



Mass Transit Reform Lessons for Pennsylvania

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Executive Summary

Pennsylvania's two major public transit agencies, the Philadelphia-area Southeastern Pennsylvania Transportation Authority (SEPTA) and the Pittsburgh-based Port Authority Transit (PAT), have been in financial crisis for years, with no indication of abatement. In response to budget shortfalls—SEPTA and PAT are expected to run deficits in excess of \$120 and \$45 million respectively in FY 2007-08—policymakers have adopted a three-faceted response: cut service, raise passenger fares, and lobby for larger and perpetual state subsidies for public transit.

With the success of competitive contracting of transit services abroad, coupled with effective implementation in several American cities, competitive contracting holds the promise of ending Pennsylvania transit agencies' "budget crisis" cycle.

Unfortunately for Pennsylvania taxpayers and transit users, the near-total focus on the revenue side of public transit will not address the real reason for transit's seemingly endless series of financial crises: the fact that the current public-sector monopoly of mass transit services has led to costs that are spiraling out of control. Costs for both SEPTA and PAT have consistently outpaced the rate of inflation, increasing at a far faster rate than they likely would have in a competitive environment. With the success of competitive contracting of transit services abroad, coupled with effective implementation in several American cities, competitive contracting holds the promise of ending Pennsylvania transit agencies' "budget crisis" cycle.

Since 1970, public transport expenditures have more than tripled despite a lack of any increase in ridership. To bring costs down, some public authorities turned to competitive contracting of transit operations, under which the authorities would decide what service would be provided, along with the terms of service and the fares to be charged. However, the service operator would have to win the job in competition with other private (and public) transit providers.

Approximately 10 percent of all bus service and 15 percent of regional rail service within the United States was competitively contracted as of 2001, with many contracted services achieving savings of 30 to 40 percent. An analysis of successful contracting of transit services elsewhere provides guidance for implementation of a similar program in Pennsylvania. Some smaller systems, such as the Mid-Mon Valley Transit Authority and Westmoreland County Transit Authority, have already begun contracting out transit services. Adopting a successful competitive contract-

ing program in the Commonwealth’s largest mass transit markets could provide not only cost savings, but also management flexibility to offer new services and provide better quality of service.

To bring competitive contracting to Pennsylvania, it will be necessary to overcome several obstacles. Chief among the federal barriers is Section 13c of the Federal Transit Act, which stipulates that “[T]he condition of existing transit workers (shall) not be diminished through transit projects initiated with federal funds.” On the state level, the Pennsylvania Second Class County Port Authority Act grants PAT the exclusive right to provide mass transit service in Allegheny County, stipulating that anyone wishing to provide such service first obtain PAT’s permission to operate. These obstacles are far from insurmountable.

Around the country, agencies have achieved compliance with Section 13c by tying their rate of outsourcing to the rate of employee attrition, so as not to “worsen” the position of any existing employee and thereby trigger the hefty dismissal allowance requirement. This restriction forces progress to be incremental, but these agencies have still achieved significant savings. In order to permit competitive contracting of bus service at PAT, it would be necessary for the Pennsylvania General Assembly to amend the Second Class County Port Authority Act to end the monopoly on mass transit service in Allegheny County.

A number of guiding principles have emerged from contracting programs in other cities which are directly applicable to Pennsylvania. First, agencies responsible for overseeing a competitive contracting program should be responsible solely for transit policy, meaning that it should not directly operate transit services itself. Transit policy agencies should also avoid employing personnel directly responsible for operating bus transit services, thereby limiting additional “legacy costs.” Such agencies, moreover, could begin the implementation of a competitive process by contracting bus routes at the rate of employee attrition, in compliance with the Federal Transit Act. Finally, contracts should be small enough and bid frequently enough to maintain bidder interest and contractor discipline.

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Introduction

In recent years, Pennsylvania policymakers have been grappling with the seemingly annual financial “crises” of the state’s two major public transit agencies, the Philadelphia-area Southeastern Pennsylvania Transportation Authority (SEPTA) and the Pittsburgh-based Port Authority Transit (PAT). The current situation is no exception. According to published reports, SEPTA faces a \$36.8 million deficit for FY 2006-07 and an estimated shortfall of \$120 to \$140 million for FY 2007-08.¹ For its part, PAT is diverting state funds originally intended to purchase new buses to fill this fiscal year’s \$6.5 million budget gap, and it expects a \$45 million deficit for FY 2007-08.² At the same time that SEPTA and PAT are adrift in a tide of red ink, many smaller Pennsylvania public transit agencies are also experiencing financial hardships of their own.

Pennsylvania’s public transit “crisis” has elicited a three-faceted response from transit management and state and local elected officials: cut service, raise passenger fares, and lobby for larger and perpetual state subsidies for public transit. In June 2007, PAT implemented a 15 percent service reduction, with an additional 10 percent service cut planned for September if state taxpayers do not provide “higher, dedicated” funding by that time.³ SEPTA has also promised dramatic service cuts and fare increases if a growing, dedicated source of state tax dollars is not forthcoming, and many of the state’s smaller agencies have made similar threats.

State officials, led by Gov. Ed Rendell, have responded to the transit “funding crisis” by proposing a combination of new taxes, increases in existing taxes, and shifts of funding to transit from other state programs. In 2004, Rendell diverted millions of state highway funds to SEPTA and PAT to temporarily fill the agencies’ budget deficits,⁴ but his actions only delayed the inevitable day of fiscal reckoning. In 2007, he proposed a new tax on oil company profits, which he estimates would provide \$760 million annually in dedicated funding for public transit.⁵ Still other policymakers have floated proposals to increase the state’s income, sales and realty transfer taxes, and it has been suggested that if the governor’s plan to lease the Pennsylvania Turnpike to a private operator comes to fruition, the proceeds of the sale could be used to fund transit costs, as well as improvements to the state’s deteriorating roads, highways and bridges.⁶ Finally, Rep. Dwight Evans (D-Philadelphia), chairman of the state House Appropriations Committee, has gone so far as to threaten to block any state budget proposal that does not include “new dedicated funding for mass transit.”⁷

Unfortunately for Pennsylvania taxpayers and transit users, the near-total focus on the revenue side of public transit’s financial position will do nothing to address the real reason for transit’s seemingly endless series of financial crises: the fact that the current public-sector monopoly of mass transit services has led to costs that are spiraling out of control. In fact, contrary to claims by transit agency officials that they have done all they can to improve service efficiency and cost-effectiveness, costs for both SEPTA and PAT have risen much more rapidly than the concurrent rate of inflation, and far faster than they likely would have in a competitive environment.

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While transit agency managers must shoulder a portion of the responsibility for skyrocketing costs, in many cases, the refusal of unions representing transit workers to agree to cost-saving reforms have contributed greatly to public transit's "spending crisis." In some cases, this union intransigence has been aided and abetted by political intervention, as most recently illustrated in PAT's 2005 contract negotiations with its largest labor supplier, the Amalgamated Transit Union (ATU). In that case, Rendell and Allegheny County Executive Don Onorato helped the ATU win a contract that guaranteed wage increases for three years, limited employees' healthcare contributions to just one percent, contained no service cuts or layoffs, and hamstrung PAT management efforts to implement any meaningful cost-controlling reforms.⁸

To illustrate just how exorbitant SEPTA and PAT's spending growth has been, a 2005 analysis by internationally renowned transit consultant Wendell Cox found that if cost increases had simply been limited to the rate of inflation between 1983 and 2002, SEPTA's 2002 operating costs would have been \$165 million lower than they actually were, while PAT's 2002 operating costs would have been \$80.7 million lower.⁹ Cox's research further demonstrated that SEPTA and PAT's financial performance lagged far behind that of United States transit agencies which have utilized a tried and tested alternative to public transit's monopoly position as service provider: competitive contracting of transit services.

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Competitive Contracting of United States Transit Systems

According to a 2004 study, approximately 10 percent of all United States bus service was competitively contracted as of 2001, as is 15 percent of regional rail service. In the United States, competitive contracting of transit services began in the 1970s with demand-responsive systems for elderly and disabled citizens (one example of such an arrangement is PAT's ACCESS service). In most cases, this work was so small in comparison to other transit services that unions did not oppose these contracting programs. A great deal of school bus service under the control of government entities is also competitively contracted.¹⁰

Most of this contracting of transit services in the United States is occurring in smaller systems, such as the southwestern Pennsylvania-based Mid-Mon Valley Transit Authority and Westmoreland County Transit Authority. One of the main reasons for the relative lack of competitive contracting in the United States in com-

parison to the rest of the world is restrictive government regulation, which will be addressed in greater depth in the analysis that follows. In fact, government consolidation of private transit companies into public agency monopolies in the years preceding the decade of the 1970s contributed heavily to the cost problems that would follow, as unions were able to win progressively costlier labor contracts from these newly created government entities.¹¹

Since 1970, the United States has more than tripled its expenditures on public transit, and by the 1980s, it was clear that these growing costs had not translated into increased ridership. To bring costs down, some public authorities turned to competitive contracting of transit operations, under which the authorities would decide what service would be provided, along with the terms of service and the fares to be charged, but the service operator would have to win the job in competition with other private (and public) transit providers.¹²

A successful competitive contracting program can provide not only cost savings, but also management flexibility to offer new services. A 2001 survey of transit managers conducted by the Transportation Research Board of the National Research Council found that 93 percent of those surveyed stated that their expectations for competitive contracting had been “at least partially met,” with a “solid majority” of those saying that contracting “fully met” their expectations. More than half of the managers surveyed reported that “reduced operating costs were among the positive effects of contracting.”¹³

A 1989 study documented savings of 22 to 39 percent for situations in which previously publicly provided bus service was subjected to competitive contracting, and as of 1995, a study comparing the cost of competitively provided bus services found a 30 percent advantage for competitive contracting.¹⁴ Through the contracting programs undertaken in United States cities, several basic principles have been developed as components of successful contracting programs:

- Bid contracts on a fixed-price basis (such as on a price per revenue hour). If a company can drive its costs under the bid price, it can increase its profit.
- Promote competition by having several contracts for a relatively small group of routes and for a relatively short time period (no more than three years with two one-year options). An interval of this length would be long enough to avoid repeat transaction costs common to frequent re-bidding, but short enough to maintain competitor interest and discourage contractor complacency.
- Monitor the contractor’s performance continuously throughout the contract and enforce contract penalties for substandard performance. Contracts can and do mandate penalties for violations, such as late starts, cancelled runs, unclean buses, and “excessive breakdowns.”¹⁵
- Provide bus contractors with vehicles (and perhaps service facilities). This action can foster competition by reducing capital costs, which are often a substantial barrier to entry for smaller firms, and by making it easier for the public agency to re-take the service in the event of poor contractor performance.¹⁶
- Above all, a successful contracting program requires that transit policy and transit operations be separated, meaning that the agency overseeing the con-

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tracting program should not be bidding on contracts as well. In many cases, a separate policy agency has been set up to administer the contract and enforce service requirements.¹⁷ (This would currently be problematic in the case of PAT, due to a state law—the Second Class County Port Authority Act—that makes the Port Authority of Allegheny County the exclusive provider of mass transit service in the county.)

Successful United States Competitive Contracting Programs

The following section outlines the experiences of a number of United States transit systems that have implemented competitive contracting programs. All of them have achieved various levels of performance, but many of them have become “victims of their own success,” as transit unions and political officials opposed to competitive contracting worked to undermine the program features responsible for the improved performance. These experiences illustrate the path that Pennsylvania transit agencies—particularly SEPTA and PAT—can follow to reform, the potential benefits to riders and taxpayers, and the obstacles that must be surmounted in order to create and sustain an environment in which competitive contracting can succeed.

San Diego

In 1979, a relatively lopsided contract settlement in favor of the local public transit union (which contained a driver wage rate of \$10 per hour, the highest such wage in the United States at that point) led to rapidly escalating San Diego transit costs. As a response, competitive contracting was instituted beginning in 1980, and by 2001, competitively contracted costs per kilometer were 40 percent lower than the non-competitive service.¹⁸

The conversion to competitive contracting in San Diego was aided greatly by an act of the California legislature which placed authority for transit policy with the Metropolitan Transit Development Board (MTDB) rather than the former public monopoly operator, San Diego Transit (SDT). SDT became a subsidiary of MTDB, which coordinated the actions of agencies administering competitively contracted services (including itself). Union employees were not fired as a result of competitive contracting, but were instead “re-allocated to other non-contract routes at the time of contract changes.”¹⁹ Upon the first existing San Diego Transit route conversion in 1989, the union did sue, claiming that “the route belonged to San Diego Transit and could not be given away”—a sentiment echoed by the ATU during its most recent contract negotiation with PAT.²⁰

Union employees providing transit services under MTDB were contracted with San Diego Transit, not MTDB, and because it was not a transit service provider, MTDB kept substantial authority to implement competitive contracting. However, union-backed 2002 legislation combined SDT with MTDB, thereby recombining policy and operations, hindering the conversion to competitive contracting. Still, by 2001, 40 percent of San Diego bus services were competitively contracted, and the operating costs per mile of the competitively provided service were 33 percent below that of San Diego Transit. Overall real bus costs per mile (both competitive and non-competitive) had declined by 30 percent, showing just the threat of competition had exerted some downward pressure on the public monopoly’s costs.²¹

In sum, San Diego Transit’s costs fell by an inflation-adjusted 16 percent from 1979 to 2001, and while overall San Diego operating expenditures increased by 20 percent from 1979 to 2001, service went up by 72 percent, productivity rose 43 percent, and bus ridership increased by 50 percent.²²

Houston

The Metropolitan Transit Authority of Harris County (Metro) was one of the first public transit agencies in the United States to subject a substantial amount of service to competitive contracting. The contracting program began with the competitive bidding of park-and-ride services in the 1970s, and it was expanded in 1997 with a contract for private operation of an entire bus garage and all services therein. All union jobs were protected in the transition, as Metro became the first public agency to convert an entire facility (rather than certain routes) to competitive contracting. In 2000, the contractor ran 130 buses providing 12 percent of Houston's service, and reported operating costs 26 percent below those of the public agency.²³

Los Angeles

In 1977, the Los Angeles County Transportation Commission (LACTC) was created to oversee public transportation policy and control all subsidies, but not to operate transit service itself. Service was provided by the Southern California Rapid Transit District (SCRTD) and eight individual municipal operators. Collective agreements with their union workforces were with the operators, not LACTC, thus keeping policy and operations separate.²⁴

Two years later, the California legislature allowed the creation of "local transportation zones," which gave local and regional communities the power to establish new public transportation districts to competitively contract previous public monopoly services.²⁵ This led to the 1988 creation of the Foothills Transit Zone, which, as of 2000, had 231 contracted buses running more than a dozen routes in the San Gabriel Valley, operating at a unit cost 42 percent lower than the publicly operated lines of the Los Angeles County Metropolitan Transportation Authority (LA Metro). The Los Angeles City Department of Transportation also contracted out several former SCRTD routes, and as of 2000, those routes had 131 buses running at a per-hour cost 39 percent below that of the public agency. Finally, when LA Metro contracted out some of its "high-subsidy" routes to private carriers, 129 buses were operated in peak service at a 40 percent cost savings over the LA Metro fully public lines.²⁶

However, in the early 1990s, local political officials prevailed upon the California legislature to combine LACTC and SCRTD into LA Metro, claiming that the two agencies were wasteful and duplicative. The merger ended the "separation of policy and operations" that had made the contracting initiative so successful, and it led to significant cost escalation (both in terms of operating and capital costs).²⁷

San Francisco

As of 2003, 15 percent of the transit service in the San Francisco Bay area was competitively contracted among several transit agencies. The largest contract was with San Mateo County Transit, which has services that go into downtown San Francisco. Overall, competitively provided transit costs were 44 percent lower than those of the public monopoly agencies.²⁸

Dallas-Fort Worth

As of 2003, the largest competitively contracted transit operation in the United States was under Dallas Area Rapid Transit (DART), with 34 percent of service competitively contracted at a 42 percent savings over in-house services. However, the high cost of DART's suburban and express rail systems created pressure to cut the bus system.²⁹

Minneapolis-St. Paul

In 1983, the Minnesota legislature established “separation of policy and operations” for Minneapolis-St. Paul public transit. The Regional Transit Board (RTB) was to regulate, not provide services, which were under the existing public sector monopoly agency, the Metropolitan Transit Commission (MTC), and serve as the coordinating agency for municipal governments, itself, and other agencies competitively contracting transit services. The collective bargaining agreement with the MTC unions remained with MTC, not RTB, and in this way, RTB could implement competitive contracting programs without running afoul of federal labor laws governing public transit (more detail on which will be provided later in this analysis).³⁰

As RTB began to transfer services formerly provided by MTC to competitive contracting, the MTC unions lobbied to get rid of RTB, and they were ultimately successful. Transportation policy and operations were placed under the regional planning organization, the Metropolitan Council, and once again, union contracts were signed by the organization that controlled transit subsidies. The remaining contracted services constituted 17 percent of all Minneapolis-St. Paul bus service, and the cost of this service was 30 percent below that provided in-house.³¹

Las Vegas

Las Vegas is the largest United States metro area in which transit service is fully competitively contracted. It had no public bus system as late as the early 1990s, although a private franchised operator served the Strip area. When Clark County decided to form a public transit system, it also decided to contract the service competitively, and it subsequently experienced tremendous growth. From 1990 to 2000, according to Census data, Las Vegas’ Citizens Area Transit had the largest increase in public transit work trip market share in the United States, at 100 percent. This result was particularly impressive given that Las Vegas was also the fastest-growing metro area in the United States during that time period. Costs in Las Vegas remained low, as evidenced by the fact that in 2001, its costs were 41 percent lower than the average for United States public transit agencies with more than 1 million operating hours (and 11 percent lower than San Antonio, the second-lowest cost system).³²

Indianapolis

In 1972, the Indianapolis Public Transportation Corporation (then commonly known as Metro, and today known as IndyGo) was formed in response to “the growing transportation needs of the Indianapolis urban area and to promote travel to and from the Central Business District.”³³ Even as suburban growth in the Indianapolis metro area increased, bus service remained oriented around the downtown area, and ridership declined even as subsidy increased from \$1.2 million in local funds in 1982 to \$6.4 million in 1992. Costs increased along with subsidy levels, and by 1992, in the face of a \$1.2 million deficit, Metro implemented layoffs and service cuts. In response, senior administrators and managers were replaced, and most express routes were eliminated. The result was a \$1.1 million budget surplus—achieved without a tax increase—but then-Indianapolis Mayor Stephen Goldsmith was not satisfied with merely turning a deficit into a surplus.³⁴

Mayor Goldsmith—one of the pioneers in using competition to improve both the cost and quality of government services—and Metro began to re-evaluate the role of public transit in Indianapolis. Their deliberations produced the following set of principles for the future of the system:

- The city would not raise property taxes to support the transit system.

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- Metro was to focus on serving the “transit-dependent” population of the Indianapolis metro area (the disabled, the elderly, and those residents without automobiles).
 - Going forward, Metro would be “self-sustaining” and “customer-driven.”
 - The preceding goals would be met by using competition to provide transit services.³⁵

To this end, a panel of international experts, consultants and citizens was formed to examine private sector-oriented alternatives for Metro. The panel developed a “Strategic Plan for Public Transit” that called for the private operation of the transit system, the encouragement of innovation and experimentation, and the development of a market-driven, customer-oriented system.³⁶ It was expected that these changes would help to increase Metro’s service quality and reduce its costs. Before the competitive contracting program began, Metro reduced its workforce through attrition, and then implemented a small pilot contracting program of 10 routes in 1995.³⁷ The city expected to save \$3 million by 1999 through competitive contracting, and 1995 saw a 2.7 percent ridership increase over the previous year—the first such increase in a decade.³⁸

In order to avoid labor issues and increase the number of routes that could be subjected to competition, Mayor Goldsmith successfully persuaded the Indiana legislature to send its portion of Metro’s subsidy to the City of Indianapolis rather than to Metro directly. As a result, Metro had to cut part of its service, and the city became the contracting agency.³⁹ By establishing “separation of policy from operations,” the city was able to select a “mobility manager” (a consulting firm) to oversee the contracting program.⁴⁰

Indianapolis used the funds that had previously gone to Metro to bid out existing routes, which forced Metro’s union and management to work together to create “an economically competitive contractual arrangement.”⁴¹ When Indianapolis requested bids for the reduced service (mainly weekend and less-traveled routes), Metro won the contract—and it was able to do so primarily because it had reduced its own costs through negotiations with its union that yielded lower starting salaries for employees.⁴² At the same time, the outsourcing of system oversight through the creation of the city’s Office of Mobility Management also helped Metro reduce its employment, as this office was charged with system-wide planning, marketing, and customer service (in addition to its oversight duties).⁴³

The Indianapolis transit competitive contracting program brought about increased efficiency and service without increasing fares.⁴⁴ In fact, from 1994 to 1996, with 70 percent of the bus system competitively contracted, Indianapolis bus service increased by 38.4 percent, while real operating costs were up by just 8.5 percent.⁴⁵ As of 1997, Metro served 950,000 people with an average of 220 buses in operation, and by 1999, the operating budget for buses and paratransit services was \$28 million.⁴⁶

The success of the Indianapolis transit competitive contracting program was further demonstrated by an econometric study published in 1997, in which a number of transit performance variables—labor productivity, maintenance efficiency, vehicle utilization, cost efficiency, service utilization, system revenue generation, and safety—were examined as to the effect competitive contracting had on each.⁴⁷ The study found that the only variable examined not positively impacted by competition was service utilization (passengers per total vehicle miles), although both total vehicle miles operated and the number of passengers increased. In contrast, two key employee performance indicators, labor productivity and maintenance efficiency, both increased by approximately 70 percent under competitive contracting, and at the same time, cost efficiency and revenue generation both improved by about 20 percent. Finally, the accident rate fell 41.6 percent under competitive contracting.⁴⁸

Despite the success of the Goldsmith Administration at using competitive contracting to improve In-

dianapolis' transit service, lingering union resentment over the conversion to contracting remained, as well as the sentiment among some community leaders that the so-called "minimalist" approach to public transit was harming the city's image and competitiveness. Indianapolis public transit policy has moved largely away from the initiatives that worked so well in the 1990s—but their example provides valuable insight into how a failing public transit system can be reclaimed.

Denver

In 1988, the Colorado legislature passed a bill, co-sponsored by then-state representative Bill Owens (who would go on to serve two terms as the state's governor) that became the only law in the nation mandating the competitive contracting of any public service. The law originally required Denver's public transit agency, the Regional Transportation District (RTD), to competitively contract 20 percent of its bus service within 18 months of passage. This was accomplished at a savings despite the necessity of paying redundant workers to avoid federal sanctions, but it was an unusual situation in that the public operator was a competitor for the work while still overseeing the contracting program. In other words, there was no separation of policy from operations in Denver, and opponents of competitive contracting within RTD worked to undermine the effectiveness of the law.⁴⁹

One of these efforts involved a report purporting to show that RTD's in-house costs were virtually indistinguishable from those of the agency's private contractors. However, the study was found to be invalid when it was shown the in-house analysis did not account for capital costs, while the competitively bid service did. New management corrected the flaws in the study, but further attempts were made over time to show competitive contracting did not lower costs. Such efforts persisted largely due to the lack of separation of policy from operations. In any case, the contracting mandate was increased to 35 percent in 1999, and as of 2001, the competitively contracted RTD services cost 45 percent less than the in-house service. By 2003, the law required that 50 percent of RTD bus service be competitively contracted.⁵⁰

By January 2005, private companies provided more than 40 percent of the total hours driven by buses in the RTD service area. Three companies provided service with 362 leased buses, and from 1988 to 1996, RTD bus boardings were up 28 percent—the largest increase among the 25 largest United States transit systems during that period. By way of comparison, the average change in boardings for those 25 systems from 1988 to 1996 was a 13 percent decrease, and PAT experienced a 17 percent decline. In terms of cost performance, as of the fourth quarter of 2004, RTD in-house total operating and facility costs were \$82.05 per vehicle hour, while the corresponding figure for RTD's competitively contracted service was \$56.68. Two major factor influencing RTD's in-house costs are its union work rules and benefit packages—a situation similar to that currently facing the Port Authority.⁵¹

Overall, the RTD competitive contracting program saved \$30 million per year as of 2005, and it provided Denver transit users with another important benefit during the 2006 strike by RTD's unionized employees. Forty-five percent of the system's service—the routes that had been competitively contracted—continued to operate during the strike, thus weakening the union's ability to paralyze the Denver transportation network (as the ATU can do with impunity when it negotiates with the Port Authority). At the time, Gov. Owens urged striking workers to return to work immediately, and if that did not happen, he encouraged RTD to expand the competitive contracting program.⁵²

In terms of driver costs, in-house RTD drivers had average wages of \$18.05 per hour as of 2006, while hourly wages for a contracted drivers ranged between \$11 and \$16. RTD's wage progression was also much steeper for drivers than for their counterparts working for private contractors. Overall contractor hourly operations costs were more than \$10 less than those of RTD, despite the fact that contractors are

subject to a variety of taxes to which RTD is not.⁵³

Boston: Competitive Contracting Thwarted

In 1993, Massachusetts Gov. William Weld attempted to begin a competitive contracting program for Boston bus service operated by the Massachusetts Bay Transportation Authority (MBTA). The initial contract was for 20 percent of bus service, and it was unique at the time as it called for the winning bidder to assume the existing wage and benefit agreement of the public authority. Even with that provision, however, it was expected to produce more than 15 percent savings over the previous monopoly service.⁵⁴

Predictably, the affected unions opposed the proposed competitive contracting deal, and they led an ultimately successful effort to enact legislation that would severely hamstring this and any future competitive contracting initiative. The result, which came to be known as the “Pacheco Law” after its primary sponsor, requires that any competitive contracting program meet a number of extremely strict standards, as determined by the State Auditor, before it can be approved. As a result, the MBTA competitive contracting effort was abandoned.⁵⁵

Contracting Lessons from Other United States Systems

The preceding review of competitive contracting programs in major United States transit systems shows that they have generally been successful at achieving the twin goals of reducing costs and improving service efficiency, and that the greatest sustained success has been achieved when state legislative bodies have placed policy responsibility in an agency other than the former public monopoly operator. However, as the cases of San Diego, Los Angeles, and Minneapolis-St. Paul demonstrate, once policy and operations are separated, that separation must be vigilantly guarded against union and other attempts to recombine the two, or it—and the ability to realize the full potential of competitive contracting for transit services—will be lost.

At the same time that political support must be maintained for competitive contracting, proponents of competitive contracting of transit services in Pennsylvania must also consider how to surmount several additional barriers to contracting. The following section briefly discusses some of the most troublesome of those barriers.

Other Barriers to Competitive Contracting

Provisions of federal and state laws present several significant barriers to competitive contracting of transit services. Chief among these barriers is Section 13c of the Federal Transit Act—a provision gives transit workers far more extensive protections than those available to other workers, public or private sector. Under Section 13c, “[T]he condition of existing transit workers (shall) not be diminished through transit projects initiated with federal funds.”⁵⁶

Terms of Section 13c arrangements vary, but they generally include protections against a “worsening of employee conditions” as a result of a project using federal funds. In effect, a transit employee who is displaced or loses compensation other than through layoffs due to service cuts or voluntary separation can be eligible for a monthly dismissal or displacement allowance for a period equal to the employee’s length of service (up to six years). A displacement allowance pays the difference between an employee’s current position and the one from which the employee was removed, while a dismissal allowance pays the employee the full wage for the position the employee lost.⁵⁷

In practice, Section 13c has severely limited the amount of service transit agencies can contract out at any given time. Agencies that have instituted competitive contracting programs have been careful to tie the rate of outsourcing to the rate of employee attrition, so as not to “worsen” the position of any existing employee and thereby trigger the hefty dismissal allowance requirement. In so doing, those agencies have achieved significant savings, but Section 13c has forced their progress to be incremental.⁵⁸

In addition, as noted previously in this analysis, Pennsylvania law also has the potential to make any competitive contracting program for PAT service difficult to establish. The primary state barrier to a contracting initiative is the Pennsylvania Second Class County Port Authority Act, which gives the Port Authority the exclusive right to provide mass transit service in Allegheny County, and which further requires that anyone wishing to provide such service first obtain the Port Authority’s permission to operate (with the exception of transportation systems that operate into Allegheny County to pick up and drop off passengers).⁵⁹

Developing Competitive Contracting Models: Principles for Pennsylvania

Obviously, the specific challenges facing SEPTA, PAT and Pennsylvania’s smaller public transit systems require solutions tailored to their individual circumstances. For instance, in the case of competitive contracting of bus service at PAT, it would be necessary for the Pennsylvania General Assembly to amend the Second Class County Port Authority Act in order to end PAT’s monopoly on mass transit service in Allegheny County. However, there are a number of guiding principles that are broadly applicable to the potential establishment of competitive contracting of transit services in Pennsylvania (particularly for SEPTA and PAT).

First of all, any agency that is responsible for overseeing a competitive contracting program should be responsible solely for transit policy—meaning that it should not directly operate transit services itself—and it, not operators of transit services, should be the recipient of any state subsidies. Affected unions would sign contracts with the public transit operator, not the new policy agency, which should also be given a legislative mandate to begin competitively contracting bus routes (and, in so doing, “right-size” the agency).

Agencies responsible for transit policy would not have any employees responsible for directly operating bus transit services. This practice would avoid the taking on of a sizeable number of future employees, and therefore limit additional “legacy costs” (pensions, retiree health care, and the like). Authority over transit capital spending should be vested in the policy agency as well.

With regard to the implementation of a competitive contracting program, a public transit policy agency could begin by contracting bus routes at the rate of employee attrition (to avoid running afoul of Section 13c’s prohibition on “worsening” employee conditions). The policy agency would decide which routes are to be provided, the terms of service for contractors, the fares to be charged, and would also enforce provisions in contracts relating to service quality. Employees providing bus transit services, and their wage and benefit costs, would be the responsibility of the contractor, and contractors would be paid from fare revenues and subsidies received by the policy agency. Existing service providers such as SEPTA and PAT would be welcome to bid on all contracts, but agency managers would likely have to get their unions to restructure their wage and benefit regimes in order to be competitive.

Finally, the goal of the competitive contracting process should not be simply to turn public transit systems over to private operators. It is the competitive pressure generated by the bidding of multiple private and public providers that produces improved service and lower costs, not the mere substitution of a

private-sector monopoly for a public-sector monopoly. To this end, as noted previously, contracts should be small enough and offered frequently enough in order to maintain bidder interest and contractor discipline.

By “right-sizing” public transit systems like SEPTA and PAT through a competitive contracting process overseen by independent policy agencies, Pennsylvania state and local policymakers can create transit systems that provide the service riders need at a lower cost to taxpayers. All potential contractors—including current public monopoly providers—would have to adjust their operations in order to meet the expectations of policy agencies and compete successfully for their business.

In order for this to happen, however, the Pennsylvania General Assembly and Gov. Rendell will have to take on a much more active oversight role of public transit in Pennsylvania. They will need to make legislative changes (where necessary) to separate transit policy from operations, and then maintain that separation in the face of what is sure to be unrelenting union pressure to recombine them. The legislature should also mandate that Pennsylvania transit agencies begin and continue competitive contracting of bus services at the rate of employee attrition as a condition of further state subsidy.

Conclusion

It appears that some of the participants in the showdown over Pennsylvania public transit funding are finally beginning to grasp the fact that they cannot rely on hoped-for “increased and dedicated” sources of state taxpayer funding to solve their financial problems. In June 2007, Amalgamated Transit Union Local 85—the union representing 2,200 current PAT employees and 2,600 retirees—announced that it would be willing to entertain the possibility of re-opening the current labor contract, which expires in June 2008. At the same time, PAT CEO Stephen Bland has stated that his agency intends to completely re-design its route structure—perhaps in ways that better reflect Allegheny County’s current population and transportation usage patterns—and begin to link its services with those in neighboring Westmoreland and Beaver Counties.⁶⁰

While these are the types of important steps that should be part of any reform of Pennsylvania public transit, the essential ingredient to any lasting reform must be competitive contracting of transit services. Only when services are competitively provided will transit users and taxpayers in Philadelphia, Pittsburgh, and many points in between finally obtain the service quality and cost efficiency that they deserve—and that many other American and international cities have demonstrated is attainable.

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