

HOUSE BILL No. 5819

May 29, 1990, Introduced by Rep. Dunaskiss and referred to the Committee on Transportation.

A bill to provide more cost effective bus transportation services for the general public; to require that public transportation bus services be subject to competitive bids; to establish standards for the submission of bids for public transportation bus services; and to require certain performance audits.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "public transportation consumer protection act".

3 Sec. 2. As used in this act:

4 (a) "Attributable fully allocated cost" means the operating
5 and capital cost of a public transportation service including the
6 direct costs of driver labor and benefits based upon actual
7 driver work assignments for the service, and a reasonable
8 allocation of costs for replacement and spare drivers and all
9 other costs of providing and administering transportation and

1 maintenance for the service, minus the cost of any function not
2 to be competitively contracted.

3 (b) "Public transit operator" means a unit of government or
4 authority that provides or sponsors public transportation service
5 and receives public funds for that service.

6 Sec. 3. (1) Each public transit operator annually shall
7 seek competitive proposals on at least 10% of its fixed route bus
8 service. The annual competitive proposal requirement shall be
9 met only by the requests for proposal for services not currently
10 operated under competitive proposals. The annual competitive
11 proposal requirement shall be based upon the annual vehicle miles
12 for the latest fiscal year for which information is available.

13 (2) Notwithstanding subsection (1), the competitive con-
14 tracting required under this act shall be accomplished through
15 attrition of the public transit operator's full-time drivers and
16 mechanics in the employ of the public transit operator on the
17 effective date of this act. A public transit operator may hire
18 new permanent drivers and mechanics only to the extent necessary
19 to operate services that the public transit operator has been
20 awarded through competitive proposals.

21 (3) Any fixed route bus services operated under competitive
22 proposals on the effective date of this act or thereafter shall
23 be subject to a new competitive proposal at least every 5 years.
24 A service operated under competitive proposal shall not be
25 returned to operation not subject to competitive proposal.
26 Renewal options that extend a contract beyond 5 years shall be
27 prohibited.

1 (4) The public transit operator shall determine the routes,
2 schedules, and fares that are to be included in any request for
3 proposal.

4 (5) Savings obtained through competitive service operations
5 shall be used only for consumer benefit, including increased
6 service levels, reduced passenger fares, new capital facilities,
7 and reduction of public transportation subsidies.

8 (6) Each public transit operator shall make buses purchased
9 after the effective date of this act available for operation
10 under competitive proposals by private transportation providers
11 under nominal leases.

12 (7) Each public transit operator shall maintain a list of
13 interested proposers, which shall include all organizations that
14 have requested inclusion on such list. The public transit opera-
15 tor shall advertise for additions to the interested proposers'
16 list at least annually in accordance with its general procurement
17 policy.

18 (8) A public transit operator may replace service with
19 alternative service provision methods through competitive propos-
20 als if the public transit operator finds such alternative service
21 methods to be in the public interest.

22 (9) A public transit operator may execute standby competi-
23 tive contracts with 1 or more private transportation providers to
24 operate any service on an interim basis if the public transit
25 operator determines such operation to be required by the public
26 welfare. Any service operated under a standby contract shall be

1 subject to competitive proposal with 6 months after commencement
2 of the standby contract.

3 Sec. 4. (1) Within 6 months after the effective date of
4 this act, each public transit operator shall establish reasonable
5 standards with respect to experience, safety records, and finan-
6 cial responsibility by which private transportation providers can
7 be qualified to provide bus services pursuant to this act. The
8 standards shall not be designed to restrict the number of eligi-
9 ble participants in the competitive proposal process.

10 (2) Within 6 months after the effective date of this act,
11 each public transit operator shall prepare a standard form of
12 agreement to provide bus services. This contract shall include:

13 (a) Reasonable passenger comfort, and safety and vehicle
14 maintenance standards.

15 (b) Standards for access to bus services for persons with
16 disabilities, which shall be as specified in the public transit
17 operator's plan for these services.

18 (c) Standards for training and safety records to be required
19 of any driver.

20 (d) Requirements for reasonable insurance protecting the
21 public transit operator from liability for the acts, negligence,
22 or omission of private transportation providers, their agents,
23 and their employees.

24 (e) Reasonable standards for reliability and on-time
25 performance.

1 (f) Reasonable penalties for inadequate performance,
2 including the public transit operator's right to cancel
3 contracts.

4 (g) Provisions and standards for the use of the public tran-
5 sit operator's logo, transfers, transit ways, bus stops, vehi-
6 cles, and other such elements as are owned by the public transit
7 operator and appropriate for use by the private transportation
8 providers under contract to the public transit operator.

9 (3) A public transit operator may not establish any require-
10 ment relating to the wages, benefits, or union organization of
11 contractor employees. All contractors shall comply with and give
12 adequate certification of compliance with all applicable federal
13 and state labor laws.

14 (4) A change in contract payment amount to a private trans-
15 portation provider shall not be made except as specified in the
16 contract. Payment changes in a contract shall be limited to
17 indices, escalators, deflators, changes in service level, and
18 other expressly stated or calculable amounts, consistent with the
19 request for proposal and the proposal of the private transporta-
20 tion provider awarded the contract.

21 (5) Contract expiration dates shall be rotated to the maxi-
22 mum extent feasible to minimize the number of contract awards
23 under consideration at any particular time.

24 Sec. 5. (1) Each request for proposals shall specify the
25 route, service frequency, and fares as determined by the public
26 transit operator.

1 (2) The public transit agency shall seek the widest
2 reasonable distribution of each request for proposals, and at a
3 minimum shall send each request for proposals to each organi-
4 zation on the interested proposers' list and to each additional
5 organization which requests the specific request for proposal.

6 (3) The public transit operator shall advertise each request
7 for proposals within 10 days after issuance, and in accordance
8 with its general procurement policy.

9 (4) Proposals shall be required to be submitted not less
10 than 45 days after the advertisement date.

11 (5) Services shall commence under any request for proposal
12 within 120 days after the deadline for proposals.

13 (6) Each request for proposals shall be limited to the least
14 amount of service as may be commercially practicable so that the
15 largest possible number of private transportation providers may
16 respond. A single request for a proposal shall not include more
17 than the greater of either of the following:

18 (a) Three percent of the public transit operator's weekday
19 peak period requirement.

20 (b) A 15-bus peak requirement.

21 (7) Any qualified private transportation provider may
22 respond to a request for proposals. Each public transit operator
23 shall ensure that disadvantaged business enterprises, as defined
24 in 49 C.F.R. part 23, have the greatest possible opportunity to
25 respond.

26 (8) With respect to each request for proposals, the public
27 transit operator shall award the contract to the private

1 transportation provider or public transit operator whose proposal
2 offers the lowest cost.

3 (9) A private transportation provider shall not be awarded
4 contracts covering more than either of the following:

5 (a) Twenty-five percent of the annual vehicle miles of a
6 public transit operator with a peak bus requirement of 60 or
7 more.

8 (b) Fifteen peak buses of a public transit operator with a
9 peak bus requirement of less than 60.

10 Sec. 6. A public transit operator, other than the public
11 transit operator seeking the competitive proposals, may submit a
12 proposal, and be awarded the service, subject to the following
13 conditions:

14 (a) That it submit a sealed proposal before the advertised
15 deadline for proposals, that the proposal not be altered after
16 that deadline, and that the proposal be publicly opened and made
17 public at the stated deadline.

18 (b) That any labor provision assumed in the proposal either
19 be specified in currently effective labor contracts or be exe-
20 cuted before the proposal deadline in a written agreement between
21 the public transit operator and the appropriate labor
22 organization.

23 (c) That it shall not make or be bound by a contract, agree-
24 ment, or assurance which creates or extends any form of obliga-
25 tion for continued employment or employee compensation, except
26 for pension, beyond the contract expiration date under the

1 provisions of the request for proposal for employees assigned to
2 the service.

3 (d) That it shall be bound by the same terms, conditions and
4 performance, and other standards as would have applied to a pri-
5 vate transportation provider awarded the contract under the
6 request for proposal.

7 (e) That its costs per vehicle mile, exclusive of capital
8 costs, for fixed route bus services which have not been subjected
9 to competitive proposals shall not at any point during the con-
10 tract rise by a percentage greater than the cost per vehicle
11 mile, exclusive of capital costs, for the competitive service in
12 the public transit operator's proposal for the corresponding
13 period. Each adopted budget or budget revision and each United
14 States department of transportation urban mass transportation
15 administration section 15 annual report shall be reviewed by the
16 public transit operator to determine compliance with this
17 subdivision. If the public transit operator's cost performance
18 is not in compliance with this subdivision, the public transit
19 operator shall relinquish the contract and a new request for pro-
20 posal for the service shall be issued within 90 days.

21 Sec. 7. Each public transit operator shall contract with an
22 independent certified accounting firm, other than the public
23 transit operator's regular auditor, for a neutral and unbiased
24 performance audit to be completed and reported to the legislature
25 by 2 years after the effective date of this act. This audit
26 shall analyze in a fair and equitable fashion the implementation
27 of this act including, but not limited to, compliance with the

1 competitive proposal process, compliance with attributable fully
2 allocated costing requirements, the level of contract compliance
3 by private transportation providers, the cost of that compliance
4 and whether the costs will be recurring or may be reduced, appli-
5 cation of savings to consumer benefit, and taxes paid by private
6 transportation providers.