

## **TLPA President Judy Swystun Testifies to Encourage Private Sector Participation in Transit**

On May 28, 2004, TLPA President Judy Swystun submitted testimony on how to maximize private sector participation in transportation to the House Committee on Government Reform's Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs hearing. Congressman Doug Ose, R-Calif., called the hearing to explore the Department of Transportation's record in encouraging private sector participation in public transportation.

President Swystun's testimony follows.

**Testimony on How to Maximize Private Sector Participation in Transportation  
to the  
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs  
of the  
House Committee on Government Reform  
by  
Judy Swystun, President  
Taxicab, Limousine & Paratransit Association  
May 28, 2004**

On behalf of our country's private taxicab, paratransit, and contract transportation service providers, we appreciate the opportunity to submit this testimony on the benefits of reinvigorating private sector participation in the provision of public transportation services funded by the Federal Transit Administration. The Taxicab, Limousine & Paratransit Association commends Congressman Ose for holding this hearing to explore the Department of Transportation's record in encouraging private sector participation in public transportation and its record in faithfully implementing the various private sector participation statutory provisions through its codified rules, oversight, enforcement, and other initiatives.

### **Industry Overview**

The Taxicab, Limousine & Paratransit Association (TLPA), formed in 1917, is the national organization that represents the owners and managers of taxicab, limousine, sedan, airport shuttle, paratransit, and non-emergency medical fleets. TLPA has over 1,000 member companies that operate 124,000 passenger vehicles. TLPA member companies transport over 2 million passengers each day — more than 900 million passengers annually.

The taxicab, limousine, and paratransit industry is an essential part of public transportation that is vital to this country's commerce and mobility, to the relief of traffic congestion, and to improving the environment. The private taxicab, limousine, and paratransit industry transports 2 billion passengers annually, compared with the 9 billion passengers transported by public transit; provides half of all the specialized paratransit services furnished to persons with disabilities; serves as a feeder service to major transit stations and airports; and provides about half of its service to transportation disadvantaged people, such as the elderly, who are either not able to drive or do not have a car.

### **Background of the Federal Transit Act and Its Private Sector Participation Provisions**

The Urban Mass Transit Act of 1964 was the congressional response to the dismal condition of the private sector transit industry in the 1960s. In the decade just prior to its enactment, 243 transit companies were sold and another 194 were abandoned. These sales and abandonments had a profound effect on transit labor and transit services. Between 1945 and 1960, transit employment decreased from 242,000 employees to 156,000 employees. Although mass transit had generally been viewed as a local, rather than national issue, many members of Congress viewed the federal mass transportation program as a necessary step to preserve both transit jobs and services. One of the principal features of the 1964 Act was to provide federal funding for local public bodies to acquire financially troubled private transit companies.

### **Private Enterprise Requirements in the Federal Transit Act**

Since its inception, the Federal Transit Act has recognized the importance of private sector participation in Federal mass transportation program. Section 5323(a)(1)(B) [formerly 3(e)]; Section 5303(e) and 5303(f) [formerly 8(e)]; Section 5304(d) [formerly 8(h)]; Section 5306(a) [formerly 8(o)]; and Section 5307(c) [formerly 9(f)] mandate private sector participation in programs assisted by federal transit grants. (When discussing the Federal Transit Act, it is sometimes confusing because one person may refer to Section 16(b)(2), Section 8(o), or Section 13(c), while another person may refer to Section 5310(d), Section 5306 (a), or Section 5333(b). Both are referring to the same provisions of the Act, but the citations are different because in July 1994, after 30 years, Public Law 103-272 repealed the Federal Transit Act and related transit provisions and reenacted them as chapter 53 of title 49, United States Code.)

Although the private enterprise participation requirements had been the law for nearly two decades (1964-1984), contracting of services to private operators was a minimal \$10 million per year in the early 1980s. Then in 1984, in response to President Reagan's call for a greater private sector role in addressing

community needs, the Federal Transit Administration issued the Private Enterprise Participation (PEP) Policy that called for the use of private providers in transportation wherever practical. The reason given for this policy was that injecting competition into the provision of public transit services would result in lower costs for quality services. It was also thought that in addition to real cost savings, contracting out some services would limit the growth in transit agencies' own costs for providing services.

Success of the PEP Policy is well documented. From 1984 through 1990, the amount of privately contracted transit bus service increased by 62.5%. From 1984 to 1991, amount of privately contracted paratransit service increased by 135%. The FTA Private Enterprise Participation Policy helped encourage competition and provided a framework for the transit community to meet the requirements in the Federal Transit Act of 1964, as amended, that private transportation companies are included, to the maximum extent feasible, in the planning and delivery of transit services. The FTA PEP Policy was very successful in that competitive contracting reduced public costs in three ways:

- Directly through lower service costs that typically ranged from 20 percent to 40 percent
- Indirectly through "ripple effect" impacts on services that had not been competitively contracted. For example, San Diego began contracting in 1979, and as a result of the PEP Policy has converted 38 percent of its bus system to competitive contracting at an average cost saving of 30 percent. "Ripple effect" savings have reduced the costs of non-competitive service by 25 percent per vehicle hour. In fact, through 1996, as a result of competitive contracting, San Diego systemwide bus costs per vehicle hour were \$475 million less than if costs had risen at the industry rates experienced by those agencies that do not contract.
- Private sector contractors pay local, state and federal taxes and the taxes paid by private operators benefit the public good.

There are numerous examples in addition to San Diego Transit where the impetus of the FTA PEP Policy resulted in innovative services utilizing private operators. A few follow below.

- In Phoenix, AZ, the transit agency saved a significant amount of money by eliminating Sunday bus service and replacing it with a shared-ride taxi service.
- The Ann Arbor Area Transit Authority eliminated its late-night bus service and replaced it with a shared-ride taxi service.
- Transit Authorities in Dallas and Houston expanded service to growing suburban areas by contracting for express bus service.

- The Denver Regional Transit District is required by state law to contract out 35 percent of its fixed route service, which it does at a cost savings of 41 percent. (The testimony submitted by the ATU used Denver as an example of contracting that failed, quoting a January 2002 article about troubles with a private operator that had to be replaced. Despite Amalgamate Transit Union's claims, Denver remains a positive example of the benefits of contracting.)
- Indianapolis contracts 70 percent of its bus system, experiencing a cost-per-hour reduction of 22 percent.
- The City of Las Vegas contracts out its entire system. Costs per vehicle hour dropped by 33.3 percent.
- Foothills Transit outside Los Angeles contracts out its entire system to private operators. Its ridership has risen by over 50 percent, it has added 57 percent more service, and its fares have dropped by 37 percent.

An oft-quoted fallacy is that the savings to the transit agency are because the contract workers are paid a lower wage than the public transit employees. However, studies have shown that the lower contractor costs result from administrative efficiencies, improved management of the work force, more productive work rules, better utilization of equipment and facilities, improved maintenance practices and labor compensation consistent with competitive market rates.

### **Rescission of the PEP Policy**

In 1993, in the early days of the Clinton/Gore Administration, a great deal of administration governmental reform policy was based on a book entitled *Reinventing Government* by David Osborne and Ted Gaebler. Incredibly, the new administration rescinded the Private Enterprise Participation Policy, although *Reinventing Government* specifically cited the FTA Private Enterprise program for its efforts to achieve competition and efficiency in the delivery of government services. In a letter protesting the rescinding of the PEP Policy, Osborne stated, "I believe the Private Enterprise Policy is indeed a model program. It simply requires local authorities to determine and consider the alternatives, public and private, in reaching transit objectives." He continued, "The injection of competition into public monopolies is a fundamental principle not only of 'Reinventing Government,' but of the Administration's National Performance Review, run by Vice President Al Gore. I serve as a senior advisor on the Performance Review. We are actively trying to increase, not decrease, the amount of competition in federally funded services."

Since the rescission of the PEP Policy in 1994, there have been no significant incentives to continue the more effective use of resources that result from the consideration of competitive contracting in the provision of public transportation. For this reason alone, this hearing being conducted by Congressman Ose is a welcome opportunity for private operators to recommend steps that could be taken to maximize private operator participation in the provision of transit.

One of the barriers to more competitive contracting is the adversarial attitude with which public operators and their unions seem to regard private operators. A number of myths have arisen regarding private operators, chief among them is the notion of "cream skimming" (e.g., private operators will only accept profitable public transit routes). Robert Cervero is a distinguished professor in the Department of City and Regional Planning at the University of California-Berkley. He has published at least four books and many journal articles concerned with public transport. In 1988, he wrote the report, *Transit Service Contracting: Cream-Skimming or Deficit-Skimming?* This report is more than 110 pages in length but Cervero's findings can be summarized in the following four short paragraphs taken from his Executive Summary.

- There are very, very few profitable fixed route bus services in the U.S. from which any "cream" could possibly be skimmed. Even when only the direct operating portions of the total costs are considered, less than one percent of all fixed route bus services currently operated by medium and large size transit agencies in the U.S. make a profit or break even.
- There is little evidence of any significant economies of scale in the transit industry, particularly for large transit agencies, meaning there is no real economic justification for protecting transit properties from competition. This and other research shows consistently that unit costs of delivering bus services rise when vehicle miles increase. Thus, private firms that assist in serving high-deficit peak loads should help reduce the scale of public operations to a more cost-efficient level.
- In all instances to date, public agencies control which routes private bidders are given an opportunity to take over, meaning that agencies have retained their best performing routes for in-house operation. By remaining the funding sponsors, public authorities are in a position to hold back any routes they so choose from possible bidding. Experience shows that only the highest deficit, poorest performing routes are ever contracted.

- Overall, it is concluded that competitive contracting of fixed-route transit services, as practiced today and in the foreseeable future, actually results in deficit-skimming. Rather than ruthless predators, contractors are actually friends of the public transit sector. They take over the least productive routes and usually deliver a comparable or better quality service at a lower deficit rate.

There are a number of other myths regarding contracting between public transit agencies and private operators that I would like to bring to your attention. These include:

- **Myth:** *Public transit agencies have a responsibility to provide all services themselves since transit is a public service.*  
**Reality:** A transit agency's mission is to provide mobility, not operate vehicles, and an agency fulfills its mission by making cost-effective mobility available.
- **Myth:** *The public sector loses control of services when they are provided under contract.*  
**Reality:** The public sector increases its control over the service and the provider(s) through a legally enforceable agreement regarding services to be rendered and associated costs.
- **Myth:** *Contracts are difficult to develop and enforce, resulting in a loss of government accountability and control.*  
**Reality:** Public managers are skilled in writing legally binding contractual agreements for countless goods and services. Transit services agreements are no different.
- **Myth:** *Contracting fosters an undesirable dependence on contractors and leaves the public sector vulnerable to one provider.*  
**Reality:** A competitive approach reduces the dependence on a single supplier (i.e., a government monopoly), since any contract may be terminated and multiple providers may be used. This reduces the vulnerability of a service to labor actions, poor service quality, inadequate management, etc.

- **Myth:** *Competition limits the flexibility of government in responding to emergencies.*  
**Reality:** A competitive approach permits a quicker response to meet new needs and facilitates experimentation in new services. Agencies have increased flexibility in adjusting a transit program's size in response to changing ridership, financial constraints, and other factors.
- **Myth:** *A competitive approach is more expensive because of the potential for corruption, existence of the profit motive, and the costs of managing the contract and monitoring the contractor.*  
**Reality:** Competition is more efficient as it streamlines the service and eliminates inefficiencies. Productivity is a paramount concern. By contracting some service, an agency can measure the productivity of their in-house employees against that of a contractor's employees and can choose the lowest cost mode of service delivery.
- **Myth:** *Service contracting is a threat to organized labor and a de facto violation of the Federal Transit Act's labor protection provisions [Section 5333(b)].*  
**Reality:** There is not a single case of a transit employee having been furloughed as a direct result of service contracting.
- **Myth:** *As service contracting becomes more widespread, the overheads and labor costs of private firms will eventually rise, as their workers become unionized.*  
**Reality:** In general, periodic rebidding of contracts has provided an effective safety valve for controlling costs. Moreover, rather than the private sector costs rising, it is more often the case that the public sector costs moderate or fall in order to be more competitive.

The public private partnership approach to providing transit services is a proven tool to achieve various public objectives, including cost control, enhancements of service quality and quantity, and access to capital funding. "Cream-skimming" is an urban myth. Since few if any routes are profitable, there is no cream to skim. However, as there are ever-increasing demands for limited transit funds, the competitive approach offers a means to provide current or new services at a reduced cost and utilizing the savings for existing transit services. The public-private competitive approach may be used for numerous services, including:

- Paratransit services for the elderly and people with disabilities

- Social service agency transportation
- Bus services (commuter, express, and local)
- Peak period overloads
- Evening and weekend services
- Employer and developer shuttle and vanpool services
- Customized service, such as "guaranteed ride home" programs.

The private sector has a very important role to play in the delivery of safe, efficient and productive public transit services in this country.

**TLPA Legislative Program to Revitalize the Participation of Private Transportation Providers to the Planning and Delivery of Public Transit Services**

The current reauthorization of public transit legislation that is being considered by Congress offers legislators a tremendous opportunity to enact legislation that will go a long way to "maximize private sector participation in transportation." TLPA recommends that the following legislative actions be included in the final transportation reauthorization bill to advance the public policy benefits that would be derived from a significant expansion of the role private operators play in the delivery of public transportation services.

The infusion of competition into the provision of public transit services is important for a number of reasons including: (1) the need to guard against inequitable government subsidized competition, (2) to guarantee efficiency and effectiveness in the expenditure of Federal mass transportation assistance through competition, and (3) to prevent duplicative expenditures. The following five legislative initiatives are designed to increase the participation of private operators to the maximum extent feasible as is called for in the statute.

### **1. Repeal the Anti-Private Sector Federal Transit Planning Certification Provision**

The Planning Program provisions applicable to transit and metropolitan planning agencies are found in Sections 5303 to 5306 of Title 49 United States Code - Transportation. Section 5306(a) states: "A plan or program required by Section 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible the participation of private enterprise." Under Section 5306(c), the private enterprise participation requirements are defined as:

- Section 5306(c)(2) requires each recipient of a grant shall develop, in consultation with interested parties, including private transportation providers, a proposed program of projects or activities to be financed;
- Section 5306(c)(3) requires each grant recipient to publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials, have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;
- Section 5306(c)(6) requires each grant recipient to consider comments and views received, especially those of private transportation providers, in preparing the final program of projects.

Unfortunately, the experiences of private operators with transit agencies and Metropolitan Planning Organizations (MPOs) for the past twelve years under ISTEA and TEA-21 are that these private enterprise participation provisions are being ignored, because Section 5305(e)(3) of the title states that:

The Secretary may not withhold certification [that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States] based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under Section 5306(a) of this title for deciding the feasibility of private enterprise participation.

Section 5305(e)(3) discriminates directly against private transportation operators. The power and role of MPOs were greatly enhanced with the enactment of ISTEA in 1991 and even more so with the enactment of TEA-21 in 1998. In the transit portion of TEA-21, the MPO is required to be certified at least every three

years, and it has to certify that it complies with all applicable laws and regulations except one. That one exception is the private sector provision of the Federal Transit Act.

This anti-competitive, anti-private sector provision should be repealed from the Federal Transit Act because the only sections of the Act that save the taxpayers' money are the private sector provisions of the statute that require grant recipients to consider the utilization of the private sector in the provision of public transit service. In addition, the enforcement of Section 5305(e)(3) effectively neutralizes the private sector participation requirement and removes the likelihood that the MPO will make a decision that allows for competition in public transit.

After the passage of TEA-21, the Federal Transit Administration and Federal Highway Administration issued a memorandum on how their field offices should proceed with the planning requirements of the law. The document serves as a reminder to transit operators, state DOTs, and Metropolitan Planning Organizations to ensure a basic level of compliance with TEA-21's statutory language. There are eight requirements covered in the memorandum including the following:

Consultation with transit users and freight shippers and service providers: "Before approving a long-range transportation plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, **private providers of transportation**, representatives of public transit, and other interested parties with a reasonable opportunity to comment on the long-range transportation plan, in a manner the Secretary deems appropriate." (Emphasis added)

The law mandates a role for the private sector, yet at the same time, Section 5305(e)(3) explicitly withdraws any enforcement of the mandate. Both the ATU in its testimony and Congressman Tierney in his statement at the hearing indicated that the repeal of 5305(e)(3) would be unfair to public transit agencies and tilt the playing field in favor of private operators. Nothing could be further from the truth. By hiding behind Section 5305(e)(3), many agencies do not even consider the role the private sector could play in improving the quality and cost effectiveness of transportation services in their area. The study published by the Transportation Research Board in 2001, *Contracting for Bus and Demand-Responsive Transit Services*,

reported that 40 percent of all federal transit aid recipients do not currently contract at all. TLPA urges that the House/Senate Conference reauthorization bill adopt the language used by the Senate in S. 1072, its reauthorization legislation, and repeal this provision.

## **2. Issue Private Participation Requirements**

There is ample, indisputable evidence that the Private Sector Participation Guidance, developed and promoted by the Reagan and Bush Administrations, was a great success raising the amount of contracting, in just ten years, from \$10 million per year to over \$500 million per year. Public transit agencies, private operators, local governments, and most importantly, the public itself can realize significant benefits from contracting some public transportation services to private operators.

- Benefits for the riding public include increased levels of transportation services, increased convenience, and improved service quality.
- Private operators typically realize increased income, productivity and exposure in their communities.
- Benefits for public transit agencies typically include cost savings, the ability to serve a greater number and type of trip needs, and allow a more productive allocation of union labor.
- Local governments typically realize cost savings and a higher level of public transit services.

However, since the rescission of the Reagan-Bush Private Enterprise Participation policies in 1994 by the Clinton-Gore Administration, the private sector has been relegated to the back burner and is not even an afterthought in the minds of many transit and government officials.

- The testimony of the three private operators: Mr. Allen, Mr. Tanaka, and Mr. Thomas at the hearing was ample evidence of the need for rulemaking as called for by Congressman Ose. Other evidence includes the following:
- Currently, 40 percent of all public transit agencies do not contract any services. Even though there is a legislative requirement to utilize private operators to the maximum extent feasible, a very alarming 30 percent of these transit agencies are led by general managers who state unequivocally that they never consider contracting.

- Only three of the Federal Transit Administration Regional Administrators were regional administrators when the guidance was in place, so even high-placed FTA officials have basically dropped private operators from their purview. It has been many years since FTA officials have been instructed to assure consideration of the private sector in leveraging public transportation investment and to assure cooperation, not unfair subsidized competition, in the efficient use of federal transit grants.
- After FTA rescinded the Private Enterprise Participation Policy, it withdrew the private sector guidance for its Capital Program, Urbanized Area Program, Nonurbanized Area Program, Elderly and Persons with Disabilities Program, and its Competition Policy for Paratransit Activities. As the years have passed and new employees have come into transit management positions, consideration of private operators for contracting purposes is ending. Just as consideration of private operators was virtually non-existent for 20 years after the Federal Transit Act of 1964 became law (until the Private Enterprise Participation Policy was introduced in 1984); utilization and even consideration of the private sector is now declining. Also, many states have revised their guidance to operators and dropped private sector inclusion in the planning process as a result of FTA backing away from enforcing the private sector provisions in the Federal Transit Act.
- While it is true that the requirements of providing complementary paratransit service required by the ADA has increased the dollar volume of contracted transit services, the trend is for transit agencies, under union pressure, to take contracts back in-house. Altogether, contractors provide about 15 percent of all bus and demand-responsive vehicle hours, a percentage that has changed very little during the past five or six years.

The public private partnership approach to providing transit services is a proven tool to achieve various public objectives including cost control, enhancements of service quality and quantity, and access to capital funding. However, as there are ever-increasing demands for limited transit funds, the competitive approach offers a means to provide current or new services at a reduced cost utilizing the savings for existing transit services. TLPA urges the House/Senate transit reauthorization bill conferees to require FTA to conduct a rulemaking to reestablish a Private Sector Participation Policy. The end result would be an increase in the efficiency and effectiveness of public transit operations in this country, which would benefit transit riders.

### **3. Amend DOL Administration of the Federal Transit Labor Protection Provisions**

In April 2001, the House Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure heard testimony from Anthony Downs, a senior fellow at the Brookings Institution who was asked to provide a report on the "Future of U.S. Ground Transportation from 2000 to 2020." In his testimony, Downs stated:

To a great extent, two types of archaic institutional structures hamper approaching future ground transportation rationally and efficiently. First, existing means of governance in most metro areas are not capable of managing regional growth so as to create consistently higher densities in new-growth areas ... **The second major institutional roadblock lies in the regulations that govern public transit. Existing authorities bolstered by transit unions want to maintain monopolies of very inefficient large-scale systems that cannot achieve flexible approaches to serving low-density residential areas. Yet such areas will comprise the vast majority of all new areas we are likely to build in the next two decades ... Imaginative management of public transit funds would encourage bidding for new types of services by private entrepreneurs. But the political power of transit unions and established institutions makes that unlikely ...** (emphasis added)

Mr. Downs is not the first individual to recognize the role unions play in stifling innovation in public transit because of the hold that Section 5333(b)-transit labor protection (formerly Section 13(c)) gives them over transit agency management. Section 5333(b) adversely impacts transit operations in a variety of ways, but two are of particular concern to private operators, including paratransit operators:

- Restrictions on delivering transit services in a manner that makes the most business sense, particularly the roadblocks that 5333(b) present to any legitimate competitive contracting efforts; and
- Financial liability for 5333(b) claims, often in connection with changes in contractors, regardless of whether the action involved has any real connection to a Federal project or grant.

Private operators' concerns about Section 5333(b) arise not out of its original intent, but rather out of how it has evolved and been expansively interpreted by the Department of Labor over the years. As the legislative

history reflects, the original Section 13(c) was designed by Congress to protect transit workers from adverse impacts in employment that might result from Federal grants and to protect the collective bargaining rights of employees of private transit companies when those companies were purchased by public entities with Federal funds. Clearly, given these congressional objectives, Section 5333(b) has been interpreted and applied far beyond its original intent. Transit operators are being repeatedly frustrated in their efforts to provide additional and cost effective transit for the people they serve due to the threat of labor protection impediments and costs. Some unions have used Section 5333(b) to block contracting action, and to impose large costs that reduce or eliminate the efficiencies in contracting for services. In April 2001, the Subcommittee on Highways and Transit heard testimony from public transit officials representing Sacramento, Little Rock, Las Vegas, Boston, New York, and Chicago — six dissimilar cities, but all burdened and asking for relief from the Section 5333(b) labor protections. Peter Stangl, Chairman and CEO of the New York Metropolitan Transit Authority, summed up the concerns of these six public transit representatives by stating:

“Current labor protection requirements, the “13(c)” provisions of the Federal Transit Act, apply to both capital and operating budgets. A grant recipient’s union must approve both our capital and operating assistance requests before FTA can proffer grants. Such sign-off provisions give extraordinary control over a transit organization to the unions and can be used to undermine more traditional channels for resolving labor/management disputes. The net effect of 13(c) is to deprive transit operators of the ability to achieve reasonable productivity. Most critically, the regulations do nothing to advance legitimate federal interests.”

The scope and nature of the 5333(b) protections required in “change in contractor” cases have continued to be a subject of major debate. The Department of Labor has become increasingly sympathetic to the efforts of the transit unions to include in 5333(b) protections a requirement that contractors providing transit services for a Federal grantee hire the workforce of the preceding contractor, and adopt the terms of the existing collective bargaining agreements. The provisions sought essentially provide a guaranteed right of continued employment, a “carryover” of the then-effective collective bargaining agreement, and if read literally, recognition of the existing union representative.

Compounding the difficulty with the Department of Labor's position is the fact that FTA grantees are faced with inconsistent, and sometimes directly conflicting, imperatives from the Federal agencies that play a major role in their funding. Specifically, grantees are being told by FTA that they must conduct periodic competitive procurements for transit services and award to the successful proposer under FTA's procurement principles, only then to be told by the Department of Labor that they cannot take any action that would change the existing workforce or their unions. These conflicting Federal directives cannot be reconciled, leaving grantees in the untenable position of trying to decide which agency to believe and whose rules to follow.

A required carryover could have a significant adverse impact on contracted services in the paratransit area. In particular, the potential economic benefits of competitive contracting could be lost if labor costs are effectively "locked in" from one contractor to the next.

The Department of Labor had previously held that when a contract for a fixed length has been properly terminated in accordance with its terms, impacts that occurred solely as a result of the expiration of the bid contract were not to be considered "as a result of" a Federal grant, and thus would not give rise to 5333(b) protections for affected employees. One major exception to the general rule was where the applicable 5333(b) protections already in place explicitly required the carryover of employees and/or the collective bargaining agreement.

The transit labor unions have been more aggressively pursuing 5333(b) provisions requiring a carryover of the workforce and collective bargaining agreement, both in the context of negotiation over the terms to be included in 5333(b) agreements and in the form of 5333(b) claims filed under applicable existing 5333(b) protections.

Section 5333(b)'s roots can be traced back to late 19<sup>th</sup> century rail labor law. These protections basically provide that should a union member covered by a labor agreement lose his or her job through the actions of a federal grant, that union member is entitled to compensation of up to six years full salary. This onerous penalty, once widespread across the United States, now only applies to two industries: Amtrak and public transit.

The Senate reauthorization bill modified the labor protections in three ways. First, they reduced the severance pay for affected transit workers from six years to four years. Second, they clarified that a change in contractors does not produce 13(c) obligations. And third, they codified the current 13(c) warranty for the rural program and added the warranty for the Job Access and Reverse Commute program.

TLPA believes implementation of the Senate language would be a good start to attaining a more level playing field to the competitive bidding process at many transit agencies.

#### **4. Adopt the President's New Freedom Program**

President Bush has stated that his New Freedom Program is designed to close the mobility gap for disabled Americans who currently do not have adequate mobility options so that these persons will have “the opportunity to participate fully in society and engage in productive work.” According to Secretary of Transportation Mineta, the New Freedom Program funds are intended to increase access to assistive technologies and educational opportunities, and to enhance the integration of disabled persons into the workforce and communities. The Department of Transportation is charged with responsibility for the New Freedom Program funding, underscoring the central role of transportation in achieving the goals of the program.

Today, most public transit systems are largely accessible to disabled persons as a result of public funding to meet the requirements of the Americans with Disabilities Act. However, the privately owned and funded taxicab and paratransit industry receives virtually *no* public funding to provide service to the disabled. At the same time, private operators provide an essential means of transportation for people in urban, suburban and rural areas. The industry is used on a curb-to-curb basis, to reach other transportation facilities such as bus and rail stations and airports, as well as workplaces, schools, doctors, community centers and other locations. Taxicabs are ubiquitous, operating in over 2,000 communities and providing demand-response service 24 hours per day, 365 days per year. For many people, the disabled included, taxicabs provide the essential link between home, the community at-large and other transportation systems. Taxicabs are more broadly available than municipal paratransit services, which are generally available only with advance reservation, for limited hours, and then only in city centers and in areas three-quarters of a mile from fixed route bus corridors or rail stations.

Significantly greater accessibility for a larger number of disabled persons easily could be achieved, consistent with the goals of the ADA, if New Freedom Program funds were made available to carry out a program designed to close the mobility gap with respect to critically important curb-to-curb transportation provided by the private taxicab and paratransit industry. The program, which would be administered by the Federal Transit Administration, would authorize funding to qualified organizations (community groups or directly to taxicab companies) for use in enhancing local transportation services for disabled persons by working with private taxi-van providers to fund the purchase, promotion and operation of taxi-vans that meet federal accessibility requirements for vans and that serve persons requiring accessible transportation to reach work, schools and other places in the community at-large.

The House of representatives included the New Freedom Program as a new standalone formula grant program in their TEA-LU reauthorization legislation. The Senate bill combines the 5310 Program and the New Freedom Program into one program where private operators are eligible to contract.

**5. Streamline and Consolidate FTA's Special Needs Programs (JARC, New Freedom, and Section 5310) to Adopt the Same Planning and Eligibility Requirements**

In the past seven years, the Federal Transit Administration (FTA) has introduced or proposed two innovative programs designed to meet the special needs of two of the most transportation-dependent groups: those with low incomes and the disabled. The Job Access and Reverse Commute (JARC) grant program is designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to employment. President Bush's proposed New Freedom Program would provide for alternative transportation services to jobs and innovative solutions eliminating transportation barriers faced by persons with disabilities. Along with the FTA Section 5310 Elderly and Persons with Disabilities Program, JARC and the New Freedom program are FTA's special needs programs. Each one of these programs has a slightly different target audience, JARC (unemployed and welfare-to work-individuals); New Freedom (disabled individuals whose needs cannot be with ADA accessible transportation options); and Section 5310 (assisting private non-profit groups and certain public bodies in meeting the transportation needs of seniors and persons with disabilities). However, there are such similarities and potential synergies among the programs that TLPA urges Congress to require that each program have uniform planning and eligibility requirements using the JARC planning and eligibility requirements as the guidelines. This request is also consistent with the recent emphasis on coordination of transportation resources at the Federal level.

The issue of providing affordable, accessible and safe transportation for human services clients has been extensively researched and promoted since the early 1970s. In October 1986, Secretary of the U.S. Department of Health and Human Services Otis Brown and Secretary of the U.S. Department of Transportation Elizabeth Dole signed an historic joint agreement on the coordination of transportation services funded by the two agencies. Every subsequent administration has renewed this commitment to coordination. In the past 17 years, the scope and reach of coordinated transportation services have advanced to such an extent that one can find exemplary models of coordinated activities in virtually every state. However, recent changes in Federal social service programs, principally the change from serving children's needs in the Aid to Families with Dependent Children program to serving entire families' needs in the Temporary Assistance to Needy Families (TANF) program; difficulties in funding medical services, primarily the financial dilemmas states are facing with the Medicaid program; and changes in the demographics of our country, chiefly the increasing proportion of our population age 65 and older, have fostered a renewed need for and commitment to coordination at the Federal level. The administration's reauthorization bill requires any locality applying for funding for NFI, Section 5310 or JARC to demonstrate that they have a local, coordinated process that includes all the stakeholders: public and private operators, local governments, private non-profit organizations and riders. Having a seat at the table should give private operators an enhanced role in helping plan for and provide coordinated services. TLPA supports having one streamlined program that has uniform planning and operating requirements for recipient and subrecipient grantees.

The importance to all parties involved in the planning process and especially to those who are not compensated to participate in planning, such as private operators and citizen groups, of having uniform planning and participation requirements for these special needs programs cannot be overstated. The Federal Transit Act requires that planners and grant recipients "shall encourage to the maximum extent feasible the participation of private enterprise." However, having to deal with different requirements for each and every FTA program is often mind numbing and counterproductive.

As noted above, the Senate voted to combine the Section 5310 Program and NFI into one program in which private operators are eligible to contract. The Senate bill also provides for the JARC planning process to be used by this new program, effectively accomplishing TLPA's goal of streamlined planning should this Senate provision become law.

### **Conclusion**

As Congressman Ose has pointed out, FTA has had ample time and opportunity to undertake a ruling that ensures that public transit agencies will take adequate efforts to integrate private enterprise in their transit programs. Competitive contracting is a tool that is available to public transit agencies to assist them in managing their costs in these current economic times where virtually every state and locality is scrambling for dollars to overcome budget deficits. Competitive contracting not only results in lower costs for public services that are competitively contracted, it also induces improved cost performance from the public agency. Contractors are the friends of the public transit sector. They take over the least productive routes and usually deliver a comparable or better quality of service at a lower deficit rate. There is little evidence of any significant economies of scale in the transit industry, particularly for large transit agencies, meaning there is no real economic justification for protecting transit properties from competition. Research consistently shows that unit costs of delivering bus services rise when vehicle miles increase. Thus, private firms that assist in serving high-deficit peak loads should help reduce the scale of public operations to a more cost-efficient level.

Despite the need and benefits, without a change in FTA attitudes, policies and legislation, the public will continue to be denied the substantial benefits that could be achieved from greater private operator participation through competitive contracting.

Thank you for this opportunity to submit testimony for the record.