

HOUSE BILL REPORT

ESHB 2072

As Passed House:

March 6, 2009

Title: An act relating to advancing effective transportation for persons with special transportation needs.

Brief Description: Concerning transportation for persons with special transportation needs.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Wallace, Clibborn and Wood).

Brief History:

Committee Activity:

Transportation: 2/17/09, 2/27/09 [DPS].

Floor Activity

Passed House: 3/6/09, 95-0.

Brief Summary of Engrossed Substitute Bill

- Strengthens the role of the Agency Council on Coordinated Transportation (ACCT) statewide, and reauthorizes the ACCT until June 30, 2011.
- Creates two pilot projects in two regions for the purpose of testing cost sharing and cost-saving opportunities.
- Creates a work group to address inconsistent federal definitions and reporting requirements.
- Creates a work group to consider implementation of certain recommendations in the 2009 report on special needs transportation.
- Directs the Office of Superintendent of Public Instruction to track additional expenditures related to transporting homeless students.
- Directs the Department of Social and Health Services to track transportation purchased for its clients.

HOUSE COMMITTEE ON TRANSPORTATION

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Clibborn, Chair; Lias, Vice Chair; Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Cox, Eddy, Ericksen, Finn, Flannigan, Herrera, Johnson, Klippert, Moeller, Morris, Rolfes, Sells, Simpson, Springer, Takko, Upthegrove, Wallace, Williams and Wood.

Staff: Kathryn Leathers (786-7114)

Background:

Special Needs Transportation, Generally.

There are approximately 623 organizations and agencies in Washington that provide some level of service to persons with special transportation needs. "Persons with special transportation needs" means those persons, including their personal attendants, who, because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase transportation.

While the 2000 federal census data does not provide estimates of residents who are defined as persons with special transportation needs under state law, the data indicates that, of the 6.4 million residents in Washington, 12 percent are older adults (defined as age 65 or older) and 42 percent of those older adults have a disability. The combined population in King, Snohomish, Pierce, and Kitsap counties is approximately 3.4 million. Of that population, approximately one-third to one-half fall within the special needs transportation population: seniors, 12 percent; children, 24 percent; low-income, 9 percent; and persons with disabilities, 22 percent.

Special needs transportation services are provided by many different providers, including public transportation systems; state-funded human service programs, most notably the Department of Social and Health Services (DSHS); civic and community-based groups; and private for-profit and non-profit entities. Within the state, there are 28 public transportation systems, of which seven serve urbanized areas, eight serve small cities, and 13 serve rural areas.

Agency Council on Coordinated Transportation.

Established in 1998 and chaired by the Secretary of Transportation, or her designee, the Agency Council on Coordinated Transportation (ACCT) is a council of state agencies, transportation providers, consumer advocates, and legislators, which was created to facilitate a statewide approach to coordinated special needs transportation and to develop community-based coordinated transportation systems.

Since enactment, the ACCT has been reauthorized several times. In 2007 the Legislature reauthorized the ACCT until June 30, 2010, and modified and streamlined the ACCT's duties. In 2007 the Legislature also directed the Joint Transportation Committee to study legal and programmatic changes and best practices necessary for providing effective coordination of special needs transportation. That study, finalized in January 2009, resulted in a number of recommendations, including the need to strengthen the ACCT's role as a statewide oversight authority and to establish the necessary infrastructure that responds to local circumstances and needs.

Local Special Needs Coordinating Entities.

Currently, approximately 20 local coordination councils are active, to varying degrees, within the state. Many of these local councils were originally established with financial assistance provided through the ACCT. Some local councils meet regularly and have full-time staff to advance local coordination initiatives, but most do not. Generally speaking, many of these local councils are involved with local transportation planning efforts required under federal law. Funds are no longer available for the councils through the ACCT, and there is no official connection between the local councils and any state transportation program or agency.

Federal Transportation Coordination Requirements.

In 2005 the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted, which conditions receipt of certain federally-funded public transportation grant projects on the establishment of locally-developed, coordinated public transportation plans. The SAFETEA-LU guidance issued by the Federal Transportation Administration (FTA) indicates that each plan should identify special transportation needs, prioritize services, and establish comprehensive strategies for meeting special transportation needs. The new federal requirement is addressed in the planning process of regional transportation planning organizations or metropolitan planning organizations.

Federal Special Needs Transportation Programs and Agencies, Generally.

In addition to state and local programs, there are approximately 62 federal programs in eight federal agencies that fund a variety of transportation services to persons who are transportation disadvantaged. Most of these programs have their own purposes and goals, target population, eligibility criteria, rules and regulations, administrative structure, funding process, billing rates, and accounting and reporting requirements. In addition, federal and state agencies maintain separate client databases, and, due to real or perceived federal confidentiality requirements, agencies are not typically willing to share client eligibility information in order to determine the extent to which there might be overlap of services provided or efficiencies that could be achieved.

With respect to seniors and persons with disabilities, the use of public transportation is supported and encouraged by two federal requirements: the discounted fare requirement and the 1990 Americans with Disabilities Act (ADA). Pursuant to the federal discounted fare requirement, public transit operators are required to provide a discount to seniors (defined as age 65 or older) and to persons with disabilities of up to 50 percent of the regular fixed route fare during off-peak hours. Generally speaking, the ADA guarantees equal access to services and programs for persons with disabilities. As a result, most public buses are equipped with lifts or ramps to ensure that public transit is accessible to persons with disabilities.

In addition, the ADA also requires transit agencies to provide complementary paratransit services to individuals that cannot take the fixed route bus due to a functional disability. However, many public transit agencies' boundaries are less than countywide. Paratransit service is a specialized, typically pre-scheduled transportation service provided by taxis, cars, and accessible vans or buses for persons with disabilities.

Other paratransit, or "demand response," services are often provided in rural or other non-urbanized areas with limited or no public transit. Such services may be operated by a city, community-based non-profit agency, or a senior center. Demand response services are not required to comply with the ADA paratransit service standards if comparable fixed route services are not available.

Medicaid and Transportation.

Medicaid is a federal entitlement program that funds basic health care services for the elderly, persons with low-income, children, and individuals with disabilities. The federal government mandates that states provide non-emergency medical trips for Medicaid clients that have no other way to access medical facilities and services. In 2005 Washington spent more than \$5 billion for its Medicaid program. The DSHS is the largest provider of social service transportation in the state, and provides a variety of services to approximately 2.1 million clients.

Washington, like many other states, administers its own Medicaid program and establishes eligibility standards, payment rates, and benefit packages. Since 1989 Washington has managed its Medicaid transportation through a brokerage system. Currently, services are operated statewide under contracts with eight brokers for the state's 13 non-emergency Medicaid transportation service regions. The transportation brokers typically provide the following primary services: (1) operation of a toll-free telephone service for scheduling interpreter services and non-emergency transportation to medical appointments; (2) evaluation and verification of client eligibility, provided service coverage, and appropriate level of transportation; and (3) contracting for, arranging, and monitoring transportation and interpreter services.

In December 2008 the DSHS applied to the federal Centers for Medicare and Medicaid Services to change its federal-state Medicaid match system from an administrative match system to a medical match system. Under the administrative match system, the federal government provides a 50 percent match rate, and the use of the funds is somewhat flexible. Under the medical match system, the federal match could be increased to as much as 70 percent; however, it appears that the use of these funds may be less flexible and subject to stricter audit and accounting requirements.

Funding for Special Needs Transportation Services.

The largest funders of special needs transportation include public transit; community transportation providers; student transportation for homeless youth or for those students requiring specialized education programs; and state-funded human service programs.

The 2007-09 state transportation budget appropriated \$25 million for special needs transportation, of which \$5.5 million was provided solely for grants to nonprofit providers and \$19.5 million was provided solely for grants to transit agencies. An additional \$16.9 million was appropriated to the Rural Mobility Grant Program, which supports transit systems serving small cities and rural areas and also providers of service in areas that are either not served or are underserved by transit agencies.

The Washington State Department of Transportation (WSDOT) administers several FTA grant programs. For the 2007-09 biennium, the WSDOT matched state and local funds with FTA funds, and administered more than \$21.5 million in federal public transportation grants.

Funding and Program Eligibility and Cost-Sharing Restrictions.

The two largest funders of special needs transportation in our state, Medicaid and public transportation agencies, are each required by federal law to provide transportation services to Medicaid eligible persons and persons with disabilities, respectively. However, eligibility standards for these programs differ for persons entitled to receive the service as well as for the type of service they can receive. Typically, programs sponsoring special needs transportation programs are required to restrict the use of grant funds for a designated population. As a result, this prevents different programs from sharing resources and costs and from jointly funding a coordinated system of transportation services.

Student Transportation.

In Washington over \$300 million per year is spent on transporting students to and from school. In general, school districts receive funding to transport students between home and school if the students live more than one mile from school. If a student is disabled, funding is provided without any restrictions on distance. Additional funding is provided if young students (kindergarten through fifth grade) live within a mile but do not have a safe route to school.

In addition, the federal McKinney-Vento Homeless Education Assistance Act (McKinney-Vento Act) provides that state educational agencies must ensure that each homeless child and youth has equal access to the same public education as other children; furthermore, a homeless student may not be separated from the mainstream school environment. The McKinney-Vento Act ensures that homeless children are transported to and from the child's choice of school, in any school district, regardless of the school district in which the child resides. Federal funding is not specifically provided to states or local school districts for purposes of complying with the McKinney-Vento Act.

Summary of Engrossed Substitute Bill:

The role of the Agency Council on Coordinated Transportation (ACCT) is strengthened and the ACCT is established as a statewide authority. Membership on the ACCT is expanded to include four new voting members, increasing total membership from 14 to 18. The new members include a representative of regional transportation planning organizations; transportation brokers who provide nonemergency medically necessary trips to persons with special transportation needs; the state Department of Veterans Affairs; and the Washington State Association of Counties. The ACCT is required to vote annually to elect one of its voting members to serve as chair, and the position of chair must rotate among the voting membership at least every two years. The ACCT is given several new duties, and is reauthorized until June 30, 2011.

The ACCT's new duties include:

- proposing statewide policies and objectives to the Legislature;
- establishing performance measures and objectives for evaluating the ACCT's progress in accomplishing its objectives;

- developing common service definitions, and uniform performance and cost-reporting systems;
- designating local coordinating coalitions in two pilot project regions; and
- progressing toward the goal of establishing a single clearinghouse for driver background checks in cooperation with the Department of Social and Health Services (DSHS) and the Washington State Patrol.

Local Coordinating Coalitions and Pilot Projects.

The ACCT is directed to appoint a local coordinated coalition (LCC) in two Medicaid brokerage regions, as defined by the DSHS. Membership on the LCCs includes several agency representatives as well as members of any existing local coordinating coalition. The purpose of a LCC is to advance local efforts to coordinate and maximize efficiencies in special needs transportation programs and services. A LCC serves in an advisory capacity to the ACCT, is staffed by the regional transportation planning organization (RTPO) serving the region, and has several duties. An LCC's duties include:

- identifying local services and transportation needs, including connectivity gaps and other barriers to reliable and efficient transportation within and across service boundaries;
- considering strategies to address local service needs and connectivity gaps;
- collaborating with local service providers and operators to identify and propose common connectivity standards, including, at a minimum, standards that address signage, transit information, schedule coordination, and services provided to address access to and from a transit stop or facility; and
- implementing pilot projects to test and demonstrate cost sharing and cost-saving opportunities.

Special Needs Transportation and Special Needs Funding.

Transit agencies are directed to work collaboratively with the LCCs for the purpose of advancing the coordination of special needs transportation services. Improved accessibility for persons with special transportation needs is added as a criteria for eligible Transportation Benefit District improvement projects. Applicants for paratransit/special needs grants must include an explanation of how the funding will advance coordination of services. In making final paratransit/special needs grants award decisions, the WSDOT must seek input from the ACCT. In awarding other special needs transportation grants, the WSDOT must give priority to projects that result in improved coordination or increased efficiencies. The Department of Social and Health Services is directed to track transportation purchased for its clients, and to submit quarterly reports to the ACCT.

Student Transportation Expenditures.

By December 31, 2010, the Office of Superintendent of Public Instruction (OSPI) is required to develop a uniform process designed to track additional expenditures related to transporting homeless students, including expenditures required under the federal McKinney-Vento Act. The Superintendent must provide information annually to the ACCT on total expenditures related to the transportation of homeless students.

Work Groups.

A work group, appointed by the ACCT by August 15, 2009, is created for the purpose of engaging relevant federal agencies and representatives in an analysis of the various federal

definitions and reporting requirements across federal special needs transportation programs. Membership on the work group includes representatives of the departments of Transportation, Veterans Affairs, Health, and Social and Health Services; medicaid nonemergency medical transportation brokers; public transit agencies; regional and metropolitan planning organizations; the ACCT; the LCCs; Indian tribes; and the OSPI. The work group members must elect one or more of its members to serve as chair or co-chairs.

A second work group, appointed by the ACCT by August 15, 2009, is created to consider implementation of certain recommendations resulting from the 2009 study of special needs transportation conducted by the Joint Transportation Committee (JTC). The work group, chaired by a member of the ACCT, is specifically directed to consider, in consultation with relevant federal agencies, recommendations related to the procurement and designation of transportation brokers, referred to as community access managers. Membership on the work group includes representatives of the ACCT, regional and metropolitan planning organizations, transit agencies, medicaid nonemergency medical transportation brokers; and the DSHS.

Required Reports.

Periodic reports must be submitted to the JTC describing the progress of the work groups, pilot projects, and certain new duties assigned to the ACCT. Reports are due by December 1, 2009; June 1, 2010; and December 1, 2010.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The recommendations resulting from the special needs transportation study conducted by the Joint Transportation Committee (JTC) is one of the reasons for introducing this bill. Often there are multiple special needs transportation vehicles all going to the same place at the same time, and there are opportunities to coordinate, save money, and offer more service. The substitute bill attempts to get at the barriers to coordination and savings through two pilot projects, instead of making changes statewide.

The provision directing the Washington State Department of Transportation to act as the statewide clearinghouse for special needs transportation information, and to create a website for this purpose, is important. This website will help people by making it easy to determine available services in any given region. Although the bill allows for participation of users of the system on the local coordinating coalitions and on the Agency Council on Coordinated Transportation (ACCT), there should be more participation of riders in the discussion of how to improve coordination of services.

(In support with concerns) Transit agencies have concerns regarding the costs associated with the bill, especially as it relates to the reporting requirements and the direction to find

opportunities to share resources. Funding needs to be provided to support these new requirements. Pierce Transit is looking forward to participating in the pilot projects, but its participation is not feasible unless funding is provided.

(With concerns) Hopelink, the Medicaid brokerage in King County, supports the reauthorization of the ACCT as a statewide authority. It has been frustrating because the ACCT has not been sufficiently funded in recent years. Hopelink supports the intent of bill, and has struggled with the problems this bill attempts to resolve. However, there is a lack of clarity in the bill regarding how the Medicaid brokers would work with the community access managers. In addition, adequate funding to implement the bill is critical. Nonprofit organizations have even less money than transit agencies. The costs associated with some of the provisions of the bill need be more fully considered, including the costs for establishing performance standards and common service definitions. Establishing common service definitions is very difficult to do because the brokerage structure works with various types of organizations.

There is a concern that the direction to the ACCT to develop common service definitions could include ambulance stretcher vans and whether a service is medically necessary. Medical policy decisions should remain with medically-qualified personnel. The debate regarding stretcher vans should not be circumvented, and should remain in the Legislature.

There are local and regional transportation plans that already require coordination of service. The existing process for selecting a Medicaid broker is good and should not be modified.

(Neutral) There are people who are stuck in their homes and unable to access services either because of a lack of services or because they have fallen through the gaps. The people providing services are admirable, and work hard to provide needed services. Where things fall apart is right about now, when the discussion turns to how the state might better coordinate existing services. The Legislature should move forward with something because this issue is too important.

(Opposed) While the effort to address special needs transportation issues is appreciated, this bill is not necessarily the answer. The bill will require a drastic restructuring of transportation infrastructure, and will have some negative outcomes. It effectively dismantles proven, fiscally-sound systems that have been in place for over 20 years, and replaces them with different systems that have to be created from scratch. It adds additional administrative layers, resulting in increased costs, and is therefore fiscally irresponsible. A new structure should not be created without testing it first. The key question is how the clients will be affected, and the Legislature should not risk impacting those that will be affected. The Legislature is urged not to eliminate existing organizations and coalitions, but rather to build upon the strengths and knowledge of these entities.

Both the special needs transportation study and this bill highlight critical issues that many transportation providers have been grappling with for over 20 years. Coordination is the key, and everyone is in agreement with this concept. However, this bill does not result in coordination of services. In addition, it does not take into account existing organizations that have saved the state millions of dollars over 20 years. One strength of existing organizations is that transportation brokerages operate efficient community-based systems as envisioned by

the JTC, and they have extensive working knowledge of their community's needs and effective partners. Many local and regional planning organizations already perform many of the duties addressed in this bill. This bill is premature. There is a willingness to test some of the proposed ideas, but these ideas do not need to be legislated.

The final JTC report does not seem to represent the feedback of customers of special needs transportation or the successes of current ongoing coordination efforts. The main concern articulated by riders is the inability to travel between counties. As brokers, travel between counties can be addressed for Medicaid clients, but not for the general public. This bill does not address specific connectivity concerns, and does not provide for building on the state's successful broker system even though the study indicated it was successful. A better idea is to build on existing structures.

Persons Testifying: (In support) Representative Wallace, prime sponsor; Marilyn Mason-Plunkett and Lynn Moody, Hopelink; Jason Pelerine, Association for Retarded Citizens Washington; and Robert Wardell, Say Coalition.

(In support with concerns) Michael Shaw and Melissa Gombosky, Washington State Transit Association.

(With concerns) Kathy Swenson, Washington Ambulance Association; Emily Rogers, Self-Advocates in Leadership; and Marge Tully, Pierce County Coordinated Transportation Coalition.

(Neutral) Faith Trimble, FLT Consultation; and Marge Tully, Pierce County Coordinated Transportation Coalition.

(Opposed) Gordon Walgren, David Baker, Christie Sheffer, and Ann Kennedy, Paratransit Services.

Persons Signed In To Testify But Not Testifying: None.