating the provider qualifications. The eligible applicant shall send the request for qualifications document to all providers of passenger transportation services, either for the general public or for the elderly or handicapped, operating within the service area of the applicant. The eligible applicant shall also cause an appropriate notice of the request for qualifications to be published in a local newspaper of general circulation.

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

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

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

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

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

Trans 4.04(4)(c) If a local public body contracts for urban mass transit service with a private provider on the basis of

negotiated procurement, eligible operating expenses may include as costs depreciation of facilities and capital equipment used directly for the provision of urban mass transit services, provided that the facilities and equipment were acquired without benefit of public financial assistance. If a facility is a joint-use facility, depreciation costs for only that portion of the facility used in the provision of urban mass transit services are eligible project costs.

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

Trans 4.04(5)(f) Lease payments to a related party which ~~would-constitute~~ 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 s. Trans 4.04(4).

SECTION 6. Trans 4.04(5)(o) is amended to read:

Trans 4.04(5)(o) Charter-related expenses. Such expenses shall be considered to be equal to the revenue received directly from the provision of charter service, except when charter revenues exceed 10% of the total annual operating revenues of the eligible mass transit system. When charter revenues exceed 10% of the total annual operating revenues of the eligible mass transit system, charter-related expenses shall be determined in accordance with a cost allocation plan approved by the department.

SECTION 7. Trans 4.04(5)(p) is repealed.

SECTION 8. Trans 4.04(5)(q), (r), (s) and (t) are renumbered
rans 4.04(5)(p), (q), (r) and (s).

SECTION 9. Trans 4.04(5)(t), (u), (v) and (w) are created to
read:

Trans 4.04(5)(t) Fees imposed upon a contracted service
provider by the recipient public body, such as taxi license fees.

Trans 4.04(5)(u) Return on investment, except as authorized
by sub. (4). 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 U.S.C. App.
§1215(b)(2) as applicable to the period ending on December 31 of
the year prior to the project year to the net book value of the
private transportation provider's equipment and facilities used in
providing the contracted for transportation service.

Trans 4.04(5)(v) Expenses that are directly offset by reve-
nues that may include, but are not limited to, expenses related to
hauling freight or package delivery, cash discounts or refunds,
tax rebates including fuel tax rebates, insurance proceeds and
resale proceeds. Such expenses shall be considered to be equal to
the revenue derived directly from their incurrence.

Trans 4.04(5)(w) Franchise fees paid by the recipient public
body to a private transportation provider.

SECTION 10. Trans 4.05(1), (2), (3) and (4) are renumbered
4.05(2), (3), (4) and (5).

SECTION 11. Trans 4.05(1) is created to read:

Trans 4.05 (1) The department of transportation may audit all public and private providers of urban mass transit services receiving state aids under the urban mass transit operating assistance program. The audits shall be the basis for computing the maximum share of state and federal aids each eligible applicant can apply against operating deficits for each state aid contract period. If a private provider is a subsidiary corporation, the department of transportation may audit both the subsidiary and the parent corporation. The department shall conduct audits as follows:

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

(b) For privately owned mass transit systems with which a local public body contracts for services on the basis of competitive bids, the department shall conduct contract compliance audits, and shall not conduct financial audits of the business records of the private provider.

SECTION 12. Trans 4.08(4)(b), (e), and (f) are amended to read:

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

Trans 4.08(4)(e) Assure that the mass transit system will file any reports required by the department at a time and in a manner prescribed by the department; and

Trans 4.08(4)(f) Assure that, if other local public bodies contribute assistance to the operation of the mass transit system, the state aids received are allocated among the contributors in accordance with any cost sharing agreement that is filed with the department. If no agreement is filed, the aid shall be distributed among contributors in proportion to their contributions;i
and

SECTION 13. Trans 4.08(4)(g) is created to read:

Trans 4.08(4)(g) Assure that, if urban mass transit service is provided under a local public body contract with a private provider, the private provider shall permit the department to conduct audits of the private provider's business records as required by Trans 4.05(1).

(END OF RULE TEXT)

This rule shall take effect on the first day of the month following its publication, as provided in s. 227.026(1)(intro.), Stats., in the Wisconsin Administrative Register.

Signed at Madison, Wisconsin this
13th day of July, 1989.

for Donald H. Janssen, Deputy
Ronald R. Fiedler, P.E.
Secretary
Wisconsin Department of
Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

July 14, 1989

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Revisor of Statutes
Bureau

Mr. Gary Poulson
Assistant Revisor of Statutes
30 West Mifflin Street
Suite 702
Madison, Wisconsin 53703

RE: Clearinghouse Rule 88-188
In the Matter of Rulemaking Amending Trans 4, Wisconsin
Administrative Code, Relating to the Urban Mass Transit
Operating Assistance Program under s. 85.20, Wis. Stats.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of CR 88-188, an administrative rule relating to operating assistance for urban mass transit systems. Additionally, a second uncertified copy is also enclosed for use as a printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Bird".

Barbara Bird
Assistant General Counsel

BB:dmy

Enclosures

cc: Tom Walker
John Evans
John Hartz
Toya Nelson
Richard A. Martin
Maynard Schneider