
HOUSE BILL 1404

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Padden, Fuhrman and Morton.

Read first time January 28, 1991. Referred to Committee on
Transportation.

1 AN ACT Relating to public transportation; and adding a new chapter
2 to Title 47 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be cited as the Public
5 Transportation Consumer Protection Act.

6 NEW SECTION. **Sec. 2.** The legislature finds and declares that:

7 (1) Public transportation services are provided to assist the
8 transit dependent and the poor, to provide travel options for all, to
9 relieve congestion, and to minimize automobile pollution;

10 (2) Protection of consumers, the public transit riders, and
11 taxpayers requires that public transportation service be provided at
12 the lowest possible cost consistent with service and safety standards;

1 (3) Private transportation providers have been used under
2 competitive contracts to provide public transportation services at
3 lower costs and with lower annual cost increases;

4 (4) Decisions on whether a public transportation service should be
5 operated by a public agency or a private company should be made on
6 economic considerations rather than on institutional considerations;

7 (5) Obtaining cost-effective public transportation services
8 requires a competitive environment and a mechanism for competitive
9 contracting of such services;

10 (6) Facilities and vehicles purchased for public transportation
11 service are public assets that are held in the public trust for service
12 to public transit riders and the taxpayers.

13 NEW SECTION. **Sec. 3.** The definitions set forth in this
14 section apply throughout this chapter.

15 (1) "Attributable fully allocated cost" means the operating and
16 capital cost of a public transportation service including the direct
17 costs of driver labor and benefits based upon actual driver work
18 assignments for the service, and a reasonable allocation of costs for
19 replacement and spare drivers and all other costs of providing and
20 administering transportation and maintenance for the service, minus the
21 cost of any function not to be competitively contracted.

22 (2) "Public transit operator" means a public agency that provides
23 or sponsors public transportation service and receives a public
24 subsidy.

25 NEW SECTION. **Sec. 4.** (1) On an annual basis, each public
26 transit operator shall seek competitive proposals on at least ten
27 percent of its fixed-route bus service. The annual competitive
28 proposal requirement shall be met only by the requests for proposal for

1 services not currently operated under competitive proposals. The
2 annual competitive proposal requirement shall be based upon the annual
3 vehicle miles for the latest fiscal year for which information is
4 available.

5 (2) Notwithstanding the requirement of subsection (1) of this
6 section, the competitive contracting required under this chapter shall
7 be accomplished through attrition of the public transit operator's
8 full-time drivers and mechanics employed by the public transit operator
9 on the effective date of this act. A public transit operator may hire
10 new permanent drivers and mechanics only to the extent necessary to
11 operate services that the public transit operator has been awarded
12 through competitive proposals.

13 (3) A fixed-route bus service operated under competitive proposals
14 on the effective date of this act or thereafter is subject to a new
15 competitive proposal at least every five years. In no case may a
16 service operated under competitive proposal be returned to operation
17 not subject to competitive proposal. Renewal options that extend a
18 contract beyond five years are prohibited.

19 (4) The public transit operator shall determine the routes,
20 schedules, and fares to be included in any request for proposal.

21 (5) Savings obtained through competitive service provision shall be
22 used only for consumer benefit, including increased service levels,
23 reduced passenger fares, new capital facilities, and reduction of
24 public transportation subsidies.

25 (6) Each public transit operator shall make buses purchased through
26 the use of public transportation subsidy available for operation under
27 nominal leases.

28 (7) Each public transit operator shall maintain a list of
29 interested proposers, including all organizations that have requested
30 inclusion on the list. The public transit operator shall advertise for

1 additions to the interested proposers list at least annually in
2 accordance with its general procurement policy.

3 (8) A public transit operator may replace service with alternative
4 service provision methods if the public transit operator finds the
5 alternative service methods to be in the public interest.

6 (9) A public transit operator may execute standby competitive
7 contracts with one or more private transportation providers to operate
8 a service on an interim basis if the public transit operator determines
9 the operation is required by the public welfare. A service operated
10 under a standby contract is subject to competitive proposal within six
11 months of standby contract service commencement.

12 NEW SECTION. **Sec. 5.** (1) Within six months of the effective
13 date of this act, each public transit operator shall adopt reasonable
14 standards with respect to experience, safety records, and financial
15 responsibility by which private transportation providers can be
16 qualified to provide bus services under this chapter. The standards
17 shall be clearly defined in each request for proposals issued by each
18 public transit operator and shall not be designed to restrict the
19 number of eligible participants in the competitive proposal process.

20 (2) Within six months of the effective date of this act, each
21 public transit operator shall prepare a standard form of agreement to
22 provide bus services. The contract shall include:

23 (a) Reasonable passenger comfort, safety, and vehicle maintenance
24 standards;

25 (b) Standards for access to bus services for persons with
26 disabilities, which standards shall be as specified in the public
27 transit operator's plan for such services;

28 (c) Standards for training and safety records to be required of any
29 driver;

1 (d) Requirements for reasonable insurance protecting the public
2 transit operator from liability for the acts, negligence, or omission
3 of private transportation providers, their agents, and their employees;

4 (e) Reasonable penalties for inadequate performance, including the
5 public transit operator's right to cancel contracts;

6 (f) Provisions and standards or the use of the public transit
7 operator's logo, transfers, transit ways, bus stops, vehicles, and
8 other such elements that are owned by the public transit operator and
9 appropriate for use by the private transportation providers under
10 contract to the public transit operator.

11 (3) Each public transit operator shall develop reasonable standards
12 for reliability, on-time performance, and other appropriate service
13 quality considerations for each service parcel for which competitive
14 proposals are sought. Such standards shall be clearly defined in each
15 request for proposals issued by each public transit operator.

16 (4) A public transit operator may not establish any requirement
17 relating to the wages, benefits, or union organization of contractor
18 employees. All contractors shall comply with and give adequate
19 certification of compliance with all applicable federal and state labor
20 laws.

21 (5) No change in the contract payment amount to a private
22 transportation provider may be made except as specified in the
23 contract. Payment changes in a contract are limited to indices,
24 escalators, deflators, changes in service level, and other expressly
25 stated or calculable amounts, consistent with the request for proposal
26 and the proposal of the private transportation provider awarded the
27 contract.

28 (6) Contract expiration dates shall be rotated to the maximum
29 extent feasible to minimize the number of contract awards under
30 consideration at any particular time.

1 (9) No company, subsidiary of a company, parent of a company, or
2 company related to a company holding a contract to manage the public
3 transit operator may submit a proposal or be awarded a contract to
4 operate public transportation services for the public transit operator.

5 NEW SECTION. **Sec. 7.** A public transit operator, including a
6 public transit operator issuing the competitive procurement, may submit
7 a proposal, and be awarded any such service, subject to the following
8 conditions:

9 (1) That it submit a sealed proposal before the advertised deadline
10 for the proposals, that the proposal not be altered after that
11 deadline, and that the proposal be publicly opened and made public at
12 such deadline;

13 (2) That any labor provision assumed in the proposal either be
14 specified in currently effective labor contracts or be executed before
15 the proposal deadline in a written and binding agreement between the
16 public transportation operator and the appropriate labor organization;

17 (3) That it define in advance and implement procedures to ensure an
18 objective and fair evaluation process including prohibition of proposal
19 evaluation participation by personnel or departments that were involved
20 in preparing the public transportation operator's proposal;

21 (4) That its proposal price be not less than its attributable fully
22 allocated cost for the service, and that its proposal price not be
23 based on part-time labor provisions or other less costly labor
24 provisions to a greater percentage than such provisions are employed in
25 the public transportation operator's fixed route bus services that have
26 not been subjected to competitive proposals, and that its proposal
27 price be consistent with currently adopted budgets and financial plans;

28 (5) That it shall make or be bound by no contract, agreement, or
29 assurance that creates or extends any form of obligation for continued

1 employment or employee compensation, with respect to employees assigned
2 to the service, beyond the expiration date of the competitively
3 contracted service;

4 (6) That it shall be bound by the same terms, conditions, and
5 performance and other standards as would have applied to a private
6 transportation provider awarded the contract under the request for
7 proposal;

8 (7) That its costs per vehicle mile, exclusive of capital costs,
9 for fixed route bus services that have not been subjected to
10 competitive proposals shall not at any point during the contract rise
11 by a percentage greater than the cost per vehicle mile, exclusive of
12 capital costs, for the competitive service in the public transit
13 operator's proposal for the corresponding period.

14 (a) Each adopted budget or budget revision and each United States
15 department of transportation urban mass transportation administration
16 section 15 annual report shall be reviewed by the public transit
17 operator to determine compliance with this provision.

18 (b) If the public transit operator's cost performance is not in
19 compliance with this provision, the public transit operator shall
20 relinquish the contract and a new request for proposal for the service
21 shall be issued within ninety days.

22 NEW SECTION. **Sec. 8.** Each public transit operator shall
23 contract with an independent certified accounting firm, other than the
24 public transit operator's regular auditor, for a neutral and unbiased
25 performance audit to be completed and reported to the legislature by
26 two years after the effective date of this act. The performance audit
27 shall analyze in a fair and equitable fashion the implementation of
28 this chapter including, but not limited to, compliance with the
29 competitive proposal process, compliance with fully allocated costing

1 requirements, the level of contract compliance by private
2 transportation providers, the cost of such compliance and whether such
3 costs will be recurring or may be reduced, application of savings to
4 consumer benefit, and taxes paid by private transportation providers.

5 NEW SECTION. **Sec. 9.** (1) The planning of all maintenance
6 facilities, operations facilities, and garages shall include a thorough
7 review of competitive alternatives available for efficient development,
8 management, and operations for the facilities. The planning process
9 shall include private transportation providers, and any application for
10 funding assistance shall include a full description of the alternatives
11 reviewed.

12 (2) No public transit vehicle, maintenance, or operating facility
13 purchased or leased after the effective date of this act may be
14 encumbered by a contract, agreement, or assurance that limits its use
15 by private transportation providers in the operation of public
16 transportation service under contract, subject to the policy control of
17 the public transit operator.

18 NEW SECTION. **Sec. 10.** No public transit operator may make or
19 be bound by a contract, agreement, or assurance that restricts its
20 ability to comply with this chapter in any respect.

21 NEW SECTION. **Sec. 11.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act shall
26 constitute a new chapter in Title 47 RCW.