

Clearinghouse Rule 18-065

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The State of Wisconsin Department of Transportation Proposes an Order to Amend Permanent Rule Wis. Admin. Code. chs. Trans 3, 4, 6, 8 relating to Administration of Grant Programs to Administer Federal and State Funds for Local Public Transit Services.

**PROPOSED ORDER
ADOPTING PERMANENT RULE**

The Statement of Scope for this Permanent Rule, SS 078-15, was approved by the Governor on August 17, 2015, published in Register No. 716A4 on August 24, 2015, and approved by Secretary of the State of Wisconsin Department of Transportation Mark Gottlieb, P.E., as required by s. 227.135(2), Stats, on September 21, 2015.

The State of Wisconsin Department of Transportation Proposes an Order to Amend Permanent Rule Wis. Admin. Code. chs. Trans 3, 4, 6, 8 relating to Administration of Grant Programs to Administer Federal and State Funds for Local Public Transit Services. The analysis below was prepared by the Wisconsin Department of Transportation (“the Department” or “WisDOT”).

ANALYSIS

Statutes Interpreted: Section 85.20, Stats., 49 USC secs. 5307 and 5311

Statutory Authority: Sections 85.16, 85.20, and 227.11, Stats.

Explanation of Agency Authority: Section 85.16 (1), Stats., authorizes the Department's secretary to "make reasonable and uniform orders and rules deemed necessary to the discharge of powers, duties, and functions vested in the department." Additionally, s. 85.20 (3), Stats., states that "The department shall administer the urban mass transit operating assistance program and shall have all the powers necessary and convenient to implement this section..." Moreover, under s. 227.10 (1), Stats., "Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute."

Related Statute or Rule: Trans 3, 4, 6 and 8 derive from s. 85.20, Stats., which establishes a statewide urban mass transit operating assistance program and authorizes the Department of Transportation to administer it. Several other statutes (s. 85.205, s. 85.21, s. 110.063, s. 194.41, s. 77.54(5)(b), s. 78.01(2)(d), 78.01(2m)(e), and s. 78.75(1m)) and administrative rules (Chapters Trans 1, 2, 330, 176.06) bear on the administrative rules subject to this proposed order. However, the changes to Trans 3, 4, 6, and 8 do not affect how these other statutes and rules regulate public transit service in Wisconsin.

Plain Language Analysis: This rulemaking updates Chapters Trans 3, 4, 6 and 8, Wis. Adm. Code, which address the Department’s administration of state and federal public transit programs. It removes or replaces obsolete language, corrects errors, and provides greater specificity in areas of the existing rule text that are unclear. It does not substantially change the way that the Department manages the distribution of federal and state funds for local public transit services, or the way that it oversees subrecipients of these funds.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: Trans 3, 4, 6, and 8 establish the Department’s blueprint for implementing and managing federal transit operating and capital funding programs established under 49 USC secs. 5307 and 5311, and the state transit operating funding program established under s. 85.20, Stats.

The Section 5307 program provides funding to public transit systems in urbanized areas (incorporated areas with a population of at least 50,000) for public transportation capital, planning, job access and reverse commute projects, and – in some circumstances – operating expenses. Section 5307 funds for urbanized areas with populations of at least 200,000 flow directly from the Federal Transit Administration (FTA) to authorized local public agencies. Funds for smaller urbanized areas flow through the Governor or Governor’s designee (in Wisconsin, the Department of Transportation).

The Section 5311 program parallels the Section 5307 program, but provides funding for public transit systems serving rural and small urban areas (those with population under 50,000). Unlike the Section 5307 program, all federal funds flow through the Governor or Governor’s designee, and may be used to pay for transit service operating expenses.

Section 85.20, Stats., establishes a framework for allocating state and federal transit funds to the operations of mass transit systems serving “urban areas.” (Per statute, an urban area is

defined as “...any area that includes a city or village having a population of 2,500 or more that is appropriate, in the judgment of the department, for an urban mass transit system or an area that includes 2 American Indian reservations and that is served by a mass transit system operated by a transit commission.”) It directs the Department to combine and equitably distribute state and federal funds among eligible public transit systems within each funding tier defined in s. 85.21 (4m) (a), Stats. It also broadly establishes the Department’s administrative authority in this regard, including the authority to:

- receive applications for financial aid and prescribe the form, nature and extent of information contained therein;
- execute contracts with eligible applicants to ensure continued provision of transit service (subject to the applicant satisfying certain conditions);
- audit the operating revenues and expenses of all urban mass transit systems participating in the program;
- conduct management performance audits of all participating urban mass transit systems at least once every 5 years; and
- apply for and receive federal grants for the Department or as requested on behalf of eligible recipients.

Section 85.20, Stats., limits each system’s state funding to the system’s operating deficit less the federal funds it receives. Finally, it instructs the Department to impose certain requirements on the recipients of state and federal transit funding. The statute does not address the use of federal funds for transit system capital investments, nor does it establish a state-funded capital program.

The administrative rules flesh out the requirements of s. 85.20, Stats. Chapter Trans 3 establishes procedures by which public transit systems may count passenger trips. (The

Department requires this information as a condition of disbursing state and federal funds, and transit agencies need it to satisfy the Department's transit development planning and performance goal requirements.) Chapter Trans 4 defines eligible costs under the federal 5307 and 5311 public transit aid programs, and outlines service procurement requirements. It also specifies a due date for public transit systems to submit state aid applications to WisDOT and the deadline for new systems to notify the Department of their intention to apply for state aid. Finally, the rule specifies the performance metrics and cost efficiency standards required under s. 85.20, Stats.

Chapter Trans 6 addresses the Department's administration of the 5311 program specifically, including the rural transit assistance program. It restates the legal limit on use of federal funds for operating costs (generally, 50% of operating deficit), and caps combined federal and state allocations for operating assistance at 70% of projected operating expenses. Similarly, it restates federal law provisions allowing use of funds for administrative and technical support purposes. It also establishes a deadline for public transit systems to submit federal aid applications to WisDOT, dictates that unused operating funds be used for capital projects, and specifies capital project funding priorities.

Chapter Trans 8 governs the allocation of the governor's 5307 program apportionment. It specifies that funds be allocated to operating costs first – up to 50% of operating deficit – and caps combined federal and state allocations for operating assistance at 70% of projected operating expenses. It also specifies capital project funding priorities.

In summary, s. 85.20, Stats. and Chapters Trans 3, 4, 6, and 8 are linked to federal code that establishes the 5307 and 5311 programs, but they do not significantly reference the specific contents of that code. To the extent they do, however, minor inconsistencies have developed over

the years as federal transit laws have evolved. The rule revisions contained in this proposed order will, among other things, eliminate these inconsistencies.

Comparison with Rules in Adjacent States:

Illinois. Illinois' public transit program is established under Illinois Compiled Statutes, specifically Section 2705 of Chapter 20 (20 ILCS 2705), 30 ILCS 740, and 70 ILCS 3610 and 3615. State administrative provisions are set forth in Illinois Administrative Code, 92 IAC Parts 651 and 653.

Broadly, these statutes and rules authorize the Illinois Department of Transportation (IDOT) to administer statewide transit operating and capital aid programs, establish aid recipient eligibility, and govern IDOT's program administration. Eligible recipients include local government units, transit districts, and transit authorities.

The statutes and rules generally are consistent with those governing WisDOT's administration of Wisconsin's statewide public transit aid programs. However, IAC rules that govern IDOT's administration of its state-funded transit capital programs have no corollary in Wisconsin administrative rule, because no such program exists in Wisconsin.

Iowa. Administration of public transit services is set forth at Iowa Code Chapters 28M ("Regional Transit Districts") and 324A ("Transportation Programs"), and Iowa Administrative Code (IAC) 761 Chapters 910, 911, 920, 921, 923, and 924. The statutes establish statewide public transit programs and identify the Iowa Department of Transportation (DOT) as their administrator, enable the establishment of regional transit districts, and authorize these districts to raise funds to support transit services.

The administrative code requires Iowa DOT to assure that transit systems comply with a statewide transportation coordination mandate, describes the statewide program through which the

DOT may issue capital and unrestricted (operating, capital and “special project”) funds to transit systems, and establishes the algorithm by which transit systems receive state funding.

Iowa’s rules relating to public transit administration generally correspond with Wisconsin’s. However, Iowa’s rules address transit districts operations and the administration of state capital project aids, neither of which is relevant in Wisconsin.

Michigan. Section 247.660 of Michigan Compiled Laws (MCL) creates a comprehensive transportation fund to finance local transit service projects across the state, and requires the Michigan Department of Transportation (MDOT) to establish rules for administering it. Administrative rules R 247.4101 through 247.4307 and R 474.101 through 474.106 govern MDOT’s administration of the fund and oversight of transit services across the state.

Michigan’s transit aid program and administrative structure under MCL and associated rules are consistent with Wisconsin’s, though Wisconsin has no state capital aid program and generally caps state operating aid at lower levels. Eligible public transit aid recipients include counties, cities, villages, and regional transit authorities (RTAs), the latter of which may not legally be established in Wisconsin.

Minnesota. Rules governing public transit administration are set forth in Minnesota Administrative Rules Chapter 8835, and derive from Minnesota Statutes Chapter 174 (primarily s. 174.21 through 174.247).

Chapter 8835 identifies the Minnesota Department of Transportation (MNDOT) Office of Transit as the administrator of statewide transit programs, directs the office to allocate transit aid funds to public transit systems, and establishes procedures and standards for review and approval of annual applications for financial assistance under the public transit program established.

Minnesota's rules largely mirror Wisconsin's, though they reflect differences in the design of the respective state transit aid programs. For instance, Minnesota law provides state transit aids for operating assistance, capital assistance, and planning and design projects, and permits counties in the Minneapolis-St. Paul urbanized area to collect local sales taxes that may fund transit capital projects.

Summary of the Factual Data and Analytical Methodologies that the Agency Used in Support of the Proposed Rule and How Any Related Findings Support the Regulatory Approach Chosen for the Rule: As noted above, the changes to Trans 3, 4, 6 and 8 amount to modest revisions intended to accurately reflect current federal law and Department procedures. Consequently, most of the factual basis informing the revisions amounts to close readings of current federal laws and guidance, reviews of state law and oversight documentation, and reviews of best practices among state agencies administering public transit programs. Relevant federal law includes 49 CFR Chapter 53 as amended by the Fixing America's Surface Transportation Act (FAST Act) – especially Sections 5302, 5307, and 5311 – and 2 CFR Part 200.

Several WisDOT staff involved in managing statewide public transit programs participated in reviewing the existing versions of Trans 3, 4, 6 and 8, and documenting deficiencies in them based on current state law (especially s. 85.20, Stats.), Department practices, and federal laws and policies. Department auditors weighed in on rule sections related to allowable expenses.

Beyond the in-house analysis, WisDOT transit staff consulted with local transit managers representing the Wisconsin Public Transit Association regarding the proposed rule changes. This consultation was intended to ensure that the revisions reflect a consistent understanding of federal and state laws and guidelines, and would not unnecessarily affect or complicate public transit system operations.

Analysis Regarding Rule’s Effect on Small Businesses:

Effect on small business: WisDOT anticipates no substantive impact on small businesses.

Taxi services providing shared-ride taxi public transit service under contract with public agencies could be indirectly affected by these rule revisions. However, the revisions should have no bearing on their public transit service business; they simply update WisDOT rules to reflect the current administrative framework under which these businesses currently operate.

Specific revisions with bearing but no fiscal impact on private transit service providers are:

- rewording in Trans 4.04 and Trans 6.03 to clarify that requests for proposals are used to procure public transit service from private providers, and
- rewording in Trans 4.05 to clarify that private businesses providing public transit service are subject to Department contract compliance audits.
- adding language to Trans 4 and Trans 6 to clarify that, consistent with current federal law, federal public transit funds may be used for job access and reverse commute projects. These projects can entail procurement of services or goods provided by small businesses.

Fiscal effect: None.

Anticipated costs incurred by private sector: None.

Proposed rule’s effect on small businesses:

The agency contact person listed below is also the small business regulatory coordinator for this proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at <https://health.wisconsin.gov/admrules/public/Home>.

Agency Contact Person:

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Place Where Comments Should Be Submitted and Deadline:

Comments may be submitted to the agency contact person listed above until the deadline given in the forthcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at: <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PERMANENT RULE

SECTION 1: Trans 3.01 (2) is amended to read:

Trans 3.01 (2) The procedures prescribed in this chapter shall apply to all urban mass transit system ridership information collected during calendar year ~~1994~~ 2019 and in each year thereafter.

SECTION 2: Trans 3.02 (1) is renumbered 3.02 (1m).

SECTION 3: Trans 3.02 (1) is created to read:

Trans 3.02 (1) “Department” means the Wisconsin department of transportation.

SECTION 4: Trans 3.02 (2) and (3) are amended to read:

Trans 3.02 (2) “Free fare passenger trip” means a trip on an urban mass transit system by a passenger who is ~~any~~ all of the following:

(a) A passenger who does not pay a fare.

(b) A passenger for whom a fare has not been paid by another ~~or~~ under contract or other arrangement with an urban mass transit system.

(c) A passenger who does not use a transfer or other equivalent.

Trans 3.02 (3) “Holiday” means any one of the 6 following legal holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas, or the ~~days~~ day officially designated for ~~their~~ its observance.

SECTION 5: Trans 3.02 (3m) is created to read:

Trans 3.02 (m) “Passenger” means an individual on board, boarding, or alighting a revenue transit vehicle.

SECTION 6: Trans 3.02 (4), (5), (7) and (9) are amended to read:

Trans 3.02 (4) “Passenger trip” means ~~a revenue, transfer or free fare passenger~~ an unlinked trip on an urban mass transit system vehicle, where “unlinked trip” has the meaning given in s. Trans 4.02 (8m).

Trans 3.02 (5) “Periods” mean the time periods during which a transit system is required to ~~make~~ conduct its survey for the purpose of computing average fare factors pursuant to the survey method under s. Trans 3.04. The general limits of the respective periods are: period I, March through April; period II, mid-June through mid-August; period III, mid-September through mid-November. The specific limits of these periods for any year shall be determined by the department and a notice of that determination shall be mailed to participating transit systems by January 31 of that year.

Trans 3.02 (7) “Revenue passenger trip” means a trip by a revenue passenger taken on an urban mass transit system. The transit system ~~may include~~ includes all routes that are generally known as express services, shuttles, trippers, route guarantees, and special contracts for routes or service that are open to the general public, unless the passenger trips on the routes are paid for and reported by another urban mass transit system receiving state transit aids under s. 85.20, Stats. Revenue passenger trips on specialized subsystems shall be included to the extent that the subsystem’s operating expenses are included in the mass transit system's program under s. 85.20, Stats. If ~~the~~ a subsystem's operating expenses are not fully supported by the participating urban mass transit system, then the revenue passenger trip figures from the subsystem shall be in proportion to the transit system's share of the subsystem's operating deficit.

Trans 3.02 (9) “Specialized subsystem” means a transportation service operated as a separate part of an urban mass transit system and which provides transportation exclusively for ~~the~~

~~disabled and elderly~~ seniors and individuals with disabilities. The specialized subsystem may be operated directly by the urban mass transit system or by a public or private transportation provider under contract to the urban mass transit system receiving funds under s. 85.20, Stats.

SECTION 7: Trans 3.03 (1) (b), (3) (c) and (3) (f) are amended to read:

Trans 3.03 (1) (b) By dividing the system's annual fare revenue by the system's per-passenger tariff if the system has established and applied a uniform fare for each passenger using the system during the calendar year, and after accounting separately for ~~elderly~~ seniors and ~~disabled~~ individuals with disabilities, transfer and free fare passenger trips and passenger trips on specialized subsystems.

Trans 3.03 (3) (c) Children boarding free because they are under a certain age established by the transit system and accompanied by an adult, or because they meet other special conditions, shall be counted as free fare passengers.

Trans 3.03 (3) (f) Transit riders using special subsystems exclusively for ~~elderly~~ seniors and ~~disabled riders~~ individuals with disabilities shall be counted separately from and included in a transit system's revenue passenger trips. Revenue passenger trips on special subsystems shall be determined by an actual count; or, if the subsystem is operated under contract to the urban mass transit system, the passenger trip figures reported shall be in direct proportion to the urban mass transit system's contribution to the special subsystem's total expenses. Alternative methods for counting transit riders under this paragraph may be used if expressly approved in writing by the department and then only if the department is satisfied that the alternative method does not adversely affect the statistical reliability, validity and comparability of the data collected pursuant to the variant procedures.

SECTION 8: Trans 3.04 (3) (e) and (4) (c) are amended to read:

Trans 3.04 (3) (e) *Special fare day*. Revenue passenger trips on days when a special tariff is in effect shall be established by taking actual revenue passenger counts during the entire period in which the special tariff applies, unless the special fare is the same for all riders. If the special fare is the same for all riders, revenue passenger trips may be determined by dividing total special fare day revenues by the per-rider fare. On free fare days sponsored by the subsidizing governmental units, no revenue is recorded and no revenue passenger trips may be counted. On free fare or reduced fare days sponsored by an agency that actually pays the fare of those riding, a revenue may be recorded and the actual number of passengers counted may be included as revenue passengers.

Trans 3.04 (4) (c) An urban mass transit system may estimate pass ridership by multiplying the number ~~of~~ of each type of pass sold by the average number of passenger trips taken per pass during the time period for which the pass is valid. The average number of passenger trips taken by pass riders shall be estimated at least once every 3 years by a survey method approved by the department or when a change in a system's fare structure may significantly alter the average use of passes.

SECTION 9: Trans 4 Table of Contents is amended to read:

Trans 4.08 State aid ~~contracts~~ grant agreements

SECTION 10: Trans 4.02 (1) is renumbered 4.02 (1h).

SECTION 11: Trans 4.02 (1d) and Trans 4.02 (1p) are created to read:

Trans 4.02 (1d) “Capital equipment” means non-expendable personal property for use in the provision of public transportation service and having:

- (a) an anticipated useful life of one year or more; and
- (b) an acquisition cost of \$5,000 or more per unit.

Trans 4.02 (1p) “Job access and reverse commute project” means a transportation project to finance planning, capital, or operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and low-income individuals to and from jobs and employment-related activities, including transportation projects that facilitate the provision of public transportation services from rural and urbanized areas to suburban employment locations, where:

(a) “low-income individual” means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2), including any revision required by that section, for a family of the size involved; and

(b) “welfare recipient” means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act, 42 U.S.C. 601 et seq., at any time during the previous three-year period.

SECTION 12: Trans 4.02 (1r) is renumbered Trans 4.02 (1t) and, as renumbered, is amended to read:

Trans 4.02 (1t) “Joint-use facility” means a facility that is shared by ~~the public transit operation~~ a mass transit system and at least one other business.

SECTION 13: Trans 4.02 (2) is amended to read:

Trans 4.02 (2) “Local public ~~bodies~~ body” ~~are defined to be~~ means:

(a) ~~Counties, municipalities or towns, or agencies thereof~~ A county or municipality as defined in s. 59.001, Stats.;

(b) ~~Transit A transit or transportation commissions or authorities~~ commission or authority, and or a public ~~corporations~~ corporation established by law or by interstate compact to provide mass transportation services and facilities; or,

(c) Two or more of any such bodies acting jointly under ss. 66.0301 to 66.0303, Stats.

SECTION 14: Trans 4.02 (3) is repealed and recreated to read:

Trans 4.02 (3) “Mass transit system” has the meaning given in s. 85.20 (1) (e), Stats., and additionally may include specialized transportation subsystems for seniors and individuals with disabilities, but does not include transportation services exclusively for a subgroup of the general public.

SECTION 15: Trans 4.02 (3g) and (3r) are created to read:

Trans 4.02 (3g) “Operating deficit” means the amount by which the total operating expenses incurred in the operation of a mass transit system exceeds the amount of operating revenues derived therefrom.

Trans 4.02 (3r) “Operating revenues” means income that accrues to a mass transit system by virtue of its operations, excluding any income derived from the sale of charter service or the hauling of freight.

SECTION 16: Trans 4.02 (4) is amended to read:

Trans 4.02 (4) “Private provider” means a privately owned entity that ~~owns facilities or revenue passenger vehicles used to provide transit service~~ is paid by an eligible applicant to provide transit service on its behalf.

SECTION 17: Trans 4.02 (4m) is created to read:

Trans 4.02 (4m) “Project year” means a calendar year in which an eligible applicant executes a public transit project receiving funding under s. 85.20, Stats.

SECTION 18: Trans 4.02 (5m), (7) and (8m) are amended to read:

Trans 4.02 (5m) “Revenue hours” means ~~hours in which a mass transit vehicle is operating in revenue service, such as being available to pick up or discharge passengers~~ times when an eligible applicant’s revenue passenger vehicle operates during advertised hours of service, plus any additional times during which it transports revenue paying passengers, travels to its base destination at the end of daily operation, or undergoes a pre-trip inspection.

Trans 4.02 (7) “Shared-ride taxicab” means a taxicab legally able to simultaneously transport passengers having different origins, ~~or different destinations, or both.~~

Trans 4.02 (8m) “Unlinked trip” means a trip beginning when a passenger boards the vehicle and ending when the passenger alights ~~from the vehicle, even though if the passenger may have to transfer~~ transfers to another vehicle to complete his or her journey reach a destination.

SECTION 19: Trans 4.02 (10m) is created to read:

Trans 4.02 (10m) “Urbanized area” means an area of the state so defined by the U.S. bureau of the census.

SECTION 20: 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 transit system, including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation services, license fees and lease expenses. For publicly owned mass transit systems, ~~the only the wages and fringe benefits that shall be considered eligible project costs are those 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~~ the employees do not work full time on transit, only expenses related to that portion of their time spent on transit shall be considered eligible costs. For services provided by private transportation providers operating

under mass transit contracts, eligible project costs may include profit, return on investment, interest on short term debt obligation, and depreciation of facilities and capital equipment used directly for the provision of urban mass transit services, provided that the facilities and equipment were acquired without benefit of public financial assistance. If a facility is a joint-use facility, depreciation ~~costs for~~ only of that portion of the facility used in the provision of urban mass transit services ~~are~~ is an eligible project ~~costs~~ cost. For shared-ride taxicab services provided by private transportation providers operating under mass transit system contracts, eligible project costs may include ~~management~~ administrative fees the eligible applicant incurs in the course of satisfying state and federal requirements.

Trans 4.04 (2) Eligible project costs may include the costs of user-side subsidies provided to ~~disabled persons~~ individuals with disabilities. User contributions to the user-side subsidy service are considered eligible project costs in accordance with s. 85.20 (3m) (b), Stats.

SECTION 21: Trans 4.04 (3) is created to read:

Trans 4.04 (3) If the recipient contracts for mass transit service with a private provider, the recipient shall execute a formal written contract with the provider. Only costs incurred under a properly executed written contract shall be considered eligible project costs.

SECTION 22: Trans 4.04 (4) is 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, 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 of that portion of the facility used in the provision of urban mass transit

services ~~are~~ is an eligible project costs cost. ~~If transit services are competitively bid, eligible project costs are eligible project costs only if the eligible applicant uses the competitive bid process set forth in par. (b), and these costs may only include costs those~~ 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 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.

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

1. An eligible applicant shall prepare a “request for ~~qualifications proposal~~” document. ~~That~~ The document shall request expressions of interest from providers, ~~shall and~~ describe essential provider qualifications and ~~shall describe~~ criteria for evaluating the provider those 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 elderly or disabled persons, operating within the service area of the applicant post the document, along with any ancillary documents, on the department of administration’s statewide goods and services electronic purchasing system website.~~ 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 2 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~~ rank each provider on the criteria set forth in the request for proposal.

4. When a publicly owned mass transit system responds to a request for proposal issued by a local public body under subd. 3., the cost proposal shall include an analysis of fully allocated costs that will be used as the basis for evaluating costs when ranking proposals. The analysis shall include all of the system's costs measured in accordance with generally accepted accounting principles, regardless of whether these costs are otherwise paid for through other public financial assistance, including operating subsidies and capital grants. When the public body which owns the mass transit system has prepared a cost allocation plan in accordance with ~~United States office of management and budget circular A-87, or OMB circular A-87~~ 2 CFR 200, costs of the mass transit system shall be allocated in accordance with that plan. When the mass transit system has not prepared a cost allocation plan in accordance with ~~OMB circular A-87~~ 2 CFR 200, costs which are allocable to the mass transit system shall be determined using the principles outlined in ~~OMB circular A-87~~ 2 CFR 200. Expenses of the mass transit system shall be allocated to segments of service considered using the following categories:

a. Costs that depend on the number of vehicle hours operated, including particular ~~operators~~ 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.

5. The ~~“request for qualifications” and the “request for proposal” may be combined and sent to transportation providers as one document.~~

~~6. When a contract is awarded based on bids for purposes of state aids, the~~ The proposed costs in an awarded bid shall be reduced by an allowance for operating and capital costs subsidized through other state and federal grants.

7. An eligible applicant shall establish an appropriate procedure for resolving bid proposal complaints and conflicts, and shall include the procedure in its request for proposal.

(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 of that portion of the facility used in the provision of urban mass transit services ~~are~~ is an eligible project costs cost.

~~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 Legislative Reference Bureau.~~

SECTION 23: Trans 4.04 (5) (q), (r), (t), (x) and (z) are amended to read:

Trans 4.04 (5) (q) ~~Indirect transit-related~~ Expenses for general public administration functions or activities of regional or local entities ~~performed as a normal or direct aspect of general public administration~~ that are not transit-related.

Trans 4.04 (5) (r) Expenses for contingencies or capital acquisitions, including contributions to a capital reserve account or fund. ~~For purposes of determining eligible operating expenses, capital acquisitions are defined as the purchase of non-expendable personal property with a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.~~ The cost of materials and

supplies utilized in facility or vehicle repairs, regardless of cost, shall be considered as eligible operating costs so long as such repairs involve replacement of existing items.

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

Trans 4.04 (5) (x) Expenses for the direct operation of private or public ~~transit~~ van pools, except ~~public van pool~~ administrative and marketing expenses associated with the public ~~transit~~ van pool program.

Trans 4.04 (5) (z) For transit systems providing services outside of their jurisdictional boundaries, expenses related to services which duplicate those provided by another ~~public~~ mass transit system in terms of geographic area served, hours operated, frequency of service and passenger boarding and alighting locations. Decisions on duplication of service shall be made by the department, after consultation with the affected public bodies.

SECTION 24: Trans 4.04 (5) (aa) is created to read:

Trans 4.04 (5) (aa) Job access and reverse commute project expenses, except in cases where the recipient's grant agreement with the department explicitly authorizes use of funds for such project(s).

SECTION 25: Trans 4.05 is amended to read:

Trans 4.05 State share of eligible project costs.

(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~~ private providers with which a local public body contracts for services on the basis of competitive bids, the department shall conduct contract compliance audits, ~~except that the department may not conduct financial audits of the business records of the private provider. This provision shall apply only for years in which an actual dollar amount was bid. Years for which a definite percentage increase over first year costs has been specified in the bid, or years in which costs are to be increased by the rate of inflation as measured by the consumer price index shall be considered years in which an actual dollar amount was bid.~~ Additionally, the department shall audit any fees the local public body charges to the department for administration of the private provider's service.

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

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

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

(5) “Operating expenses” shall be determined in accordance with s. Trans 4.04.

SECTION 26: Trans 4.06 is amended to read:

Trans 4.06 Distribution of state aids.

(1) The department shall distribute the state appropriations for this program among eligible applicants in accordance with the procedures set forth in s. 85.20 (4m), Stats., and also in accordance with provisions of the annual state ~~contract~~ grant agreements executed between ~~the~~ each applicant and the department.

(2) Except as provided in sub. (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 (2) does not apply to an eligible applicant that is served exclusively by a shared-ride taxicab system.

(4) State aids shall be paid to a recipient on a quarterly recurring basis, and no more than four times annually. 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. 85.20, Stats., then the recipient shall refund to the department an amount sufficient to reduce the state aids to an amount that is in conformity with s. 85.20, Stats.

SECTION 27: Trans 4.07 is amended to read:

Trans 4.07 Application for state aids. (1) Applications shall be made in a form and manner prescribed by the department. If ~~more than one~~ multiple public body bodies in a given urban area ~~contributes~~ contribute assistance to a mass 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.

(1m) Each state aid application shall include a transit management plan which describes for the coming year the transit system's operations, including the amount of service to be provided, the fares to be charged, any steps to be taken to improve system effectiveness and efficiency, and the procedures to be used for counting revenue passenger trips.

(2) Applications for aids shall be submitted to the department no later than ~~November~~ December 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.

(3) Eligible applicants ~~in "urbanized" areas~~ serving an urbanized area with a population exceeding 50,000 shall submit a copy of their application to the appropriate metropolitan planning organization.

(4) ~~For purposes of this chapter a "project year" is defined to be a calendar year. The~~ assisted transit Transit services receiving financial assistance may be operated for less than a calendar year.

(5) Costs for services not included in the application for state aids will not be eligible for funding until the following ~~calendar~~ project year unless the department so approves them in writing prior to the time at which costs start accruing.

(6) An eligible applicant intending to submit an application to support a new mass transit system shall notify the department of ~~the applicant's~~ its intention no later than ~~April~~ January 15 of the ~~even-numbered~~ preceding year to be eligible for funding ~~in the next biennium.~~

SECTION 28: Trans 4.07 is amended to repeal Trans 4.07 (1) (Note).

SECTION 29: Trans 4.08 is amended to read:

Trans 4.08 State aid ~~contracts~~ grant agreements. (1) For each calendar year, the department may execute an annual aid ~~contract~~ grant agreement with each eligible applicant.

(2) State aid ~~contracts~~ grant agreements may be terminated by either the department or the applicant under the following conditions:

(a) By the department, if the department determines that the purpose of the aid program as expressed in s. 85.20, Stats., is not being fulfilled, or if the recipient fails to comply with the terms and conditions of the state aid ~~contract~~ grant agreement.

(b) By the recipient, if the recipient makes a formal application to the department to do so.

(3) A state aid ~~contract~~ grant agreement may be terminated as provided in sub. (2) by giving written notice of intent to terminate, sent by certified mail, at least 30 calendar days prior to the proposed termination date.

(4) State aid ~~contracts~~ grant agreements shall require that recipients do the following:

(a) Pay the operating deficit of the mass transit system;

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

(c) Establish and maintain accounting procedures and documents as prescribed or approved by the department;

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

(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. 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 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 transit service is provided under a local public body contract with a private provider, the local public body makes payments to 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) only on the basis of actual billed expenses.

~~(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 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 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 30: Trans 4.09 (1) and (2) are amended to read:

Trans 4.09 Planning requirements. ~~As a condition of eligibility to receive state aids, an applicant shall comply with the~~ The following requirements apply to all mass transit systems receiving assistance under s. 85.20, Stats.:

(1) TRANSIT DEVELOPMENT PROGRAMS. ~~The transit system shall Prepare~~ prepare and submit annually to the department a 4-year transit development program, in the form and manner prescribed by the department.

(2) PERFORMANCE GOALS. ~~The transit system shall Establish~~ establish annually service and performance goals for ~~a 4-year period~~ the coming 4 project years and assess the effectiveness of ~~the applicant’s~~ its operations ~~mass transit system~~ in relation to those goals. The goals shall be submitted to the department as a part of the application for state aids. At a minimum, systemwide goals shall be established for the following performance indicators:

(a) The ratio of passengers, as expressed in unlinked trips to service area population.

- (b) The ratio of operating expenses to passengers, as expressed in unlinked trips.
- (c) The ratio of operating expenses to revenue hours.
- (d) The ratio of revenues to operating expenses.
- (e) The ratio of passengers, as expressed in unlinked trips, to revenue hours.
- (f) The ratio of revenue hours to service area population.

SECTION 31: Trans 4.09 (3) is repealed and recreated to read:

TRANSIT MANAGEMENT PLAN. The transit system shall submit a transit management plan annually that meets the requirements of s. Trans 4.07 (1m). Each transit system's policies and activities shall conform at all times to its transit management plan for the current project year. A transit system shall report to the department any proposed deviations from the transit management plan and shall not implement them prior to department concurrence. The department shall determine if a formal amendment to the transit management plan is required in all cases. The department may require the mass transit system to hold a public hearing on the proposed change prior to approving the proposal.

SECTION 32: Trans 4.09 (4) (b), (c), (d) and (f) 1. are amended as follows:

Trans 4.09 (4) (b) ~~For purposes of analysis, The department will assign each transit systems~~ system are divided into the following to a peer groups: group based on operating characteristic similarities.

- ~~1. Milwaukee.~~
- ~~2. Madison.~~
- ~~3. Medium bus systems.~~
- ~~4. Small bus systems.~~
- ~~5. Commuter bus systems.~~

~~6. Shared ride taxi systems.~~

~~Trans 4.09 (4) (c) For the Milwaukee, Madison and medium bus tiers, peer groups of similar sized transit systems with similar operating characteristics external to the state will be developed to establish performance standards. Data used for these peer groups will be the most recent available from the national transit database. For small bus, commuter bus, and shared ride taxi tiers, standards shall be established using data from only in-state systems in these tiers, because no national database information is available for these types of systems. Data used will be from the preceding calendar year. Standards for each of the 6 performance measures defined in sub. (2) shall be set for each tier peer group using a standard deviation based on arithmetic means. Systems that are within one standard deviation of the arithmetic mean shall be judged as in compliance with the standard for the measure. Systems whose performance is better than the one standard deviation shall also be judged as in compliance with the standard for the measure. Systems that meet the standards for 4 of the 6 performance measures shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.~~

Trans 4.09 (4) (d) If a transit system does not meet the cost efficiency standards as defined under par. (c), a time-trend analysis shall be performed, analyzing the 6 performance measures over the most recent 5-year period. Data used will be the data from the preceding calendar year. A system showing improvement in 4 of the 6 indicators ~~would~~ shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

Trans 4.09 (4) (f) 1. If management performance audit recommendations have not been implemented, the department shall provide technical assistance to aid in the implementation of the recommendations. If consultant services are necessary, the transit system shall pay the nonfederal share of the consultant's costs.

SECTION 33: Trans 6 Table of Contents is amended as follows to read:

Trans 6.05 Operating grants to rural and small urban areas ~~other than urbanized~~.

Trans 6.11 ~~Transferring federal funds to another program~~ Federal aid grant agreements.

~~Trans 6.12 Americans with disabilities requirements.~~

SECTION 34: Trans 6.01 is amended to read:

Trans 6.01 Purpose and scope. The ~~purpose~~ purposes of this chapter ~~is~~ are to prescribe the ~~department of transportation's~~ department's administrative interpretation of ss. 85.20 and 85.23, Stats., and to prescribe the administrative policies and procedures for implementing the federal program for public transportation projects in rural and small urban areas ~~other than urbanized~~. This program is authorized by ~~section 18 of the urban mass transportation act of 1964~~ 49 USC 5311, as amended. The goals of this program are to enhance access of people in non-urbanized and small urban areas for purposes such as health care, shopping, education, recreation, public services, and employment by encouraging the maintenance, development, improvement and use of public transportation services. ~~By federal definition, "areas other than urbanized" include small urban and rural areas.~~

SECTION 35: Trans 6.02 is amended to read:

Trans 6.02 Definitions. (1) "Capital ~~project cost~~ equipment" means ~~the cost of acquisition, construction, reconstruction and or improvement of facilities, vehicles and or equipment for use in the provision of an eligible public transportation service. A public body shall retain ownership of all capital items purchased under this program.~~ non-expendable personal property for use in the provision of public transportation service and having:

(a) an anticipated useful life of one year or more; and

(b) an acquisition cost of \$5,000 or more per unit.

(1g) “Capitalized maintenance project” means vehicle and facility related maintenance which a mass transit system has classified as a capital project as allowed under 49 USC 53.

(1r) “Department” means the Wisconsin department of transportation.

(2) “Eligible ~~applicants~~ applicant” means a local public ~~bodies~~ body, or federally recognized Indian tribal governing ~~bodies~~ body, but does not include private transportation providers.

(3) “Eligible public transportation service” means a public transportation service operating or designed to operate in non-urbanized or small urban areas.

(4) “Federal section ~~18~~ 5311 funds” means all funds appropriated to the state for use in the federal program for public transportation projects in small urban, rural and intercity areas.

(4m) “Federal section ~~9~~ 5307 funds” has the meaning given in s. Trans 8.02 (4).

(5) “Intercity bus service” means regularly scheduled bus service for the general public that operates over routes connecting 2 or more ~~urban~~ urbanized areas ~~of at least 2,500 population~~ and serving rural and or small urban areas, or both.

(5g) “Job access and reverse commute project” means a transportation project to finance planning, capital, or operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and low-income individuals to and from jobs and employment-related activities, including transportation projects that facilitate the provision of public transportation services from rural and urbanized areas to suburban employment locations, where:

(a) “low-income individual” means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services

Block Grant Act, 42 U.S.C. 9902(2), including any revision required by that section, for a family of the size involved; and

(b) “welfare recipient” means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act, 42 U.S.C. 601 et seq., at any time during the previous three-year period.

(5r) “Local contribution” means operating deficit less federal and state operating assistance received.

(6) “Local public bodies ~~body~~” means ~~counties, cities, villages and towns or agencies thereof.~~ means:

(a) A county, or a municipality as defined in s. 59.001 (3), Stats.;

(b) A transit or transportation commission or authority, or a public corporation established by law or by interstate compact to provide mass transportation services and facilities; or,

(c) Two or more of any such bodies acting jointly under ss. 66.0301 to 66.0303, Stats.

(7) “Operating ~~project cost~~ deficit” means the difference between the costs of operating an eligible public transportation service and the revenues derived therefrom. User subsidies such as transportation stamps are not considered to be “operating costs” for purposes of this chapter.

(7m) “Operating project cost” means a cost accruing to an urban mass transit system by virtue of its operations, including a cost to subsidize fares paid by individuals with disabilities for transportation within the urban area of the eligible applicant, and maintenance.

(8) “Private transportation providers” means privately owned (for-profit or nonprofit) organizations that operate an eligible public transportation service.

(9) “Project year” means a calendar year.

(10) “Public transportation service” means a passenger transportation service provided to the general public on a regular and continuing basis by a public agency or private ~~firm~~ firm, and that is authorized by the office of the department secretary under ch. 194, Stats., unless exempt under s. 85.20 (5), Stats., or under ch. 194, Stats. ~~Passenger fares shall be collected for the service in accordance with established tariff schedules.~~ The transportation service may be provided by bus, rail, shared-ride taxicab or other conveyance. The service may constitute an entire public transit system or may be an individual route or a segment of a route provided by a common carrier of passengers. ~~The service shall be authorized by the office of the commissioner of transportation under ch. 194, Stats., unless exempt under s. 85.20 (5), Stats., or under ch. 194, Stats.~~ A transportation service provided exclusively for a subgroup of the general public is not considered to be a “public transportation service” for purposes of this chapter, unless it is part of an overall public transit service to the area.

(10g) “Rural area” means an area with a population of under 50,000 people that has not been designated as an “urbanized area” by the U.S. bureau of the census.

(10r) “Short-term lease” means a lease of one year or less in duration.

(11) “Small urban area” means any area that includes a city or village having a population of at least 2,500, but not more than 49,999. The department shall determine the population of a city or village within a small urban area using the most recent estimates prepared by the department of administration.

(12) “Station ~~revenue~~ revenues” means those revenues which are derived from the operation of a public transportation facility. Such revenues include concessions, storage rentals, parking, office space rental, and other miscellaneous sources.

(13) “Through revenue” means revenue derived from passengers whose trips begin and end outside an eligible project route but whose route of travel includes the eligible project route.

(14) “Urbanized area” means ~~those areas~~ an area of the state so defined by the U.S. bureau of the census.

(14m) “Useful life” means an assumed minimum time period during which an asset remains in suitable operating condition for continued use in its intended capacity.

(15) “User-side ~~subsidies~~ subsidy” means a program whereby users of ~~the~~ a transit service are permitted to purchase transportation vouchers at prices substantially below the fares charged by the transit ~~providers~~ provider, or are given ride vouchers free of charge. The users can exchange these vouchers for transportation services, and the providers can then redeem them for the full fare.

SECTION 36: Trans 6.03 is amended to read:

Trans 6.03 Federal share of project costs. (1) The federal share of an eligible public transportation service’s operating project costs shall not exceed 50% of ~~those costs~~ its operating deficit, except for projects where the department uses capital cost of contracting procedures to determine the service’s reimbursement amount. On applicable projects, the capital cost of contracting reimbursement rate shall be based on allowances specified in federal transit law or guidance. The ~~department has determined that the~~ following operating revenues and expenses shall be used to establish the project ~~costs~~: operating deficit:

(a) Operating revenues shall consist of all passenger revenue derived from the project service, including the portion of through revenue attributed to eligible project routes, station ~~revenue~~ revenues derived from the project service and any unrestricted federal, state or local funds received as a result of providing the project service that are not used to match federal section 48

5311 funds. Operating revenues also may include income generated through approved job access and reverse commute type projects, consistent with 49 USC 5311.

Note: Charter, package delivery, and package express operating expenses and revenues for all applicants are assumed to be equal and, therefore, shall not have any net financial effect on the project.

(b) Eligible operating expenses are those transportation and overhead expenses associated with the provision of public transportation service including labor, fringe benefits, materials and supplies, utilities, insurance, purchased transportation service, license fees and certain lease expenses. They also may include other expenses associated with approved job access and reverse commute type projects, consistent with 49 USC 5311. The following expenses are not eligible project expenses:

1. Depreciation and amortization for publicly owned facilities and equipment;
2. Expenses that are offset or that will be offset by means that include, but are not limited to, cash discounts or refunds, tax rebates including fuel tax rebates, insurance proceeds or resale proceeds;
3. Interest expense, except that privately owned systems may include interest on short-term debt obligation;
4. Return on investment, except that a private transportation provider that negotiates all or part of a transportation service contract with an eligible applicant is eligible for a return on its investment. Its 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 service;

5. Lease-purchase payments;

6. Lease payments to a related party which are a less than ~~arms~~ arm's length agreement.

Only actual eligible expenses of owning the property, including depreciation and taxes, shall be allowed;

7. Lease payments by small urban area systems for revenue passenger vehicles, unless situations exist necessitating short-term leases. ~~In this subdivision, 'short term lease' means a lease of one year or less in duration.~~ If the grantee is actively pursuing a federal grant to purchase vehicles, the eligibility of lease payments may be extended until delivery of the purchased vehicles;

8. Entertainment costs;

9. Fines and penalties;

10. Bad debts;

11. Charitable deductions;

12. User-side subsidies except those specifically funded under an intercity bus project;

13. Payments to members of advisory committees, transit commissions or transit boards;

14. Federal, state and local income taxes;

15. Expenses related to contractual agreements for special planning studies;

~~16. Indirect transit related functions or activities of regional or local entities performed as a normal or direct aspect of general public administration;~~

17. Expenses for contingencies or capital acquisitions, including contributions to a capital reserve account or fund. ~~For the purposes of determining eligible operating expenses, capital acquisitions are defined as the purchase of non-expendable personal property with a useful life of~~

~~more than one year and an acquisition cost of \$1,000 or more per unit. A unit is defined as one or more like items.~~ The cost of materials and supplies utilized in facility or vehicle repairs, regardless of cost, shall be considered as eligible operating costs so long as the repairs involve replacement of existing items.

18. Fees imposed upon a contracted service provider by the grant recipient, such as ~~taxi~~ taxicab license fees.

19. Job access and reverse commute project expenses, except in cases where the recipient's grant agreement with the department explicitly authorizes use of federal funds for such project(s).

(c) An eligible applicant that contracts with a provider for eligible public transportation service shall use the competitive procurement process set forth in this paragraph to choose a provider. An eligible applicant shall follow this competitive procurement process for each of its eligible public transportation service contracts not less than once every 5 years. If, however, service is provided by a transit commission formed in accordance with an applicable enabling statute, the competitive procurement process need not be used. Eligible applicants shall use the following competitive procurement process:

1. An eligible applicant shall prepare a "request for ~~qualifications proposals~~" document that ~~shall request expressions of interest~~ solicits proposals from providers and ~~that describe~~ describes essential provider qualifications and criteria for evaluating ~~those qualifications proposals~~. The eligible applicant shall send the document to the department for its approval and, after receiving departmental approval, shall ~~send it to all local transportation providers and to all known potential local transportation providers~~ post it along with any ancillary documents on the department of administration's statewide goods and services electronic purchasing system website.

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~~ submits a proposal to provide the eligible public transportation service; and the proposal satisfies all requirements of the eligible applicant's request for proposals, the eligible applicant may negotiate a contract with that provider. The negotiated contract shall be subject to the department's approval.

3. If 2 or more qualified providers ~~express interest in providing~~ submit proposals to provide the eligible public transportation service; and the proposals satisfy all requirements of the eligible applicant's request for proposals, the eligible applicant shall ~~send each qualified provider a department approved "request for proposal" document. That document shall describe the eligible public transportation service requirements and the criteria that shall be used in evaluating the bid proposals~~ rank each provider on the criteria set forth in the request for proposals, and may negotiate a contract with the highest-ranking provider.

4. An eligible applicant shall establish an appropriate procedure for resolving bid proposal complaints and conflicts. The ~~director of the department's bureau of transit~~ department shall consider procedural complaints or conflicts that include, but are not limited to, complaints that allege that ~~local~~ established proposal evaluation procedures have not been followed. The ~~director~~ department shall not review the substance of an eligible applicant's decision to select a particular service provider. This ~~limitation~~ subdivision may not limit the ~~director's~~ department's authority to review an eligible applicant's actions or inactions under this section or under other state or federal law.

(d) Paragraph (c) applies only to eligible applicants filing applications due on or after November 15, 1988.

(2) The federal share of capital project costs shall not exceed 80% of eligible costs, except that the federal share of vehicle-related equipment required by the Clean Air Act or the Americans with Disabilities Act of 1990 ~~may~~ may, at the department's discretion, be up to 90% of the net project cost of such equipment. The department shall establish the appropriateness of each capital expenditure. Where capital ~~items are~~ equipment is to be shared ~~by~~ with parties not directly involved in the provision of the project service, ~~it shall be shown to the satisfaction of the department that~~ will consider the equipment eligible for funding only if the applicant ~~will use the item~~ satisfactorily demonstrates that it will be used for the project service at least 50% of the available time ~~before the item shall be considered eligible for funding.~~ The In such cases, the project cost shall be prorated according to the use percentage.

(3) No eligible applicant may use funds received from the United States department of transportation as part of its local contribution towards operating and capital project costs. This includes section 5311 operating assistance funds received in past calendar years.

SECTION 37: Trans 6.04 (1) and 6.05 are amended to read:

Trans 6.04 Distribution of federal aids. (1) The state's annual apportionment of federal section ~~48~~ 5311 funds shall be distributed as follows:

(a) Up to 10% will be reserved by the department for administrative and technical assistance purposes. Such technical assistance may include project planning, program development, management development, coordination of public transportation programs and research the department deems appropriate to promote effective means of delivering public transportation services in areas other than urbanized areas. Any uncommitted balance of the state's apportionment of administrative funds from a preceding project year may be used during subsequent years until the balance is depleted.

(b) Apportionments are initially available for operating assistance grants to eligible applicants, but when combined with state s. 85.20, Stats., operating assistance funds are limited to the lesser of either ~~70%~~ 65% of the total eligible operating expenses or the operating ~~project cost deficit~~. No city or village ~~shall be appropriate for~~ may receive federal section 5311 funds to operate a municipal bus transportation system ~~for purposes of receiving federal section 18 funds~~ unless the system is approved by action of its governing body and by referendum vote of its electorate pursuant to s. 66.0803 (2) (a), Stats.

(c) Any balance remaining in the apportionment referred to in par. (b) after operating assistance limits are met under par. (b) shall be available to all eligible applicants for capital grants awarded in accordance with criteria set forth under s. Trans 6.06.

(d) Any balance remaining in the apportionment after capital assistance needs are met under par. (c) shall be available to all eligible applicants for operating assistance beyond the ~~70%~~ 65% limitation initially imposed in par. (b), not to exceed ~~50% of the operating project cost~~ allowable limits under 49 USC 5311.

(e) Not less than ~~5%~~ 15% of the apportionment made available to the state shall be used for the development and support of intercity bus service. Eligible activities under this program may include planning and marketing, capital grants for intercity bus shelters, joint-use stops and depots, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small transit operations and intercity bus carriers. This requirement is effective unless the governor certifies that the intercity bus service needs of the state are adequately being met.

Trans 6.05 Operating grants to rural and small urban areas ~~other than urbanized~~.
Subject to the limitations set forth in s. Trans 6.03 (1), the operating assistance funds available in

s. Trans 6.04 (1) (b) and (d) shall be allocated among eligible applicants in proportion to each applicant's share of the projected operating project costs of all applications.

SECTION 38: Trans 6.06 is amended to read:

Trans 6.06 Capital grants. (1) Capital assistance funds under s. Trans 6.04 (1) (c) shall be ~~made available according to~~ awarded based on the following rank order of priority prioritization list until all ~~of the available~~ funds ~~available~~ are committed:

- (a) ~~Projects to replace~~ Replacement of vehicles operated by existing systems;
- (b) Projects to initiate a public transportation service;
- (c) ~~Projects to replace~~ Replacement of maintenance and storage facilities of existing systems;
- (d) ~~Projects to expand the number~~ Purchase of additional vehicles ~~operated~~ by existing systems;
- (e) ~~Projects to expand and rehabilitate~~ Expansion and rehabilitation of maintenance and storage facilities of existing systems; ~~and~~
- (f) ~~Projects to purchase~~ Purchase and install installation of passenger amenities for existing systems such as shelters and bus stop ~~signs-~~ signs;
- (g) Capitalized maintenance projects for existing transit systems;
- (h) Mobility management projects; and
- (i) Job access and reverse commute projects, except where the department evaluations these projects through a stand-alone process using a set-aside of section 5311 funds.

(2) If available funds are not sufficient to fund all applications within a given category, then the department shall, after consultation with the applicants, reduce the scope or modify the timing of proposed projects within that category to fit available funding.

(3) Based upon exceptional circumstances, the availability of other state or federal capital funds, or both, the department may at its discretion deviate from the priorities established in sub. (1).

SECTION 39: Trans 6.07 is amended to read:

Trans 6.07 Application for federal aids. (1) Eligible applicants may apply to the department for federal section ~~48~~ 5311 funds. If more than one local public body will financially participate in the project, one body should submit a single application on behalf of all. In those cases, the federal aids received shall be allocated among all local public bodies in proportion to each one's share of eligible project costs.

(2) Applications shall be submitted to the department no later than ~~October~~ December 15 of the year immediately preceding the project year. The department may accept revisions to a submitted application during the application review period. No application for operating assistance or capital assistance received after ~~October~~ December 15 of the year immediately preceding the project year may be funded unless the department secretary ~~of transportation~~ determines that a later date is appropriate in order to properly respond to an emergency.

(3) The ~~assisted~~ transit services receiving financial assistance may be operated for less than a calendar year.

(4) Applications shall be made in a manner and form prescribed by the department in accordance with governing federal regulations.

(5) The applicant shall submit ~~the original~~ of its application to the department's bureau of ~~transit and local transportation aids~~ transit, local roads, railroads and harbors with a copy to the ~~appropriate region office of the department.~~

~~(6) An applicant shall submit a copy of its application for review and comment purposes to the appropriate regional planning commission, to the appropriate area agency on aging, and to the appropriate department of health services' regional office. In order to be considered by the department, comments by the agencies shall be submitted to the department's appropriate transportation region office within 45 days following the submission of the application to the department. The department shall give appropriate consideration to the review comments of the agencies.~~

(7) The department reserves the right to reject applications for any of the following reasons:

(a) The proposed project is not consistent with the intent of the federal section 48 5311 program;

(b) ~~The lack of~~ Insufficient federal funds are available;

(c) The application is incomplete;

(d) The proposed project is not effective and efficient when compared to projects of a similar type. Such measures as the ratio of operating revenues to operating expenses, passengers per mile of service, operating expenses per passenger, and passengers per population served may be used to determine effectiveness and efficiency.

SECTION 40: Trans 6.10 (1) and (2) are repealed and recreated to read:

Trans 6.10 Property management and disposition. (1) Grant recipients shall retain ownership of, and exercise continuing control over, equipment and facilities purchased with federal section 5311 funds throughout their useful life. Grant recipients shall ensure that equipment and facilities so purchased are maintained consistent with manufacturer instructions, sound asset management practices, and the terms of their grant agreements with the department.

(2) Grant recipients shall report on equipment and facilities purchased with federal section 5311 funds in a manner, format, and timeframe that the department specifies.

SECTION 41: Trans 6.10 (3) and (4) are amended to read:

(3) ~~The grant recipient~~ Grant recipients shall request disposal instructions from the department when ~~it desires~~ they are ready to dispose of any equipment or facilities purchased with federal section ~~18~~ 5311 funds. ~~The department shall instruct the grant recipient to dispose of the equipment or facilities in the most efficient and practical manner.~~

(4) Proceeds received from the disposition of equipment and facilities may be retained by the grant recipient subject to the provision of sub. (4m) below but shall be used for mass transit purposes consistent with applicable federal transit administration guidelines, such as the following:

- (a) To purchase additional capital equipment.
- (b) To pay expenses of the operating assistance project.
- (c) To pay the local share of capital assistance projects.
- (d) To pay the local share of operating assistance projects.

SECTION 42: Trans 6.10 (4m) is created to read:

Trans 6.10 (4m) For each disposition of a federally funded asset that generates proceeds in excess of \$5,000, the federal transit administration is due the federal share of the proceeds.

SECTION 43: Trans 6.10 (5) is amended to read:

Trans 6.10 (5) Any use by the grant recipient of proceeds from the disposal of equipment or facilities requires prior approval of the department. Records shall be maintained by the grant recipient to permit ~~tracing~~ tracking of the use made of the disposal proceeds.

SECTION 44: Trans 6.10 (6) is repealed.

SECTION 45: Trans 6.11 is repealed and recreated to read:

Trans 6.11 Federal aid grant agreements. No eligible applicant shall receive federal section 5311 funds without full execution of a grant agreement with the department, and continuing adherence to the terms therein.

SECTION 46: Trans 6.12 is repealed.

SECTION 47: Trans 8 Table of Contents is amended to read:

Trans 8.04 ~~Report~~ Reporting requirements

SECTION 48: Trans 8.01, 8.02, 8.03 and 8.04 are 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 mass transit assistance to urbanized areas of under 200,000 population. This program is authorized by 49 USC 53, section 5307 ~~of the Transportation Equity Act for the 21st Century, Public Law 105-178.~~

Trans 8.02 Definitions. (1) “Capital project equipment” means ~~the acquisition, construction, reconstruction and improvement of facilities, vehicles and equipment for use in the provision of an eligible urban mass transit system~~ non-expendable personal property for use in the provision of public transportation service and having:

(a) an anticipated useful life of one year or more; and

(b) an acquisition cost of \$5,000 or more per unit.

(2) “~~Capitalized~~ Capital maintenance costs project” ~~are means costs associated with vehicle and facility related maintenance which a mass transit system has classified as a capital costs project as allowed by TEA 21. A mass transit system shall classify capitalized maintenance costs~~

~~identically under both the federal section 5307 program and the state operating assistance program authorized under s. 85.20, Stats. under 49 USC 53.~~

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

(2r) “Eligible recipient” means ~~a local public bodies~~ body in ~~an urbanized areas~~ area under 200,000 population ~~who have~~ that has been designated as ~~recipients~~ a recipient of federal section 5307 funds by the secretary of the department of transportation acting on behalf of the governor.

(3) “Eligible urban mass transit system” means a mass transit system operating or designated to operate in urbanized areas of less than 200,000 population.

(4) “Federal section 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.

(5) “Local public ~~bodies~~ body” has the meaning given in s. Trans 4.02 (2).

(6) “Mass transit system” has the meaning given in s. Trans ~~4.02(4)~~ 4.02 (3).

(7) “Operating assistance” means a subsidy to pay part of the operating deficit of an eligible urban mass transit system.

(8) “Operating deficit” has the meaning given in s. Trans ~~4.05(3)~~ 4.02 (3g).

~~(9) “Operating expenses” means all eligible project costs under s. Trans 4.04.~~

(10) “Operating revenues” has the meaning given in s. Trans ~~4.05(4)~~ 4.02 (3r).

(11) “Project year” means a calendar year.

~~(11m) “TEA 21” means the federal transportation equity act for the 21st century of 1998.~~

(12) “Urbanized area” means ~~those areas~~ an area of the state so defined by the U.S. bureau of the census.

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

(1) (a) Funds apportioned to the governor and made available by the department for operating assistance shall be allocated annually among eligible recipients in proportion to each recipient's share of the projected operating expenses of all eligible recipients for the project year. No recipient may receive an allocation that exceeds 50% of its operating deficit for any project year in accordance with 49 USC ~~1607a (k) (1)~~ 5307 (d) (2); and no recipient shall receive an allocation that when combined with the state s. 85.20, Stats., operating assistance funds exceeds ~~70%~~ 60% of its projected operating expenses.

(b) ~~The department of transportation shall provide to each eligible recipient projections of the amount of state and federal funds aid amounts for operating assistance which will be allocated to each recipient for the next project year as soon as possible after October 1 and once October 1, based on the best information available at the time regarding state and federal budgeted amounts are known along with reasonable estimates of and the operating assistance needs of affected mass transit systems the recipients. The projections shall be based on the best information available at the time.~~

(2) Funds apportioned to the governor and not allocated for operating assistance under sub. (1) shall be made available on an annual basis to eligible recipients to cover up to 80% of the cost of capital projects, or at the department's discretion up to 90% of the costs if the project is of projects required to comply with the Americans with Disabilities Act or Clean Air 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 department shall rank order of priorities

~~shall be established by the department the requests~~ in consultation with ~~the eligible recipient recipients~~. ~~Annually, the rank order~~ The ranking shall consider age, condition, the age and condition of capital items requiring replacement or rehabilitation, and 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: The department may consider the following hierarchy when selecting projects for funding:

(a) Projects to replace or rehabilitate existing vehicles and maintenance and shop equipment.

(b) Projects to improve or rehabilitate existing maintenance and storage facilities.

(c) Projects to purchase and install passenger amenities such as shelters and bus stop signs.

(d) Projects to purchase vehicles necessary to expand transit service.

(e) Projects to construct new maintenance and storage facilities and major passenger transfer facilities.

(f) Capitalized maintenance projects for existing transit systems.

(3) Any uncommitted balances of the governor's apportionment after capital assistance needs are met under sub. (2) ~~or~~ and any unexpended balances from previous years under this section shall be carried forward to the following year.

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

SECTION 49: 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) (intro.), Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2018

Dave Ross.

Secretary

State of Wisconsin Department of Transportation